

The Senate

Foreign Affairs, Defence and Trade
References Committee

The Torres Strait: Bridge and Border

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Abbreviations

ACIAR	Australian Centre for International Agricultural Research
ADF	Australian Defence Force
AFMA	Australian Fisheries Management Authority
AFP	Australian Federal Police
AI	Avian influenza
AMSA	Australian Maritime Safety Authority
AQIS	Australian Quarantine and Inspection Service
BPC	Border Protection Command (multi-agency unit)
CMS	Convention on Migratory Species
CPO	Community Police Officer
DAFF	Department of Agriculture, Fisheries and Forestry
DEEDI	Queensland Department of Employment, Economic Development and Innovation
DEWHA	Department of Education, Environment, Water, Heritage and the Arts
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
DoHA	Department of Health and Ageing
EMC	Environmental Management Committee
EPA	Environment Protection Agency (Queensland, now Department of Environment and Resource Management)
EPBC	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EEZ	Exclusive Economic Zone
GDP	Gross Domestic Product

HIC	Health Issues Committee
H1N1	Swine Influenza
IDC	Interdepartmental committee
IMO	International Maritime Organization
IUCN	International Union for Conservation of Nature
IUU	Illegal, unregulated and unreported fishing
JAC	Joint Advisory Council
JCU	James Cook University
JE	Japanese Encephalitis
LSMU	Land and Sea Management Unit
MDGs	Millenium Development Goals
MDRTB	Multi-drug resistant tuberculosis
MMO	Immigration Movement Monitoring Officer
MTSRF	Marine and Tropical Sciences Research Facility
NAQS	Northern Australia Quarantine Strategy
NAQIA	National Agricultural Quarantine and Inspection Agency
NPARC	Northern Peninsula Area Regional Council
OCVO	Office of the Chief Veterinary Officer
OCPPO	Office of the Chief Plant Protection Officer
PBC	Prescribed Body Corporate
PNG	Papua New Guinea
PTCN	Pacific Transnational Crime Network

PSSA	Particularly Sensitive Sea Area
PZJA	The Torres Strait Protected Zone Joint Authority
QATSIP	Queensland Aboriginal and Torres Strait Islander Police
QDPI&F	Queensland Department of Primary Industry and Fisheries
QPS	Queensland Police Service
QNU	Queensland Nurses Union
RNOTI	Resident Naval Officer Thursday Island
RRRC	Reef and Rainforest Research Centre
SWF	Screw-worm Fly
TAC	Total allowable catch
TB	Tuberculosis
TCU	Transnational Crime Unit
The Treaty	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. (Sydney 18 December 1978)
TIB	Traditional inhabitant boat (licence)
TIM	Traditional Inhabitants' Meeting
TNCC	Transnational Crime Conference
TRL	Tropical rock lobster
TSC	Torres Shire Council
TSCMC	Torres Strait Coastal Management Committee
TSFA	<i>Torres Strait Fisheries Act 1984</i>
TSIRC	Torres Strait Island Regional Council
TSPZ	Torres Strait Protected Zone
TSRA	Torres Strait Regional Authority
TVH	Transferable vessel holder (licence)

UNCLOS	United Nations Convention on the Law of the Sea (1982)
UNEP	United Nations Environment Programme
WHO	World Health Organization

Executive summary and recommendations

Whether considering health issues, law and order, conservation, biosecurity, climate change, border protection or economic development in the Torres Strait, the committee found that a number of clear messages emerged during the course of its inquiry. They underscored the importance of:

- engaging local people, 'the eyes and ears of the north', in activities that come under Treaty arrangements and decision-making associated with them;
- encouraging PNG's full participation in all aspects of Treaty arrangements, including the cycle of Treaty meetings, and strengthening its capacity to support joint undertakings in the region;
- ensuring that Australia's development assistance to Western Province produces benefits that are well-targeted and long lasting;
- recognising the Torres Strait as a joint jurisdiction and capitalising on the potential for Australia's aid agencies and research institutes working on the PNG side of the border to link up, wherever possible, with their counterpart agencies in the Torres Strait to support and complement each other's work;
- achieving effective whole-of-government cooperation and coordination between government agencies, giving particular attention to the sharing or pooling of assets and the delivery of services to the region; and
- preventing or minimising abuses of treaty arrangements and reconciling differences in perceptions between traditional inhabitants and government agencies about the operation of the provisions of the Treaty.

These messages are evident in the committee's recommendations which have been grouped under the key subject headings as set out in this report.

Provision of health services

The committee recommends that:

- through the Package of Measures developed by the Health Issues Committee, the Australian Government continue to support PNG initiatives to establish new, or improve existing, health facilities in Western Province so that PNG nationals no longer need to seek health care in the Torres Strait; (recommendation 1, paragraph 4.23)
- the Australian Government give serious consideration to measures that would further facilitate the proposal for greater cross-border involvement by Australian health professionals in both the provision of services and capacity building initiatives on the PNG side of the border; (recommendation 2, paragraph 4.35)
- the Australian Government review its funding to Queensland Health to ensure that such funding is commensurate with the actual costs incurred by

Queensland Health in providing health care to PNG nationals; (recommendation 6, paragraph 5.34)

- the Australian Government offer assistance to help the Queensland Government fund the implementation of the new data collection systems for PNG nationals accessing health services in the Torres Strait; and provide funding, if required, for a review of the effectiveness of this system; (recommendation 7, paragraph 5.41.)
- the Department of Immigration and Citizenship ensure that its statistics on PNG nationals visiting Australia, including those in Australia receiving medical treatment, are complete and complement those collected by Queensland Health; (recommendation 8, paragraph 5.42)
- relevant Australian government agencies combine their efforts to ascertain whether, or the extent to which, PNG nationals are coming to Australia to access social services, whether they are misinformed about their entitlements and, if so, the source of this misinformation and how best to correct it. (recommendation 9, paragraph 5.44)

Australia's development assistance to Western Province

The committee recommends that:

- the Australian Government use the Papua New Guinea–Australia Partnership for Development to detail the assistance it is providing to PNG to improve the delivery of health services in the southern part of Western Province and to ensure that projects undertaken in this region are appropriately monitored and evaluated during implementation and after completion; (recommendation 3, paragraph 4.61)
- to improve accountability and transparency of Australia's development aid spending, AusAID's Office of Development Effectiveness (ODE) conduct an analysis of Australia's funding in relation to Western Province in the Torres Strait region—

This analysis must provide an accurate and quantifiable account on the effectiveness of Australian aid provided to Western Province in the Torres Strait region. Special consideration must be given to the outcomes of Australian Government initiatives in the region, including both technical achievements and outputs and changes in attitudes and behaviour; (recommendation 4, paragraphs 4.62–63)

- the analysis mentioned in the previous recommendation also look closely at the extent and effectiveness of AusAID's cooperation with Queensland Health and consider ways to ensure that their work in the Torres Strait region is seamless across the border and that their operations and funding complement each other; (recommendation 5, paragraph 4.68)

Policing in the Torres Strait

The committee recommends that:

- the Queensland Government consider, as part of its overall review of policing in Indigenous communities, increasing Community Police Officer powers in order to enable them to respond more effectively to incidents in Torres Strait island communities and providing appropriate training and supervision in the use of these powers. The findings of the recent Queensland Crime and Misconduct Commission inquiry provide an ideal starting point; (recommendation 10, paragraph 8.47)
- with regard to matters dealing with visiting PNG nationals, the committee believes that the Australian Government has a direct responsibility. It recommends that the Australian Government should confer with the Queensland Government on how best it, and more particularly the AFP, can assist with any law and order issues that arise because of the shared border and the presence of PNG nationals in the Torres Strait; (recommendation 11, paragraph 8.64)
- in consultation with law enforcement and border security agencies working in the Torres Strait, the AFP review its presence in the region and consider whether it adequately meets the level of risk and community expectations. (recommendation 22, paragraph 13.79)

Conservation and biosecurity, community management plans and community involvement in protecting the environment and in sustainable management

The committee recommends that:

- the Australian Government ensure that the funding for the development of community management plans and the employment of community rangers is secure and commensurate with the maintenance and progress of these plans; (recommendation 12—also applies to biosecurity—paragraph 10.15)
- in recognition of the important role of community rangers in both conservation and in maintaining Australia's biosecurity, the Australian Government, in consultation with TSIRC and TSRA, give consideration to making the positions of community rangers permanent; (recommendation 12, paragraph 10.16)
- in conjunction with local communities in the Torres Strait, AusAID consider ways that would enable much greater engagement by PNG villagers in the work of community rangers in the Torres Strait as a means of educating and training them in conservation and biosecurity and in managing their environment. In particular, the committee recommends that the Australian Government support the TSRA's efforts to engage coastal communities in Western Province in turtle and dugong conservation; (recommendation 13, paragraph 10.33)

- the Australian Government fund a number of scholarships for PNG post-graduate students whose research would be linked to the community management plans now in operation in the Torres Strait and the work of community rangers; (recommendation 13, paragraph 10.34)
- the Australian Government ensure that there is adequate funding available for:
 - regular assessments of stocks of protected or vulnerable marine species in the Torres Strait; and
 - research into the nature and size of the catch by traditional inhabitants and the illegal or unauthorised harvest of marine turtles, dugong and bêche-de-mer in the Torres Strait; (recommendation 14, paragraph 10.38)
- when allocating funding for research projects in the Torres Strait, the Australian Government ensure that relevant agencies place a high priority on projects that demonstrate a commitment to engaging local communities in the formulation and design of these projects and, where possible, to training local Indigenous people in research techniques and sustainable management; (recommendation 15, paragraph 10.52)
- as a high priority, the Australian Government consider engaging AusAID and other Australian agencies working in PNG such as ACIAR as partners with Australian research bodies working on the Australian side of the border. This partnership, which would include local communities, would be designed to ensure that work on the PNG side complements, builds on and reinforces the conservation and biosecurity work being done on the Australian side; (recommendation 16, paragraph 10.60)
- in line with this priority, the committee recommends that, wherever practical, researchers or project officers working in the Torres Strait are encouraged to establish or strengthen partnerships with counterparts in PNG so that work on both sides of the border is complementary and builds critical networks of researchers who are then well positioned to collaborate in further research. AusAID could act as a key coordinator in forging these links; (recommendation 16, paragraph 10.60)
- the Australian Government assist Torres Strait Islanders to assume a central role in biosecurity-relevant studies, including research into management of indigenous flora and fauna, and surveying and monitoring threats to their localities, such as illegal fishing or the introduction of harmful weeds or pests. (recommendation 17, paragraph, paragraph 12.65)

Border protection

The committee recommends that:

- DFAT assume the leadership role in exploring ways with relevant border control agencies to make better use of modern technologies to identify travellers visiting the Torres Strait. The aim would be to implement as soon as practicable an improved means of identification for people crossing the border

in the Torres Strait that would be in keeping with the spirit of the Treaty; (recommendation 18, paragraph 13.32)

- DFAT jointly with DIAC, Customs and Border Protection, the AFP and Queensland Police review the ways in which government agencies currently work with local communities as partners to promote border security. The intention would be to consult with local communities to gauge their views on how their role in border security could be improved and to use this process to strengthen the intelligence network on the ground in the Torres Strait; (recommendation 19, paragraph 13.39)
- the Australian Government continue to support and fund adequately the effort to combat illegal fishing in the Torres Strait; (recommendation 20, paragraph 13.65)
- the Australian Government provide the funding needed to expedite the charting of uncharted waters in the Torres Strait, with priority given to the waters between Saibai and Boigu and the area north of these islands
 - the Department of Defence provide the committee with periodic updates on the progress being made to chart the waters of the Torres Strait. (recommendation 21, paragraphs 13.73 and 13.74)

Climate change

The committee recommends that:

- the Australian Government
 - place a high priority on implementing practical measures that need to be taken in the short term to assist local communities in the Torres Strait better deal with and, where possible, mitigate the problems caused by higher sea levels and extreme weather events;
 - review the need for an education and training program designed specifically to assist those communities in the region most at risk from the damaging effects of changes in climate. The intention would be to determine how best to assist people to remain productive members of their community in a changing environment; (recommendation 23, paragraph, 14.20)
- the Australian Government lend its full support to CSIRO's 'climate adaptation flagship' and ensure that adequate funding is made available to the institution to continue this initiative; (recommendation 24, paragraph 14.36)
- in conjunction and closely connected with this initiative, the committee recommends that the Australian Government fund a study into socio-economic developments in the region, including in the South Fly District, and their implications for water and food security and population movements in the area; (recommendation 25, paragraph 14.37)
- the Australian Government assist PNG to undertake complementary studies of climate change in Western Province by providing funding for research,

opening up research opportunities for PNG researchers to work alongside Australian researchers in this area and for Australian researchers to work in PNG. For example, the Australian Government should consider offering scholarships or traineeships for PNG students to participate in CSIRO's climate adaptation flagship; (recommendation 26, paragraph 14.40)

- ACIAR consider including climate change and the implications for coastal villages in PNG's southern region as research priorities for PNG (traditional fishing, the conservation of species, including the dugong and turtle, and emergence and/or spread of exotic pests); (recommendation 27, paragraph 14.41)
- the Australian Minister for Foreign Affairs consult with his PNG counterpart about removing immediately any possible impediment to the Environment Management Committee and the Joint Advisory Council considering climate change in the Torres Strait. (recommendation 28, paragraph 14.45)

Commercial fishing in the Torres Strait

The committee recommends that:

- DAFF monitor developments within the Protected Zone Joint Authority (PZJA) during the coming twelve months. Further, at the end of that period, it consult with representatives from the Indigenous and non-Indigenous fishing sectors in the Torres Strait and with the Queensland Government to ascertain whether, in their view, the PZJA is making progress in remedying the problems identified in this report. The committee recommends that DAFF prepare a report for the minister for his/her consideration and for the report to be provided to the committee. (recommendation 29, paragraph 15.66)

Governance, consultation and service delivery

The committee recommends that:

- the Australian Government look closely at the operation of the Customs facility on Saibai with a view to increasing the opportunities for greater integration of effort across all agencies engaged in the Torres Strait; (recommendation 30, paragraph 16.15)
- the government establish a working group to consider the sharing arrangements for government assets in the Torres Strait with a view to identifying any areas for improvement, any real or potential points of conflict in the sharing of assets and how they could be resolved; (recommendation 30, paragraph 16.16)
 - a copy of this assessment be provided to the committee for its consideration; (recommendation 30, paragraph 16.17)
- the Royal Australian Navy remain in close consultation with all relevant agencies working in the Torres Strait in order to arrive at a decision regarding a Navy presence there that would best support Australia's whole-of-government effort in the region. (recommendation 31, paragraph 16.22)

- agencies take note of the observations about 'consultation overload' and make real efforts to dispel the notion that government officials fly in and fly out. (recommendation 32, paragraph 16.29)
- the Australian Government, the Queensland Government, the two local councils and the TSRA establish a working group with the aim of formulating recommendations designed to produce a more stream-lined and integrated approach to service delivery in the Torres Strait. (recommendation 32, paragraph 16.30)

Consultative mechanisms under the Treaty

The committee recommends that:

- DFAT examine the working of the consultative mechanisms with a view to developing, in collaboration with their PNG counterparts, initiatives that would encourage and assist PNG representatives to attend and participate in all joint activities, build their capacity to contribute to decision making and importantly, to follow through with agreed actions; (recommendation 33, paragraph 16.55)
- the Australian Government, in consultation with the PNG Government, establish 'Torres Strait cooperation' as a standing item on the agenda for the annual bilateral ministerial meetings or forums. (recommendation 34, paragraph 16.57)
- DFAT explore the reasons for the different perceptions held by traditional inhabitants and state and Commonwealth authorities on the effectiveness of arrangements under the Treaty and report on its findings. This report to include suggestions on ways to reconcile these differences (recommendation 35, paragraph 17.21)

Commonwealth responsibilities—infrastructure and waste management

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; (recommendation 35, 18.6)
- the Australian Government consider providing additional funding for Horn Island airport, especially in areas related to safety, security and border control. (recommendation 36, paragraph 18.11)

Chapter 1

Introduction and conduct of inquiry

Referral of inquiry

1.1 On 14 September 2009, the Senate referred matters relating to the Torres Strait to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report by 26 February 2010. On 25 February, the Senate granted an extension of the reporting date to 13 May and on 12 May to 2 September 2010.¹

1.2 On 19 July 2010, the Governor-General prorogued the 42nd Parliament and dissolved the House of Representatives. After due consideration, the committee tabled an interim report on 20 August informing the Senate that it would require additional time to consider and prepare its final report for presentation in the 43rd Parliament.

Terms of reference

1.3 Under the terms of reference, the committee was to inquire into 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.

1 *Journals of the Senate*, 12 May 2010, p. 3461.

Conduct of inquiry

1.4 The committee advertised its inquiry on its website and in *The Australian*, *Brisbane Courier Mail* and *Torres News* calling for submissions to be lodged by 30 October 2009. The committee also wrote directly to a range of people and organisations inviting written submissions. These included federal government departments and agencies, academics, research and strategic studies institutes, non-government organisations, local councils in the region, the Queensland Government, and the governments of Indonesia and Papua New Guinea (PNG) through their representatives in Australia.

1.5 The committee received 32 submissions which are listed at Appendix 1. The committee held public hearings in Canberra, Brisbane and Thursday Island in the Torres Strait. A list of the hearings, together with the names of witnesses who appeared, is at Appendix 2.

1.6 During the inquiry, the committee also received additional information and answers to questions taken on notice. This documentation is listed at Appendix 3 and is available on the committee's website.

Visit to the Torres Strait

1.7 The committee visited the Torres Strait between 21 March and 23 March 2010. It inspected Horn Island airport and the nearby detention centre for illegal fishers, and the hospital and the Army unit on Thursday Island. Members went on board and inspected the Customs vessel, *CORIO BAY*. They travelled to the two most northern islands where they met and held formal discussions with traditional leaders from the region. On Saibai, committee members inspected the local health clinic, the Customs facility and a designated entry and exit point for traditional inhabitants from PNG. They observed the landing of four dinghies from PNG carrying a number of PNG nationals who were visiting the island to trade.

1.8 While on the island, the committee took the opportunity to host a lunch for local leaders and to converse with them informally about their concerns. On the invitation of local leaders, the committee also toured the flood-prone areas to gain an appreciation of the damage being done through erosion and sea water inundation. The committee then flew to Boigu where Councillor Donald Banu and his colleagues briefed members on a range of matters. Afterwards, members walked through the village to the shoreline to inspect the designated entry and exit point.

1.9 As part of its public hearings on Thursday Island, the committee held an open forum to which it invited local people to participate. The committee found its visit to the region invaluable. Both the formal and informal conversations with residents of the Torres Strait provided committee members with a much better understanding of the challenges facing the region and of the hopes and expectations of the people who live and work there.



Committee members visiting the detention centre for illegal fishers, Horn Island



Hospital on Thursday Island



Committee members inspect Army unit on Thursday Island



The committee on arrival at Saibai airstrip

Related inquiries

1.10 A number of parliamentary committees have reported recently on matters relating to the Torres Strait. Although not concerned solely with the Torres Strait, they gave extensive consideration to this region. In October 2009, the House of Representatives Standing Committee on Climate Change, Environment and the Arts tabled its report, *Managing our coastal zone in a changing climate*. This report made a few recommendations specific to the Torres Strait (see Appendix 4).

1.11 In November 2009, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs tabled a report *Inquiry into remote Aboriginal and Torres Strait community stores*. Finally, the House of Representatives Standing Committee on Health and Ageing received submissions and held a Round Table Forum on regional health issues common to Australia and the South Pacific. It gave a significant amount of attention to the Torres Strait. Indeed, as part of its visit to the region, the committee spent some time meeting communities on the Australian and PNG side of the border. It tabled a report in March 2010 and made numerous recommendations particularly in relation to Australian assistance toward improving PNG's health system (see Appendix 4).

Scope of inquiry

1.12 Primarily concerned with foreign affairs, defence and trade matters, the committee considered domestic matters in the Torres Strait in the context of the Torres Strait Treaty (the Treaty) and Australia's relations with its near neighbours (see Appendix 5 for text of the Treaty). It took a strong interest in the movement of people, animals and goods through the straits and in border control. It also looked closely at the way in which Australia and PNG work together to implement the provisions of the Treaty.

Structure of report

1.13 The report is divided into the following main sections:

- Overview—general description of the Torres Strait, its people, geography, history and key features, the function and purpose of the Treaty, and the different layers of government operating in the region;
- Part I—free movement of people and the challenges that this creates for the health, welfare and security of local communities;
- Part II—the natural resources and eco-system of the region, conservation, biosecurity and sustainable development;
- Part III—Australia's national security from the point of view of criminal activity in the straits—illegal fishing, transnational crime, people smuggling—and socio-economic trends in the region that may create difficulties for border security in the Torres Strait; and
- Part IV—governance in the Torres Strait.

1.14 Each section in the report is accompanied by an analysis of the effectiveness of the measures that Australia takes to ensure that the objectives of the Treaty are realised.

Acknowledgments

1.15 The committee thanks all those who contributed to the inquiry by making submissions, providing additional information or appearing before it to give evidence. The committee also wishes to express its gratitude to the government and local officials who helped the committee plan and arrange its visit to the Torres Strait and for their support throughout the committee's time in the region.

1.16 It especially acknowledges the warm welcome it received from the people of the Torres Strait and appreciates their efforts in bringing their concerns for the region to the committee's notice.

Part I

Overview of the Treaty

Chapter 2

Torres Strait and the Treaty

2.1 The Torres Strait Treaty (the Treaty) was signed in 1978 and came into effect in 1985. This agreement between Australia and Papua New Guinea (PNG) does far more than establish borders. It has multiple objectives and is concerned with protecting the traditional way of life of local inhabitants, conserving the environment and promoting sustainable development in the region.

2.2 In this chapter, the committee starts its consideration of the Torres Strait by providing a brief description of the region and its people—their history, customs and way of life. This account provides some understanding of the major factors that gave final shape to the Treaty. The committee then examines:

- the main features of the Treaty;
- the challenges implementing the Treaty
 - the complexity of the Treaty and the mechanisms for coordinating the work of the various levels of government involved in the Torres Strait; and
 - general views on the operation of the Treaty.

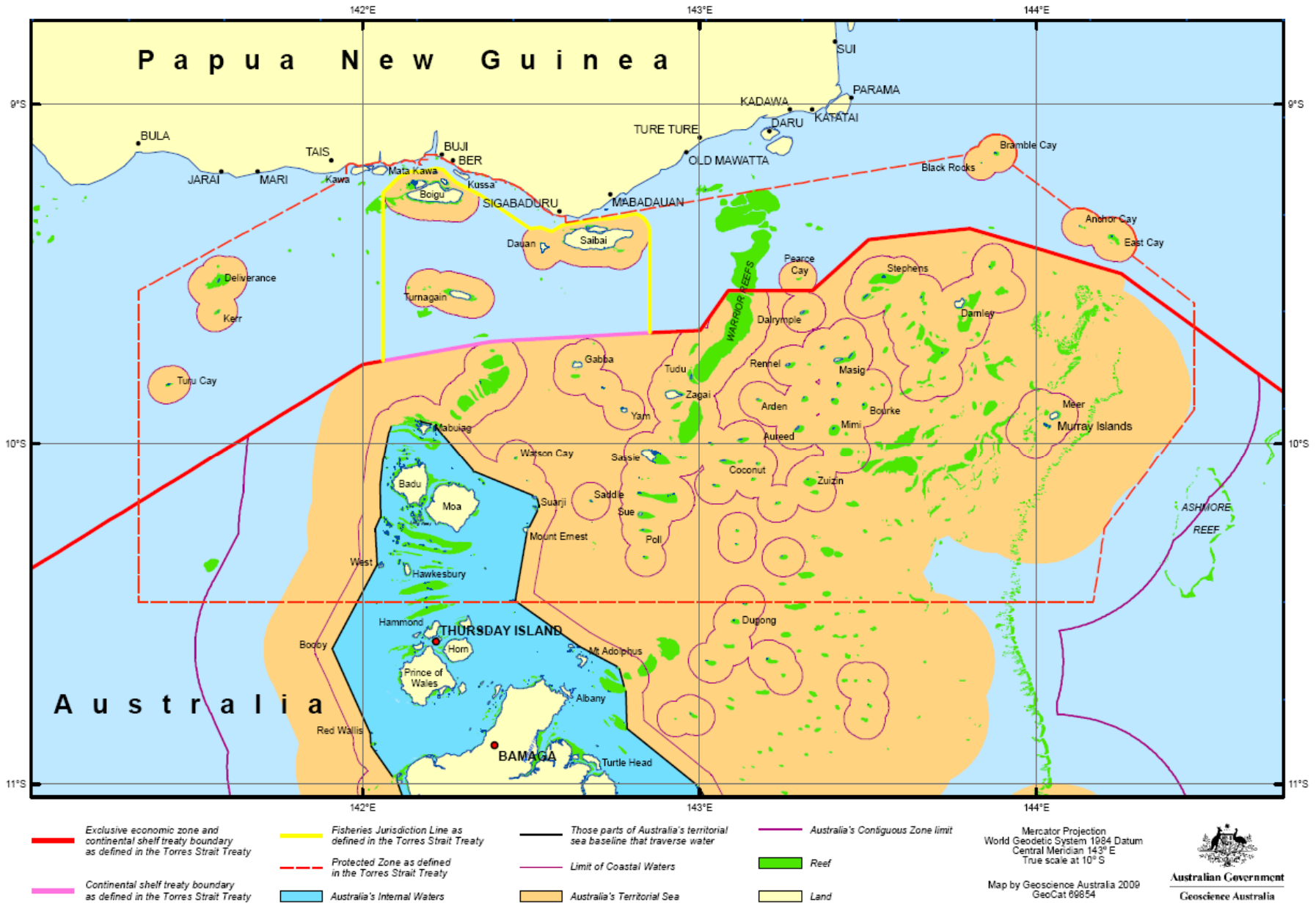
Torres Strait and its people

2.3 The Torres Strait is a body of water in the far north of Australia that stretches approximately 278 kilometres from the tip of Cape York Peninsula to the southern border of PNG. It is over 160 kilometres long connecting the Arafura Sea on the west to the Coral Sea on the east.¹ Hundreds of islands and reefs dot this area which is rich in geographical, ecological and cultural diversity. They range from low-lying islands formed from alluvial deposits and fringed with mangroves to granite islands with mounds of basaltic rock. There are high volcanic islands with rich brownish soils that stand in contrast to flat and poorly-watered sandy coral cays with scrubby vegetation.² On the very sandy islands, gardening is not productive, whereas cultivation takes place on those with fertile soils.

1 Exact measurements differ but the figures given here are based on those in Document submitted by Australia and Papua New Guinea to the International Maritime Organization, Marine Environment Protection Committee, 49th session, Agenda item 8, MEPC 49/8, 10 April 2003, p. 2. It stated that the Torres Strait is about 150 nautical miles long and 90 nautical miles wide. See also the *Reef Guide, A Shipmaster's handbook to the Torres Strait and the Great Barrier Reef*, Maritime Safety Queensland and Australian Maritime Safety Authority, fifth edition, 2003. It stated that the Torres Strait is about 140 nautical miles long and 80 nautical miles wide, p. 6.

2 See for example, David Lawrence and Helen Reeves Lawrence, *Torres Strait: the region and its people*, Aboriginal Studies Press, www.aiatsis.gov.au/aboriginal_studies_press/order (accessed 19 February 2010).

Figure 2.1: Map of the Torres Strait



2.4 These environmentally diverse islands provide a unique home for indigenous flora, fauna and marine life. Eighteen island communities with populations ranging in size from less than one hundred to over two thousand are located in the strait.³

2.5 The islands in the Torres Strait form five distinct clusters. According to the Torres Strait Regional Authority (TSRA), they are:

Top Western Islands

- Boigu Island—a low lying island formed from alluvial mud deposited on decayed coral platforms, population 283;
- Dauan Island—a small granite island, population 153;
- Saibai Island—formed from alluvial sediment, is approximately 20 km long and 6 km wide, and separated from PNG by only 5 kilometres, population 337.

Western Islands

- Badu Island—one of the larger islands, partly covered with mounds of basaltic rocks with lightly vegetated open areas and fringed by extensive mangrove swamps, population 818;
- Mabuag Island—partly covered with mounds of basaltic rocks, lightly vegetated and mostly well watered, population 251;
- Moa Island—the second largest island in the Torres Strait, is lightly vegetated and well watered and has two communities;
 - Kubin Community on the south side of the island, population 201; and
 - St Paul's Community on the northern side of the island, population 238.

Central Islands

- Iama (Yam) Island—a vegetated granite island with steep hills, population 311;
- Masig (Yorke) Island—a coral cay, approximately 2.7 kilometres long with a maximum width of 800 metres, population 300;
- Poruma (Coconut) Island—a coral cay, approximately 1.4 kilometres long and 400 metres wide, population 166; and
- Warraber (Sue) Island—a small low lying coral island of 93 acres surrounded by extensive reefs that support an abundant marine life, population 247.

3 TSRA, website, <http://www.tsra.gov.au/the-torres-strait/community-profiles.aspx> (accessed 14 January 2010).

Eastern Islands

- Mer (Murray) Island—comprises three high level volcanic islands with red fertile soil and dense vegetation, population 485;
- Ugar (Stephen) Island—of volcanic origin with rich fertile soil, home to the region's smallest community, population 76;
- Erub (Darnley) Island—of volcanic origin with rich soil, the largest of the Eastern islands, population 320.

Inner Islands

- Hammond Island—hilly island with mounds of basaltic rocks, population 212;
- Muralug (Prince of Wales) Island—203 square kilometres, the largest of the Torres Strait Islands, population n/a;
- Ngurupai (Horn Island)—a flat island of approximately 53 square kilometres houses the region's primary airport, population 586;
- Thursday Island—the administrative centre for the Torres Strait Islands, population 2,547.

2.6 Of the 8,576 people residing in the Torres Strait at the time of the 2006 census, 81 per cent were Torres Strait Islanders, 1.7 per cent Aboriginal and 14.5 per cent non-Indigenous.⁴

2.7 There are three main administrative bodies in the Torres Strait that have responsibility for representing the interests of residents in the region. They are the Torres Shire Council (TSC), the Torres Strait Island Regional Council (TSIRC) and the Torres Strait Regional Authority (TSRA). The TSC is the local government authority that administers the inner islands of the Torres Strait; the TSIRC administers the 15 outer islands whose councils amalgamated in March 2008 to form the TSIRC.⁵ The TSRA is an Australian Government statutory authority funded by the Australian Government and responsible for programs for Torres Strait Islander and Aboriginal people living in the region. Its primary objective is to achieve a better quality of life and develop an economic base for Torres Strait Islanders and Aboriginal persons in the Torres Strait.

4 Queensland Government, Office of Economic and Statistical Research, Indigenous Regional Profile (Census 2006), Torres Strait Indigenous Region; see also Australian Bureau of Statistics, *Population distribution, Aboriginal and Torres Strait Islander Australians*, 4705.0, 2006, p. 40.

5 In the Torres Strait, the Torres Shire Council administers Thursday Island, Horn Island, Friday Island, Prince of Wales Island and Goods Island. For Information on the Torres Shire Council see <http://www.torres.qld.gov.au/>

Torres Strait Islanders—way of life

2.8 The people of the Torres Strait are seafaring people, who have a deep attachment to their lands and surrounding sea.⁶ For example, researchers Colin Scott and Monica Mullrennan observed that at Erub:

Ownership and control of reef and deeper water resources are as fundamental to culture and identity as ownership and control of dry land, and certainly more important to the future development prospects of people in the Strait. As a senior man of the Peidu clan declared 'Our feet are on the land, but our hands are in the sea'.⁷

2.9 Although communities in the Torres Strait share a geographical area and an established and enduring connection to the sea, they have over many generations evolved their own identity, culture and traditions.⁸ Each has developed a 'sense of being distinctive to a stable, long established, closely knit and self-conscious society' and has stories that explain its spiritual and cultural heritage.⁹ Ms Anna Shnukal noted the close bond between a community and its location. In the Central Islands:

...almost every vertical projection—whether island, cay, atoll, reef, rock or sandbank—is named, owned and serves some material or symbolic purpose. Ownership resides with specific Islander communities, even down to the level of clans, families or individuals.¹⁰

2.10 The culture of the Torres Strait people is much more than rituals or ceremonies: it is also about the nature of community life, social expectations, the duties and obligations of members of the community and the moral values and beliefs underpinning them.¹¹ It establishes relationships with, and responsibilities to, the sea,

6 See for example, David Lawrence and Helen Reeves Lawrence, *Torres Strait: the region and its people*, Aboriginal Studies Press, www.aiatsis.gov.au/aboriginal_studies_press/order and Nonie Sharp, Transcript, ABC Radio National, 'Spirit of Things', 'Seadreaming', 15 December 2002.

7 Colin Scott and Monica Mullrennan, 'Land and sea tenure at Erub, Torres Strait: Property, sovereignty and the adjudication of cultural continuity', *Oceania*, vol. 70, issue 2, Sydney, December 1999.

8 See for example, Case Study 1, 'Climate change and the human rights of Torres Strait Islanders', in Australian Human Rights Commission, *Native Title Report 2008*, p. 229, http://www.hreoc.gov.au/social_justice/nt_report/ntreport08/casestudy1.html (accessed 4 January 2010).

9 Jeremy Beckett, *Torres Strait Islanders: Custom and Colonialism*, Cambridge University Press, Cambridge, 1987, p. 4.

10 Anna Shnukal, 'The Post-contact created environment in the Torres Strait Central Islands', *Memoirs of the Queensland Museum Cultural Heritage Series*, vol. 3, part 1, Queensland Museum, Brisbane, June 2004, p. 319.

11 See for example, Julie Lahn, 'Past Visions, Present Lives: sociality and locality in a Torres Strait community', Thesis for the degree of Doctor of Philosophy submitted James Cook University, November 2003, p. 19.

its surrounds and resources. Anthropologist Nonie Sharp wrote of the Meriam people of the Murray Island Group:

The right to a locale or clan territory includes foreshore, reef, seabed, waters, fish. As with land it has *going with it* identifiable responsibilities...these responsibilities are given to the head of the patriline or nameholder of jointly-owned marine space to share it and its produce with designated kin, to look after it, to fish and 'farm' it, to exclude others from it (according to the 'keep off' rules of the Meriam god, Malo).¹²

2.11 Over the centuries, communities in the Torres Strait have built a complex social network. The bonds between some are strong and based on long standing cultural and social exchanges. For example, one researcher noted how communities form close relationships:

A trip to Poruma [from Warraber] takes around two hours by dinghy...much less when the sea is calm. Here proximity and consanguinity fold into each other. Decades of intermarriage between these islands have resulted in a web of familial interconnection.¹³

2.12 Shaped by its history and own unique land and seascape, Island life in the Torres Strait draws on centuries of tradition as well as more recent Melanesian, Aboriginal, Polynesian and European influences. In this regard, the body of customs, traditions, beliefs and practices of Torres Strait Islanders is both diverse and dynamic. Anna Shnukal noted:

Recent colonial history has left its mark. For example, the people of the Central Islands responded to the demands of the new economic and cultural order by altering many aspects of their traditional lifeways, but only by degrees and within traditional constraints.¹⁴

2.13 According to Jeremy Becket, Island custom is a lived and living creature, 'capable of taking on new meanings and functions'.¹⁵ He wrote:

According to the old myths, their ancestors subjected the fetishes brought in from other places to a process of 'domestication', integrating them into the local structures without denying their exotic origins. In the same way, latter day Islanders domesticated not only the songs and dances they adopted

12 Nonie Sharp, 'Reimagining Northern Seascapes in Australia: Open Access, Common Property and the Return of Responsibility?', Paper prepared for the Seventh International Conference for the Study of Common Property, 'Crossing Boundaries', Vancouver, 10–14 June 1998.

13 Julie Lahn, 'Past Visions, Present Lives: sociality and locality in a Torres Strait community', Thesis submitted for the degree of Doctor of Philosophy, James Cook University, November 2003, p. 14.

14 Anna Shnukal, 'The Post-contact created Environment in the Torres Strait Central Islands', *Memoirs of the Queensland Museum Cultural Heritage Series*, vol. 3, part 1, Queensland Museum, Brisbane, June 2004, p. 336.

15 Jeremy Beckett, *Torres Strait Islanders: Custom and Colonialism*, Cambridge University Press, Cambridge, 1987, p. 4.

from the South Sea people, but also the diving boats, the church and government, weaving them about with customary practices and organizing them along customary lines.¹⁶

2.14 Some communities along the southern border of PNG also have a long and established affinity with the Torres Strait. For centuries, they have sailed, hunted, fished, traded produce and goods, formed strong family connections, and attended ceremonies and traditional tribal gatherings in the Torres Strait. This network of social bonds and trade routes between communities on the islands and the coast of PNG developed into a region-wide identity.¹⁷

2.15 When the time came to negotiate an international border, both Australia and PNG recognised the need to respect the age-old traditions, family links, customs, and practices of the local inhabitants. The following section considers the Treaty that was agreed to and the special provisions that recognise and accommodate the uniqueness of the region and its history.

Torres Strait Treaty

2.16 The Treaty took six years to negotiate, was signed by Australia and Papua New Guinea on 18 December 1978 and entered into force in February 1985.¹⁸ It contains 32 Articles and, as noted earlier, is much more than 'a simple border delimitation agreement'.

Territorial boundaries

2.17 When negotiating the Treaty, Australia and PNG's first task was to recognise sovereignty over the many islands in the strait and to establish the territorial boundaries between them. History and tradition had a significant influence over the process.

History and sovereignty

2.18 By proclamation in 1879, the Colony of Queensland annexed a number of islands in the far north of the Torres Strait lying close to the coast of New Guinea, including Saibai, Dauan and Talbot (Boigu) Islands. The line on the map created by this historical act extended Australia's sovereignty to within five kilometres of the PNG coast. Thus, at the time of negotiating the Treaty, these islands had effectively been part of Queensland and subject to its laws for almost one hundred years.¹⁹ At

16 Jeremy Beckett, *Torres Strait Islanders: Custom and Colonialism*, Cambridge University Press, Cambridge, 1987, pp.6–7.

17 See for example, Torres Strait Natural Resource Management Reference Group, *Land & Sea Management Strategy for Torres Strait*, Natural Heritage Trust, November 2005, p. 45.

18 *Submission 23*, p. [1].

19 Queensland Government, *Queensland Coast Islands Proclamation dated 18 July 1879*, reprint No. 1.

various times since 1879, proposals had been made to move the border further south but to no effect. During the drafting of the Treaty, Torres Strait Islanders resisted strongly any suggestion for redrawing the line. According to Professor Donald Denoon:

Border No Change signs were mounted across the archipelago, and Island Council chairmen asserted their collective solidarity with Saibai, Dauan and Boigu, under threat as the northern-most Islanders. The crisis crystallised the Islanders' sense of common identity and yearning for autonomy, and once it was stirred, their anxiety was impossible to allay.²⁰

2.19 History and the wishes of the local inhabitants in the Torres Strait prevailed. With the exception of three small islands immediately adjacent to the PNG coast—Kawa, Mata Kawa and Kussa—the other islands in the Strait, including Sabai, Dauan and Boigu, were designated Australian Territory.

Territorial sea and fishing boundaries

2.20 Concerns about Australia's sovereignty extending so close to PNG's borders were settled by the agreement to separate the seabed boundary line and the fisheries jurisdiction boundary line.²¹ The establishment of a different boundary for water column and for seabed set a clear precedent.²² According to Mr Dean Bialek, a lecturer in law, University of Melbourne, this 'very rare' arrangement appears to have been done 'only twice', both times involving Australia—in the Torres Strait Treaty and again in the Timor Sea and the Arafura Sea negotiations.²³

20 Emeritus Professor Donald Denoon, ANU, 'The Hundred Fathers of the Torres Strait Treaty', 4th Annual R.G. Neale Lecture 2009, Department of Foreign Affairs and Trade, 5 November 2009, p. 3.

21 See Articles 3 and 4.

22 H. Burmester, 'The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement', *The American Journal of International Law*, vol. 76, 1982, p. 333.

23 Joint Standing Committee on Treaties, Timor Sea treaties, *Committee Hansard*, Friday, 4 October 2002, Melbourne, p. 135.



The PNG coast from Saibai's shoreline

Seabed boundary

2.21 The seabed jurisdiction line established by the Treaty runs through the centre of the Torres Strait well south of the Australian islands of Saibai, Dauan and Boigu. This line delineates who has control over the seabed. Most of the Australian islands below that line are surrounded by a 12-nautical mile territorial sea. The proximity to PNG of islands above that line required a different approach. Mr Henry Burmester, a member of the Australian negotiating team for the Treaty, noted that 'if every island were given a 12-mile territorial sea, the Strait would be transformed into an area of Australian sovereignty'.²⁴ Thus, islands above the seabed line form Australian enclaves with a territorial sea of only three nautical miles. In this regard, Mr William Campbell, Attorney-General's Department, explained further:

Once you get closer to the coast of the Papua New Guinea mainland the treaty, rather than saying just three nautical miles from the coastline, actually plots the line in some cases, because it is between the Papua New Guinean coast and Australia. The territorial sea we have there is, I think,

24 H. Burmester, 'The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement', *The American Journal of International Law*, vol. 76, 1982, p. 336.

largely based on equidistance between the mainland, other PNG islands and our islands and is less than three nautical miles.²⁵

Fisheries boundary

2.22 The fisheries jurisdiction line follows the seabed for much of its course but then turns sharply northward to form a 'top hat' that encloses the three northern Australian islands. South of this line, Australia controls the fisheries and on the other side, PNG controls fisheries.²⁶

Protecting the traditional way of life

2.23 As noted earlier, long before any consideration was given to defining national borders between Australia and PNG, communities in the Torres Strait, including some of the villages along the southern coast of PNG, had lived their lives and sustained themselves according to long established traditions. This way of life involved freedom of movement between the islands and the PNG coast. When the time came to negotiate borders, both Australia and PNG took account of the local inhabitants and their traditional way of life. According to Mr Burmester:

During the negotiations, the islanders made very clear to the Australian Government their concern that traditional practices and freedom of movement be allowed to continue...At the time of the negotiations, it was apparent that the use of the Strait by islanders and coastal Papuans involved considerable movement of both groups through the area.²⁷

2.24 In the preamble to the Treaty, Australia and PNG recognise 'the importance of protecting the traditional way of life and livelihood of Australians who are Torres Strait Islanders and of Papua New Guineans who live in the coastal area of Papua New Guinea in and adjacent to the Torres Strait'.²⁸

Torres Strait Protected Zone (TSPZ)

2.25 In order to uphold the traditional way of life, the Treaty established a Protected Zone (Article 10). This large zone includes all Australian islands north of the seabed boundary and most in the central part of the strait. The southern islands

25 Mr William Campbell, *Committee Hansard*, 17 December 2009, pp. 7–8.

26 See for example, Professor Stuart Kaye, 'Torres Strait Native Title Sea Claim: Legal Issues Paper', *National Native Title Tribunal Occasional Papers Series*, No. 2/2004, 18 October 2002 (updated September 2004), p. 10.

27 H. Burmester, 'The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement', *The American Journal of International Law*, vol. 76, 1982, p. 330.

28 Preamble to Treaty, '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', Australian Treaty Series, No. 4, Department of Foreign Affairs, Canberra, <http://www.austlii.edu.au/au/other/dfat/treaties/1985/4.html> (accessed 23 November 2009).

adjacent to Cape York Peninsula, including Hammond, Prince of Wales, Horn and Thursday Islands, are not within the zone. The principal purpose for establishing the Protected Zone was to:

- acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants, including their traditional fishing and free movement; and
- protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Protected Zone.

2.26 Although freedom of movement between the countries for traditional activities is allowed, the area is not a customs-free zone. Immigration requirements apply to all non-traditional activities but should not inconvenience those engaged in traditional business. The Protected Zone Joint Authority (PZJA) is the central decision-making and policy-setting body for managing commercial and traditional fisheries in the Australian portions of the TSPZ.²⁹

Traditional inhabitants and traditional activities

2.27 The Treaty defines 'traditional inhabitants'. In relation to PNG, it means persons who live in the Protected Zone or the adjacent coastal area of PNG; are citizens of PNG; and maintain traditional customary associations with the area or in the vicinity of the Protected Zone. In 2000, Australia and PNG exchanged third person notes which identified the PNG villages deemed to be Treaty villages. Thus, PNG inhabitants from the 13 Treaty villages—Bula, Mari, Jarai, Tais, Buji/Ber, Sigabadaru, Mabadauan, Old Mawatta, Ture Ture, Kadawa, Katatai, Parama and Sui—can, without passports, visit the Protected Zone to carry out traditional activities. Torres Strait Islanders living in the Protected Zone have reciprocal rights to visit the Treaty villages to also carry out traditional activities.³⁰

2.28 Furthermore, the Treaty defines traditional activities which include activities performed by the traditional inhabitants in accordance with local tradition. They cover:

- activities on land, including gardening, collection of food and hunting;
- activities on water, including traditional fishing;
- religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and
- barter and market trade.³¹

29 Torres Strait Protected Zone Joint Authority, http://www.pzja.gov.au/about_us/default.htm (accessed 2 July 2010).

30 See for example, Department of Foreign Affairs and Trade, 'Torres Strait Treaty and You', http://www.dfat.gov.au/geo/torres_strait/brief.html (accessed 30 November 2009) and Mr William Campbell, *Committee Hansard*, 17 December 2009, p. 5.

31 Article 1, Definitions.

2.29 At this stage, the committee notes that some villages on the PNG side of the border that are not designated as Treaty villages question the current arrangements. They believe that the Treaty ignores their standing as traditional inhabitants and has removed their right to exercise their customary rights in Torres Strait. Some go further and deny the legitimacy of the Treaty and the borders it created.³² The committee considers this matter in chapter 18 on the extent of Commonwealth responsibility.

Protecting the environment

2.30 The Treaty also has a considerable environmental protection component. The Torres Strait region supports a number of critical fisheries habitats and ecosystem resources. In recognition of the environmental sensitivity of the region, the Treaty states clearly that one of its objectives is to protect and preserve the marine environment and indigenous fauna and flora in, and in the vicinity of, the Protected Zone.³³ It includes provisions for the protection of indigenous flora, fauna and traditional fisheries, for sustainable management of commercial fisheries, prevention of pollution and environmental damage from all sources.³⁴ But even when it comes to conservation and biosecurity measures that may impose restrictions on traditional activity, the Treaty recognises the importance of allowing the free movement of traditional inhabitants in pursuit of the performance of lawful traditional activities. Thus, both countries are to use their 'best endeavours to minimise any restrictive effects on the traditional activities of the traditional inhabitants'.³⁵

Promoting economic development

2.31 The economic development of the region is another of the Treaty's objectives. It requires both countries to work together in the conservation, management and optimum use of the Protected Zone's commercial fisheries. The Treaty provides for the sharing of commercial fishing resources between PNG and Australia, the licensing arrangements for this activity and for inspection and enforcement of such arrangements. Sustainable development and commercial enterprise matters will be discussed in detail in chapter 15.

Complexity of the Treaty

2.32 The separate seabed and fisheries jurisdictional lines, the specially created Protected Zone and the role of safeguarding the traditional way of life and protecting the environment make the Treaty one of the most complicated maritime boundary

32 See *Submissions 4, 8 and 31*.

33 Article 10(4) and Articles 13, 14 and 15.

34 Articles 7, 10, 13, 14, 19 and 21–28.

35 Article 14(4).

delimitations.³⁶ It creates complex jurisdictional regimes across a range of activities which calls for effective coordination and cooperation in the exercise of jurisdictional responsibility by Australia and PNG and state and provincial or local governments. According to Mr Burmester:

Although the special status and rights in the zone are directly created by the Treaty, it is left to each Government to ensure that they are given effect. To this extent, the jurisdictional division of the area remains significant.³⁷

2.33 Aware of the importance of acting collaboratively in order to achieve the objectives of the Treaty, both countries entered into the agreement as 'good neighbours and in a spirit of cooperation, friendship and goodwill'. The preamble records their desire to cooperate with one another 'in the conservation, management and sharing of fisheries resources and in regulating the exploration and exploitation of seabed mineral resources'. The Treaty requires both countries to consult with each other in order to harmonise their policies and to coordinate their efforts when taking measures to protect and preserve the marine environment and to identify and protect vulnerable species of indigenous fauna and flora.³⁸ It also provides for matters such as resolving problems dealing with the administration of immigration, quarantine, health and customs matters.³⁹ Indeed, the Treaty stipulates that:

Each Party, in administering its laws and policies relating to the entry and departure of persons and the importation and exportation of goods into and from areas under its jurisdiction in and in the vicinity of the Protected Zone, shall act in a spirit of mutual friendship and good neighbourliness...⁴⁰

2.34 Similar importance is given to information sharing, consultation, negotiation, and joint decision making on a range of other measures—determining the share of the fish catch in the Protected Zone (Article 23); issuing commercial fishing licences in the Protected Zone (Article 26); and inspection and enforcement to prevent violations of the Protected Zone commercial fisheries arrangements. This consultative approach also extends generally to resolving any disputes between the parties arising out of the interpretation or implementation of the Treaty (Article 29).

36 Professor Stuart Kaye, 'Torres Strait Native Title Sea Claim: Legal Issues Paper', *National Native Title Tribunal Occasional Papers Series*, No. 2/2004, 18 October 2002 (updated September 2004), and Stuart B Kaye, 'Jurisdictional Patchwork: Law of the Sea and Native Title Issues in the Torres Strait', *Melbourne Journal of International Law*, vol. 2, 2001.

37 H Burmester, 'The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement', *The American Journal of International Law*, vol. 76, 1982, p. 332.

38 Article 13(4) and Article 14(3).

39 Article 17.

40 Article 16(2).

Treaty Liaison Officers

2.35 The Treaty sets up mechanisms to provide for a high level of consultation and cooperation between the two countries. Article 18 establishes Treaty Liaison Officers, one from Australia, based at Thursday Island, and one from PNG, based at Daru, who are required to facilitate the implementation of the provisions of the Treaty at the local level. They are required to exchange information on relevant developments, consult with each other on the practical operation of the provisions of the Treaty at the local level and resolve related problems. The Treaty stipulates that the liaison officers are to 'consult closely with representatives of the traditional inhabitants and maintain close liaison with national, State and Provincial authorities'.⁴¹

2.36 These officers chair the Treaty Liaison Meetings which are also attended by other Australian and PNG agencies represented in the region and involved in implementing arrangements under the Treaty. These meetings are held alternately in Australia and PNG and their main purpose is to address issues raised at the Traditional Inhabitants Meeting and to seek to solve locally identified problems at an administrative level.⁴²

Cycle of treaty meetings

2.37 Government officials and representatives of traditional inhabitants attend a cycle of Treaty meetings to promote close consultation and to keep each other informed about their views and matters of concern. The committee covers these meetings in greater detail where relevant in the main body of the report but, for the moment, provides a brief description:

- *The Joint Advisory Council (JAC)* is the peak governance body established under Article 19 of the Treaty. It is an advisory and consultative body, co-chaired by senior officials from the PNG and Australian departments of foreign affairs and trade. JAC is made up of Australian and PNG officials and representatives of traditional inhabitants and meets annually to review the implementation of the Treaty. The JAC reports to the foreign ministers of Australia and PNG who consider its reports and recommendations.
- Three sub committees—
 - *Traditional Inhabitants Meeting (TIM)*, co-chaired by traditional leaders from PNG and Australia, are held once a year alternatively in PNG and Australia generally prior to meetings of the JAC in order to identify main issues for its consideration. It is a consultative mechanism run by DFAT and attended by the Customs and Border Protection Service. Through these meetings, TSRA communicates with PNG on matters within the Protected Zone.

41 Article 18(3).

42 http://www.dfat.gov.au/geo/torres_strait/brief.html and *Land & Sea Management Strategy for Torres Strait, 2005*, p. 46.

- *Health Issues Committee* (HIC), chaired by Australia's Department of Health and Ageing (DoHA), meets biannually in Australia. It was established in 2003 to examine health issues associated with the free movement of PNG nationals and Torres Strait Islanders.
- *Environmental Management Committee* (EMC), co-chaired by PNG and Australian national departments of environment, meets annually before the JAC meeting and reports directly to the JAC.⁴³ It provides a forum for Australian and PNG officials to share information and collaborate on issues affecting the environment within the Torres Strait Treaty Zone and surrounding region.⁴⁴ According to DEWHA, the EMC oversees and reports on a range of issues relating to environmental aspects of the Treaty, including the sustainable management of sea turtle and dugong resources, drift-nets and other fisheries-related matters arising from the parallel Australia and PNG fisheries bilateral meetings. It also considers management plans for the protection and sustainable use of resources; coastal management issues; and Torres Strait research.⁴⁵

2.38 At a recent TIM meeting, traditional inhabitants decided that guidelines were needed as a means to make everyone in the Treaty area aware of the obligations and rules applying to visitors crossing the border. As a consequence, the *Guidelines for Traditional Visitors* was produced.⁴⁶ This document incorporates the protocols and accepted practices, previously conveyed in oral form, into a single written document. Importantly, the guidelines were created by and for the traditional inhabitants and subsequently endorsed by the JAC.⁴⁷ The committee refers to this document on numerous occasions throughout this report, but it is especially relevant to the committee's consideration of law and order issues in the Torres Strait.

International sea route

2.39 Running through the Torres Strait is a major international sea route which places particular obligations on Australia. According to international law, the Treaty is subservient to these obligations.

Views on the Treaty

2.40 Although the Treaty is one of the most complicated maritime boundary delimitations, both the Attorney-General's Department and Department of Foreign

43 *Submission 24*, p. [3].

44 *Submission 24*, p. [3].

45 *Submission 24*, p. [3].

46 The text of the document belongs to the Traditional Inhabitants as defined in the Treaty. Additional Information provided to the committee, 22 June 2010.

47 Mr Brett Young, *Committee Hansard*, 18 December 2009, p. 7.

Affairs and Trade (DFAT) regard it as a success. Mr Campbell, Attorney-General's, explained:

The treaty was intended to be a practical and fair solution to Australia and Papua New Guinea and, importantly, to the traditional inhabitants of both countries. And despite the difficulties that have arisen in the administration of the treaty, in our view it has stood the test of time.⁴⁸

2.41 DFAT concurred with this assessment. In its view, the Treaty is very flexible, resilient and adaptable and has 'operated pretty well over time'.⁴⁹ The department also informed the committee that 'the Australian and PNG governments work hard and have a shared commitment to the proper and sensitive management of the region through the Torres Strait treaty'.⁵⁰

2.42 A number of witnesses challenged these views. They raised concerns about aspects of the Treaty, or its implementation, including inadequate or ineffective consultation with local inhabitants, problems with interpretations, non-compliance with treaty provisions and enforcement, a lack of capacity on the PNG side to fulfil its obligations under the Treaty and the status afforded to some communities in PNG. A few local leaders suggested the need for a full review of the Treaty.⁵¹

2.43 In the following chapters, the committee examines in detail the issues that have given rise to concerns about the Treaty and its implementation. To start, the committee considers matters dealing with the free movement of traditional inhabitants: the health and welfare of local communities and the demands placed on them and more broadly on Australian resources by the visits of PNG nationals to the region.

48 Mr William Campbell, *Committee Hansard*, 17 December 2009, p. 3.

49 Mr Jeremy Bruer, *Committee Hansard*, 18 December 2009, pp. 2–3 and *Submission 23*, [5].

50 *Committee Hansard*, 18 December 2009, p. 2.

51 Information obtained during the committee's visit to the Torres Strait and evidence taken on Thursday Island, *Committee Hansard*, 24 March 2010. See also Torres Strait Island Regional Council, *Submission 9*.

Part I

Health and law and order

The free movement provisions of the Treaty allow traditional inhabitants from PNG to cross the border to carry out traditional activities such as food gathering, fishing and hunting, and attending social gatherings and ceremonies. Although the Treaty defines traditional activities, some PNG nationals from the Treaty villages along the PNG south coast travel across the border for a range of reasons not covered by the Treaty. Some overstay their visits and behave contrary to the norms and customs of the Torres Strait Island communities. The lack of identification documents poses issues in the law enforcement and border protection context.

In this part of the report, the committee examines the tensions created by these breaches in the free movement provisions and the inappropriate or unacceptable conduct of some visitors. It then looks at the ways local communities and government agencies manage these tensions.

Chapter 3

Health service provision in the Torres Strait

3.1 In the previous chapter, the committee outlined the Treaty provisions and referred briefly to concerns arising from them. In this chapter, the committee examines health issues in the Torres Strait region. While health and the provision of medical care are not matters directly covered by the Treaty, the free movement provisions have contributed to a situation where public health and access to health services have become significant issues in the region.

3.2 The committee starts its examination by looking at the nature and extent of local concerns associated with PNG traditional inhabitants visiting the Torres Strait to receive medical attention. It then seeks to establish why some PNG visitors choose to access health services in Australian health clinics rather than those available in their own country.

Access to health services under the Treaty

3.3 The Treaty allows traditional inhabitants from the PNG Treaty villages the freedom to enter the Torres Strait Protected Zone and stay temporarily to perform traditional activities. They are not subject to the same immigration, customs, health and quarantine requirements and checks as PNG citizens who are not traditional inhabitants. The Treaty defines traditional activities and lists the activities that come under this definition. Access to health services, however, is not classified as a traditional activity. The *Guidelines for Traditional Visitors* indicate clearly that a visit to a medical clinic is a non-traditional activity.¹ Thus, any traditional inhabitant from PNG seeking to gain entry to Australia for medical reasons is not entitled to benefit from the free movement provisions and must satisfy Australia's immigration laws.

PNG traditional inhabitants visiting island health clinics

3.4 Although using health services is not included under the freedom of movement provisions, every day, PNG nationals travel cross the border to receive treatment at one of the island health clinics, particularly those located on Saibai and Boigu. The Torres Strait Island Regional Council (TSIRC) informed the committee that there are 13 Western Province communities plus an additional 16 communities outside the Treaty zone that access health facilities in the Torres Strait.² Mr John Toshi Kris, Chairperson, TSRA, told the committee that island communities are being 'inundated' with people coming across with medical issues.³

1 See previous paragraph 2.28.

2 Torres Strait Island Regional Council (TSIRC), *Submission 9*, p. 2.

3 *Committee Hansard*, 24 March 2010, p. 5.

3.5 Data on the number of PNG nationals seeking medical assistance in the Torres Strait is incomplete due to problems recording the exact nature of visits. The TSRA suggested that 'DIAC and Queensland Health estimates of unregulated health service use are perhaps conservative'. It noted:

Few people are likely to declare that medical treatment is a reason for their visit if it is illegal; also, clinic staff may not report visits on minor medical matters and instead deal with them as part of their routine day-to-day business.⁴

3.6 Indeed, the Department of Immigration and Citizenship (DIAC) noted that according to health care consultants, medical treatment may be a primary rather than a secondary factor in some 'traditional' visits.⁵

3.7 Despite questions about the accuracy of the data, without doubt, the number of PNG nationals receiving medical treatment in the Torres Strait is significant. On average, PNG nationals make around 2,500 visits to Torres Strait island health clinics every year.⁶ For example, in 2007–08, there were 2,350 presentations on Saibai and Boigu.⁷ Considering that Saibai and Boigu each have a population of around 300 people, PNG visitors make up a large proportion of the people residing on an island.⁸ In addition, according to TSRA, some PNG traditional inhabitants stay on the Torres Strait islands or in Cairns or Townsville hospitals 'for up to nine months'. This is mainly a result of tuberculosis treatment requiring 'at least six months of intravenous treatment'.⁹

3.8 Ms Bronwyn Nardi, Queensland Health, noted that although there were some issues around data collection, the district chief executive officer had compared figures for the first three months of 2009 with the first three months of 2010 and found a 300 per cent change from the quanta. However, a change of this magnitude is probably an anomaly caused by fewer PNG nationals seeking health care at Torres Strait health

4 Torres Strait Regional Authority (TSRA), *Submission 18*, p. 12.

5 Department of Immigration and Citizenship (DIAC), *Submission 16*, p. 16.

6 Queensland Government, *Submission 20*, p. 15. TSRA and Immigration figures support this estimate. See for example TSRA, *Submission 5*; House of Representatives Standing Committee on Health and Ageing, Roundtable forum on regional health issues jointly affecting Australia and the South Pacific, p. 5; and DIAC, *Submission 16*, p. 16.

7 Queensland Government, *Submission 20*, p. 15. TSRA and Immigration figures support this estimate. See for example TSRA, *Submission 5*; House of Representatives Standing Committee on Health and Ageing, Roundtable forum on regional health issues jointly affecting Australia and the South Pacific, p. 5; and DIAC, *Submission 16*, p. 16.

8 Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islanders Australians*, Catalogue number 4705.0, table 21, 2006, p. 40. It indicates that Boigu had a total of 282 and Saibai a total of 338 inhabitants.

9 TSRA, *Submission 18*, p. 12.

clinics in 2009 as a result of the swine flu epidemic and the temporary closure of the border.¹⁰

3.9 As a matter of interest, Ms Nardi recorded that on Wednesday, 24 March 2010, 60 per cent of the inpatients in Thursday Island hospital were PNG nationals, which, in her view, was 'not unusual'.¹¹ Also, demographic and medical information collected by Queensland Health on patients presenting at their specialist mobile units in the Torres Strait indicate that PNG nationals account for over 99 per cent of presentations at these clinics.¹² It should be noted, as explained by Ms Nardi, that Queensland Health has no control over the volumes that are coming through the border to its healthcare facilities, and that demand for healthcare services from PNG nationals appears to be rising.¹³

Concerns about PNG nationals accessing health services in the Torres Strait

3.10 During the inquiry, including the committee's visit to the Torres Strait, the committee learnt of numerous worries regarding PNG nationals visiting island health clinics. The committee turns to examine each of these in detail.

Strain on local resources

3.11 Local inhabitants were concerned that PNG nationals receiving treatment in the Torres Strait place 'a lot of strain on infrastructure and communities' and restrict local residents' access to health professionals.¹⁴ For example, the TSIRC noted that limited doctor availability 'sometimes mean that legal residents do not have access to health professionals because their time is spent on PNG Nationals'.¹⁵

3.12 Community leaders on Saibai and Boigu informed the committee that their people, particularly the elderly, feel as though they are missing out on access to health services.¹⁶ Some pointed to the high number of Thursday Island hospital beds occupied by PNG nationals with tuberculosis, which, in their view, affects access to

10 *Committee Hansard*, 25 March 2010, p. 20.

11 *Committee Hansard*, 25 March 2010, p. 20.

12 Queensland Government, answer to question on notice, p. 3.

13 *Committee Hansard*, 25 March 2010, pp. 19–20.

14 For example, the TSRA referred to local concerns that health resources are being used by visitors from PNG and impacting on the ability of Torres Strait Islanders to access health services. TSRA, *Submission 58* to Senate Select Committee on Regional and Remote Indigenous Communities, p. 13. See also, Torres Shire Council, *Submission 19*, p. 6; TSIRC, *Submission 9*, p. 3; and John Toshi Kris, *Committee Hansard*, 24 March 2010, p. 5.

15 *Committee Hansard*, 18 June 2010, p. 4. The TSRA also referred to clinic staff dealing with PNG visitors as part of their routine business which may affect the quality of health service delivery to local people. *Submission 18*, p. 12.

16 Meeting with community leaders on Saibai, 23 March 2010.

services by locals.¹⁷ Queensland Health statistics support this view, indicating, as stated earlier, that it is not unusual to have 60 per cent of the inpatients in Thursday Island hospital from PNG.¹⁸

3.13 Ms Nardi noted the rising demand for healthcare services from PNG nationals and the concerns relating to the shift 'of funding for the provision of health care from Torres Strait Australians to Papua New Guinean nationals'.¹⁹ She indicated that 'it is feasible that around 10 per cent' of the Queensland Government's Torres Strait Islands health budget of \$58.5 million is diverted to PNG nationals (approximately \$6–6.8 million).²⁰ She noted:

While we are providing acute care for Papua New Guineans, that means there are other services that are not being provided—things like increases in primary health care and public health.²¹

3.14 Acknowledging these concerns, Queensland Health pointed out that while PNG nationals may access some services, there are many that they can not.²² The committee also learnt that the waiting time to see a specialist on Torres Strait Islands is shorter than on the mainland and that there is no obligation on the health workers to accept referrals from PNG.

3.15 Even so, the strongly-held perception in the region remains that significant numbers of PNG nationals are receiving medical treatment, which inevitably affects the quality of service available to local people.

3.16 Furthermore, the TSRA was of the view that these visits by PNG nationals to Torres Strait health facilities also place 'a silent burden' on infrastructure, education and welfare services.²³ For example, the increased demand for the limited supply of water and sanitation infrastructure, particularly during the dry seasons, could produce additional health concerns.²⁴

17 *Submission 2* and see also Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 25.

18 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 20.

19 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 20. Ms Nardi indicated that part of the increase could be attributed to the advent of swine flu.

20 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 20.

21 *Committee Hansard*, 25 March 2010, p. 20.

22 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 20.

23 TSRA, *Submission 18*, pp. 11–12; see also TSIRC, *Submission 2*, p. 1; Department of Health and Ageing (DoHA), *Submission 11*, p. 1.

24 TSRA, *Submission 5*, House of Representatives Standing Committee on Health and Ageing, Roundtable forum on regional health issues jointly affecting Australia and the South Pacific, p. 3.

Transmission of communicable diseases

3.17 As well as the strain on medical resources and vital infrastructure associated with promoting good health, a large number of submissions referred to the prevalence of communicable diseases in PNG and the risk of their transmission to Australia. The TSRA drew attention to local inhabitants and their increasing concern that diseases, including HIV/AIDS and dengue fever, are entering Torres Strait Islands via the movement of PNG nationals.²⁵ Community leaders on Saibai also spoke to the committee about their people's fear of contracting infectious disease.

3.18 The most worrying diseases present in PNG are malaria, tuberculosis (TB), sexually transmitted infections (STI) and HIV/AIDS.²⁶ For example, in March 2009, the rate of tuberculosis in Western Province, the PNG region closest to the Torres Strait, was 552 cases per 100,000 people.²⁷ Indeed, the most common reasons for health visits by PNG nationals to the Saibai health clinic were tuberculosis and malaria.²⁸ The following statistics record the medical conditions of PNG nationals treated by the Saibai health clinic over the 2006–2007 period.²⁹

Table 3.1: Reasons for health visits of PNG nationals to the Saibai health clinic, 2006–2007

Reasons for Presentations	2006	2007
Other Problems	20%	19%
Doctor/Specialist review	11%	8%
TB medication/confirmed TB	10%	16%
TB investigation	10%	11%
Post Treatment Review	9%	n/a
Aches and Pains	n/a	9%
Surgical Elective Cases	n/a	8%
Prescriptions	n/a	8%

3.19 The freedom of movement provisions, which exempt traditional inhabitants from the usual immigration health checks at the border in the Torres Strait, add to the fear of likely transmission of serious diseases. Unauthorised visitors who manage to land on the islands undetected also increase the risk of diseases being transmitted to

25 TSRA, *Submission 18*, pp. 11–12; see also Jennifer Bryant, *Committee Hansard*, 17 December 2009, pp. 74–75.

26 DoHA, *Submission 11*, p. 1. See also TSIRC, *Submission 9*, p. 3; TSRA, *Submission 18*, p. 12.

27 DoHA, answer to question on notice 4, 17 December 2009.

28 DIAC, *Submission 16*, p. 16.

29 TSRA, *Submission 5*, House of Representatives Standing Committee on Health and Ageing, Roundtable forum on regional health issues jointly affecting Australia and the South Pacific, p. 9.

people on the islands. These visitors cannot be monitored in a similar manner to authorised entries who are registered at the designated immigration entry points.

Tuberculosis

3.20 Tuberculosis presents a particular problem for the Torres Strait. Ms Nardi explained that diseases such as tuberculosis, which essentially have been controlled in Australia, are crossing the border from PNG. She noted further that while tuberculosis can present as an acute illness, it requires lengthy treatment that can last about six months.³⁰

3.21 Evidence to the inquiry made clear that appropriate and thorough treatment of tuberculosis is of vital importance. If the treatment is not completed or administered incorrectly, tuberculosis may build up a resistance to drugs, requiring stronger and more expensive medicines to treat effectively. This form of tuberculosis may not only spread as a drug-resistant disease but eventually as a multi-drug resistant tuberculosis (MDR TB).³¹ Health workers in the Torres Strait are conscious of the potential for the transmission of MDR TB.³² Limited surveys estimate that between 10 and 20 per cent of tuberculosis in PNG could be MDR TB.³³ Ms Nardi stated that 'we know that in Papua there is an extreme drug resistant tuberculosis which is essentially a death sentence'.³⁴

3.22 According to Ms Nardi, the Torres Strait Islanders are 'genuinely concerned about these severe and exotic illnesses coming into their community'. She noted that the incidence of PNG nationals returning home and failing to maintain their drug regime was 'common enough'. Ms Nardi underlined the need to treat diseases like tuberculosis appropriately so they do not extend into Torres Strait communities and then spread to the mainland.³⁵

HIV/AIDS

3.23 Another communicable disease raising significant concern amongst Torres Strait Islanders is HIV/AIDS, which is the leading cause of deaths in some PNG districts.³⁶ The Department of Health and Ageing (DoHA) informed the committee

30 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 21.

31 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, pp. 21–22.

32 Queensland Government, *Submission 20*, p. 17.

33 Richard Speare, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 31 August 2009, p. 10.

34 *Committee Hansard*, 25 March 2010, p. 21.

35 *Committee Hansard*, 25 March 2010, p. 21.

36 Australian Government, Papua New Guinea–Australia Partnership for Development, Priority Outcome 3: Health, 10 June 2009, pp. 1–2.

that PNG has the highest incidence of HIV in the Pacific region, with an estimated two per cent of the adult population, or approximately 64,000 persons, being HIV positive.³⁷ The epidemic is concentrated in seven highlands and central provinces and along the Highlands Highway.³⁸ Limited transportation options and thus movement of people have to date contained the spread of the disease.³⁹

3.24 Despite the lack of comprehensive data, the prevalence of HIV/AIDS in Western Province is estimated to be low.⁴⁰ This information seems to be supported by information provided by AusAID that indicates that only seven cases have been diagnosed in Daru and these have been people who had contracted HIV outside Western Province.⁴¹ Further, DoHA informed the committee that on average, one case per year amongst PNG nationals is diagnosed at the health clinics.⁴²

3.25 Although the presence of HIV/AIDS is low in Western Province, DoHA observed that the disease continues to be an issue that needs careful management.⁴³ For example, the situation could change considerably with the construction of a highway from the South Fly district towards the Indonesian border in Western Province. This development is expected to increase the movement of people, including that of 'mobile men with money'.⁴⁴ Some medical experts have suggested that road construction projects should be accompanied by 'very rigorous HIV prevention programs' in order to educate the people and to minimise the risk of HIV/AIDS spreading.⁴⁵

37 DoHA, answer to question on notice 4, 17 December 2009.

38 Michael Toole, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 11 September 2009, pp. 14–15.

39 Jennifer Bryant, *Committee Hansard*, 17 December 2009, p. 80.

40 DoHA, answer to question on notice 4, 17 December 2009.

41 Jennifer Lean, *Committee Hansard*, 18 December 2009, p. 23.

42 DoHA, answer to question on notice 4, 17 December 2009.

43 DoHA, *Submission 11*, p. 1. See also Australian Government, Papua New Guinea–Australia Partnership for Development, Priority Outcome 3: Health, 10 June 2009, pp. 2–3. It noted that provision of health services in PNG and Western Province 'is not reaching rural areas where approximately 86 per cent of Papua New Guineans live'. In fact, the number of open aid posts had reduced by 160 in just one year (2005 to 2006).

44 Bradley McCulloch, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 31 August 2009, p. 16; Professor Michael Toole, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 11 September 2009, p. 14.

45 Michael Toole, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 11 September 2009, pp. 14–15.

3.26 The terms of reference for AusAID's evaluation of Australia's contribution to the national HIV response in PNG made a similar reference to the potential for HIV/AIDS to spread because of increased people movements and activity associated with infrastructure projects.⁴⁶ The committee considers that this evaluation, provides an opportunity for AusAID to consider developments in PNG's Western Province and the likely exposure of the Treaty villages to this disease. It therefore suggests that the Office of Development Effectiveness include Western Province, in particular the 13 Torres Strait Treaty villages, in its evaluation of Australian aid program's contribution to PNG's national HIV response.

3.27 While the prevalence of HIV/AIDS in the southern part of PNG is low at the moment, the committee recognises that health professionals in the region are concerned about the potential transmission of the disease. Fortunately, at the moment, the incidence of HIV/AIDS is almost non-existent in the Torres Strait Islands, with only three confirmed cases.⁴⁷ Dr Patricia Fagan told a House of Representatives Committee that there was 'no known local transmission of HIV among the people of Cape York and the Torres region'.⁴⁸

3.28 The Queensland Government informed the committee that the spread of HIV/AIDS to the islands 'to this point has proven not to be as significant as initially anticipated'; but it was aware that cross-border movements complicate the situation.⁴⁹ Experts agree that 'the soil is very fertile' and that Torres Strait Islanders 'are extremely vulnerable to an HIV epidemic'.⁵⁰

3.29 The potential for co-infection of tuberculosis and HIV is an added problem. The high rate of HIV infections can undermine the effective management of

46 AusAID, Office of Development Effectiveness, Evaluation of Australian aid program's contribution to the national HIV/AIDS response in PNG, Evaluation terms of reference, p. 2, <http://www.ode.ausaid.gov.au/publications/index.html#papua1> (accessed 23 September 2010).

47 Darren Russell, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 31 August 2009, p. 9.

48 Patricia Fagan, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 31 August 2009, p. 15. Data regarding HIV/AIDS 'in respect of Australian nationals in the Torres Strait is reported directly to our national surveillance systems', Jennifer Bryant, *Committee Hansard*, 17 December 2009, p. 80.

49 Queensland Government, *Submission 20*, p. 17.

50 Darren Russell, p. 9, and Dr Patricia Fagan, p. 14, in House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 31 August 2009.

tuberculosis because tuberculosis and HIV interact, making 'each other worse'.⁵¹ Even though the number of co-infection cases is very low, the survival rate is also low.⁵²

Other communicable diseases

3.30 Malaria is another communicable disease causing concern in the Torres Strait region. It 'remains a serious health problem' in PNG, where it is 'the third leading cause of hospital admissions and deaths'. In 2007, there were 87,961 confirmed malaria cases in PNG, of which 594 resulted in deaths. However, malaria in PNG is thought to be contained, even though its prevalence in Western Province is not monitored.⁵³ This would appear to be supported by the statistics from the Torres Strait: the number of confirmed malaria cases presented at the Saibai health clinic between 2006 and 2008 had declined from 20 cases in 2006 to six in 2008.⁵⁴

3.31 Apart from human-to-human transmission, there are other means through which diseases enter the islands. The committee considers these concerns in greater detail in the chapter on biosecurity. The committee now turns to examine the reasons PNG citizens seek health care on the Torres Strait Islands.

Incentives for seeking medical care in the Torres Strait

3.32 The occurrence of communicable diseases in PNG together with the free movement of people creates genuine grounds for concern. The core question before the committee is why PNG nationals are travelling away from their homes and communities to access health services in the Torres Strait. The following section explores some of the main reasons.

Disparity in available health services

3.33 Many witnesses cited the large disparity between the quality of health services in Western Province and in the Torres Strait as a major incentive for PNG nationals to seek medical treatment on the Australian side of the border. For example, Ms Nardi noted that health care in the Torres Strait is in demand because 'the health services in Papua New Guinea are of a lesser, lower standard and the services that are offered in the Torres Strait are of a higher standard—there is a confidence in them'. She explained:

51 Anastasios Konstantinos, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 31 August 2009, p. 23.

52 Graham Simpson, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 31 August 2009, p. 22.

53 DoHA, answer to question on notice 4, 17 December 2009.

54 TSRA, *Submission 5* to House of Representatives Standing Committee on Health and Ageing, Roundtable forum on regional health issues jointly affecting Australia and the South Pacific, p. 9.

I think we are seeing that Queensland Health is suffering from being a downstream type arrangement from what is a failing healthcare system in the Papua New Guinean area.⁵⁵

3.34 Indeed, 'PNG has one of the poorest health records in the Pacific and is unlikely to meet any of its health-related Millennium Development Goals' (MDGs).⁵⁶ None of its health sector indicators has improved since 2002. Evidence indicates that: 'Communicable and often easily preventable diseases are the most common causes' of death, with two in five deaths caused by 'six diseases that can be easily and inexpensively treated' at aid posts.⁵⁷

3.35 The World Health Organization's (WHO) Country Health Information Profile on PNG for 2009 provides some insight into the state of health facilities in the country and the health care services available to Papua New Guineans, especially in rural areas. With regard to health facilities, it recorded that:

A function and expenditure review in 2001 described the health system in rural areas as being in a state of 'slow breakdown and collapse, currently being saved from complete collapse by donors'...'About 600 rural facilities are closed or not functioning effectively. Where services remain, the breadth and quality of the services are diminishing'. This dire situation has worsened since then, and more facilities have closed down. In spite of this being acknowledged for some time, little has been done yet to seek redress.⁵⁸

3.36 The information profile noted that while nurses and community health workers form the backbone of primary health care services in rural areas, both 'are considered to be in short supply and dramatically reduced'. For example, it noted that the nurse-to-population ratio was estimated at 1:2271, stating further:

55 *Committee Hansard*, 25 March 2010, p. 22.

56 AusAID, *Submission 21*, p. 1. According to a UNDP report, PNG's level of human development remains low and has, in some areas, deteriorated over the recent years. For example, with regard to health indicators, it noted: 'Life expectancy increased from 40 years in 1971, to nearly 50 years in 1980, with infant mortality declining from 134/1,000 to 72/1,000 over the same period. By 2002, however, Papua New Guinea's progress had slowed against a number of key social indicators with low life expectancy (57 years), high infant mortality (64/1,000) and very high maternal mortality (370/100,000)'. Government of Papua New Guinea United Nations Development System, *A partnership for nation-building: United Nations country programme Papua New Guinea 2008 – 2012*, May 2007, p. 11, paragraphs. 17 and 20, <http://www.undp.org.pg/documents/UNCP/UNCP%202.pdf?ArticleId=34> (accessed 7 June 2010).

57 Australian Government, Papua New Guinea–Australia Partnership for Development, Priority Outcome 3: Health, 10 June 2009, pp. 2–3.

58 World Health Organisation, *Country Health Information Profiles, Papua New Guinea*, p. 327, <http://www.wpro.who.int/NR/rdonlyres/11EE7BCC-0C36-4B66-A6E3-8075333E34E5/0/29PapuaNewGuinea2009.pdf> (accessed 7 June 2010).

An additional 600 nurses, 600 community health workers and 100 midwives are estimated to be needed to fill vacant posts, but current production rates are insufficient to fill the gaps. The doctor-to-population ratio is estimated at 1:19 399 population, the majority of doctors being in Port Moresby.⁵⁹

- 3.37 Some provinces and many districts have no doctor. Ms Nardi observed:
To be perfectly honest, there are horrendous things coming out of Papua New Guinea that we are looking after in the Torres Strait that really indicate that the health of that nation truly needs some attention...⁶⁰

Reasons for poor state of health services in PNG

3.38 The reasons for the poor state of health facilities in PNG and the shortfall in capacity to meet the health needs of its people are varied and complex. The nature of settlement in PNG, with widely scattered rural communities separated by difficult terrain, makes the provision of health services on the ground difficult and expensive. Some villages can only be reached on foot. Also, according to the WHO, spending on health is falling in PNG despite its high share of government funding. It noted that 'total health expenditure as a share of Gross Domestic Product (GDP) rose steadily from 3.2 per cent to 4.4 per cent between 1997 and 2001'. In 2007, it fell back to 3.2 per cent, with total health expenditure per capita declining to US\$31.3 from US\$32 in 1997.⁶¹

3.39 The administration of finances, including the prioritisation and allocation of funding between the central and provincial governments, is a major impediment to the effective delivery of health services.⁶² Capacity constraints and weak governance, including lack of accountability, coordination and leadership in the delivery of health services, is a further complication.⁶³ Criticism has been directed at the 'lack of flexibility around the use of the funds', including in emergencies, and the disregard of funding priorities in some provinces.⁶⁴ As a result, funding may not always reach its target. According to AusAID, these constraints between central and provincial governments in PNG result in a 'large amount of the money [left] unspent'.⁶⁵ In

59 World Health Organisation, *Country Health Information Profiles, Papua New Guinea*, p. 326, <http://www.wpro.who.int/NR/rdonlyres/11EE7BCC-0C36-4B66-A6E3-8075333E34E5/0/29PapuaNewGuinea2009.pdf> (accessed 7 June 2010).

60 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 23.

61 World Health Organisation, *Country Health Information Profiles, Papua New Guinea*, p. 325, <http://www.wpro.who.int/NR/rdonlyres/11EE7BCC-0C36-4B66-A6E3-8075333E34E5/0/29PapuaNewGuinea2009.pdf> (accessed 7 June 2010).

62 Australian Government, Papua New Guinea–Australia Partnership for Development, Priority Outcome 3: Health, 10 June 2009, p. 3.

63 *Review of the PNG–Australia Development Cooperation Treaty (1999)*, 19 April 2010, p. 45.

64 *Review of the PNG–Australia Development Cooperation Treaty (1999)*, 19 April 2010, p. 46.

65 Jennifer Lean, *Committee Hansard*, 18 December 2009, p. 26.

addition, 'The late and sporadic release of funds has led to serious delays in activities' and exemplifies the problems regarding allocating funds to where they are most needed.⁶⁶ Provinces also face the challenge of managing two different sources of funds, from the PNG Government and donors, each with different sets of rules and procedures.⁶⁷

3.40 Another impediment to improving the PNG health system is its changing funding arrangements, in particular, the 'transfer of control over supplementary funding for infrastructure from the National Department of Health to the National Department of Planning and Monitoring'.⁶⁸

3.41 Evidence suggested that despite funding shortfalls, Western Province has sufficient financial resources to fund its health services as a result of resources from mining revenues.⁶⁹ According to AusAID, the revenue flows to Western Province 'are substantially above that required to fully fund basic services, including health'. It noted that royalties and dividends from the Ok Tedi mine to the Western Province Administration are projected at K60 million in 2010. However, it also indicated that the total health revenue of Western Province 'is difficult to estimate as funding comes from multiple sources'. Despite the apparent availability of funds, AusAID informed the committee that in 2005–2008, the province was said to have spent '59 per cent of what was necessary to deliver basic health services'.⁷⁰

Health services in the South Fly District

3.42 For this inquiry, the health situation in the South Fly District of Western Province, which is adjacent to the Torres Strait, is of particular relevance. Not only does this region suffer from the same shortage of health facilities and workers that affect PNG as a whole but, as a remote rural area, it faces even greater problems. DoHA explained the challenges confronting the district:

PNG villages...face pressing health concerns brought about by poor sanitation, poor water quality and limited disease control. Local health services suffer from inadequate infrastructure, shortages in staff and clinical supplies and have limited diagnostic capacity.⁷¹

66 AusAID, answer to question on notice 2, 18 December 2009.

67 *Review of the PNG–Australia Development Cooperation Treaty (1999)*, 19 April 2010, pp. 46–7.

68 DoHA, *Submission 11*, p. 6.

69 Ellen Shipley, *Committee Hansard*, 18 December 2009, p. 22.

70 AusAID, answer to question on notice 2, 18 December 2009.

71 DoHA, *Submission 11*, p. 1; Also see Queensland Nurses' Union, *Submission 29*, p. 1; Kevin Murphy, *Submission 15*, pp. 5–6. See also Australian Government, Papua New Guinea–Australia Partnership for Development, Priority Outcome 3: Health, 10 June 2009, pp. 2–3. It noted that provision of health services in PNG and Western Province 'is not reaching rural areas where approximately 86 per cent of Papua New Guineans live'. In fact, the number of open aid posts had reduced by 160 in just one year (2005 to 2006).

3.43 Mayor Frederick Gela, TSIRC, told the committee that it was evident that 'the villagers who access the Treaty arrangement have been neglected for years—for generations'.⁷² Dr Garrick Hitchcock, an academic with extensive experience in the Torres Strait region, said that the region does not have resources such as timber, oil, gas or minerals; the southern area of Western Province is 'the backblocks', 'off the beaten path and very peripheral'. He suggested that the people would do whatever they could to try to improve their standard of living and health care and are looking elsewhere.⁷³ Dr David Lawrence, another academic who has researched the Torres Strait region, spoke similarly of the very poor standard of health care on the PNG side of the border. He described the region as 'the most marginalised province in Papua New Guinea and basically in Port Moresby it is seen as rubbish country...not considered to be terribly useful, productive or important'.⁷⁴ In his assessment:

Their access to health, education and welfare is just appalling. Daru has a population—sometimes it fluctuates—of about 13,000 people, so just the Daru Island has more people than the whole of the Australian side of the Torres Strait. It has one hospital. We do not even know that there is actually one doctor for the whole of the Western Province.⁷⁵

3.44 DoHA submitted that the Daru hospital requires major infrastructure development but also that the quality of clinical services, management and governance issues needs to improve.⁷⁶ Furthermore, it noted that the clinical outreach services from Daru hospital lack the capacity to support rural areas: for example, access to maternal and child health outreach services in most cases had not been functioning at all in remote communities. It stated that the non-functioning of these services means that family planning, immunisation for young children, antenatal screening, health education and awareness are not available. DoHA suggested that as a result of these poor outreach health services, people in these communities tend to prefer to use the freedom of movement provisions to access health services in the Torres Strait.⁷⁷ Community leaders on Saibai were of the view that with the lack of facilities on Daru, people were being referred to the Torres Strait in increasing numbers.⁷⁸ Indeed, the TSIRC claimed that health officials in Daru encouraged PNG nationals through referrals to visit Australian health clinics and timed these visits 'perfectly' with the visits to the islands by specialist doctors.⁷⁹ Overall, the TSRA noted:

72 *Committee Hansard*, 18 June 2010, pp. 8–9.

73 *Committee Hansard*, 18 June 2010, p. 51.

74 *Committee Hansard*, 18 June 2010, p. 51.

75 *Committee Hansard*, 18 June 2010, p. 47.

76 *Submission 11*, Attachment A, p. 2.

77 *Submission 11*, Attachment A, p. 4.

78 Meeting on Saibai, 23 March 2010.

79 TSIRC, *Submission 9*, p. 3.

Given the desperate condition of infrastructure and health care services in the Western Province of PNG, where they have little prospect of adequate treatment, these people may be regarded as 'medical refugees'.⁸⁰

Accessibility to Torres Strait health clinics

3.45 A second reason for PNG nationals from the region choosing to seek assistance from Australian health clinics is the proximity and accessibility to health clinics, especially on Saibai, and the high quality health care provided on the islands. The Saibai health clinic is situated in the centre of the community, just a short walk from the designated entry point. It is administered by Queensland Health that is also undertaking design work for a new primary healthcare centre and staff accommodation on the island.⁸¹

3.46 For those living in the villages across the border, the distance to a health clinic in the Torres Strait is generally shorter than that to the closest one in PNG. Transport and the terrain may also make travel to Australia's northernmost islands easier, safer and quicker and many would be familiar with the region and have family connections. Indeed, Mayor Gela observed that while it may be practical for some villagers to walk to Daru to access the health facilities:

Some villagers do not have that luxury, so it is quicker, easier and more convenient for them, rather than walking for 2½ hours to seek urgent medical attention, to jump in a tinnie. It will only take on 20 minutes before they hit the shores of Saibai and access our facility.⁸²

3.47 Along similar lines, Ms Ellen Shipley, AusAID, noted:

When there is a health clinic available a short distance away by boat and people need to travel four or more hours or several days to access the same or similar types of services on the PNG side, they make choices and it is very difficult to argue with that.⁸³

3.48 Mr Kevin Murphy, a researcher focusing on the Torres Strait, noted that some PNG communities may have a closer connection with the Torres Strait than other parts of PNG.⁸⁴

Provision of humanitarian assistance

3.49 Another incentive for villagers from the South Fly District to cross the border into the Torres Strait to obtain medical treatment is their expectation that they will

80 TSRA, *Submission 18*, p. 12.

81 DoHA, *Submission 11*, p. 3.

82 *Committee Hansard*, 18 June 2010, p. 9.

83 *Committee Hansard*, 18 December 2009, pp. 27–28.

84 *Committee Hansard*, 18 June 2010, pp. 51–52.

receive the care they need. This understanding is based on the fact that Australia continues to provide the necessary health services, especially for those PNG visitors requiring urgent medical attention.

3.50 As the first point of call in the Torres Strait, PNG nationals who are ill are treated on their arrival at health clinics on the outer islands. Also, Queensland Health has established specialist clinics on the outer islands to treat PNG patients with tuberculosis as part of its cross-border management strategy.⁸⁵ In addition, the Australian Government is funding 'additional sexual health clinical staff...at the Thursday Island Hospital including the extra costs, such as transportation, related to community awareness in the Torres Strait'.⁸⁶ A sexual health program, upgrade of the Saibai health clinic and provision of staff housing have been allocated \$9.2 million of the \$13.8 million under the Health Issues Committee (HIC) package of measures.⁸⁷

3.51 Queensland Health informed the committee that it exercises a humanitarian duty of care for PNG nationals in need of medical assistance who present at its clinics.⁸⁸ Thus, when a PNG traditional inhabitant arrives on a Torres Strait Island and is assessed as having an illness, they are treated by Queensland Health staff at an island health clinic.⁸⁹

3.52 Ms Nardi spoke of the humanitarian approach taken by health professionals in the Torres Strait. She suggested that no clinician was 'going to turn someone away who is bleeding at their door' and asked, 'if people present at the clinic's door—some people in labour, some of them with acute illnesses—what do they do with them?'⁹⁰ She explained:

Essentially, if someone presents to our clinics with an acute illness or an exacerbation of a chronic illness, we will treat them, but we will not take people who are referred and we try not to continue ongoing treatment. The idea is to treat that which is before us and then return them or refer them back to the Papua New Guinea border.⁹¹

85 Queensland Government, *Submission 20*, p. 17.

86 TSRA, *Submission 18*, p. 14.

87 Fay Gardner, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 11 September 2009, p. 21.

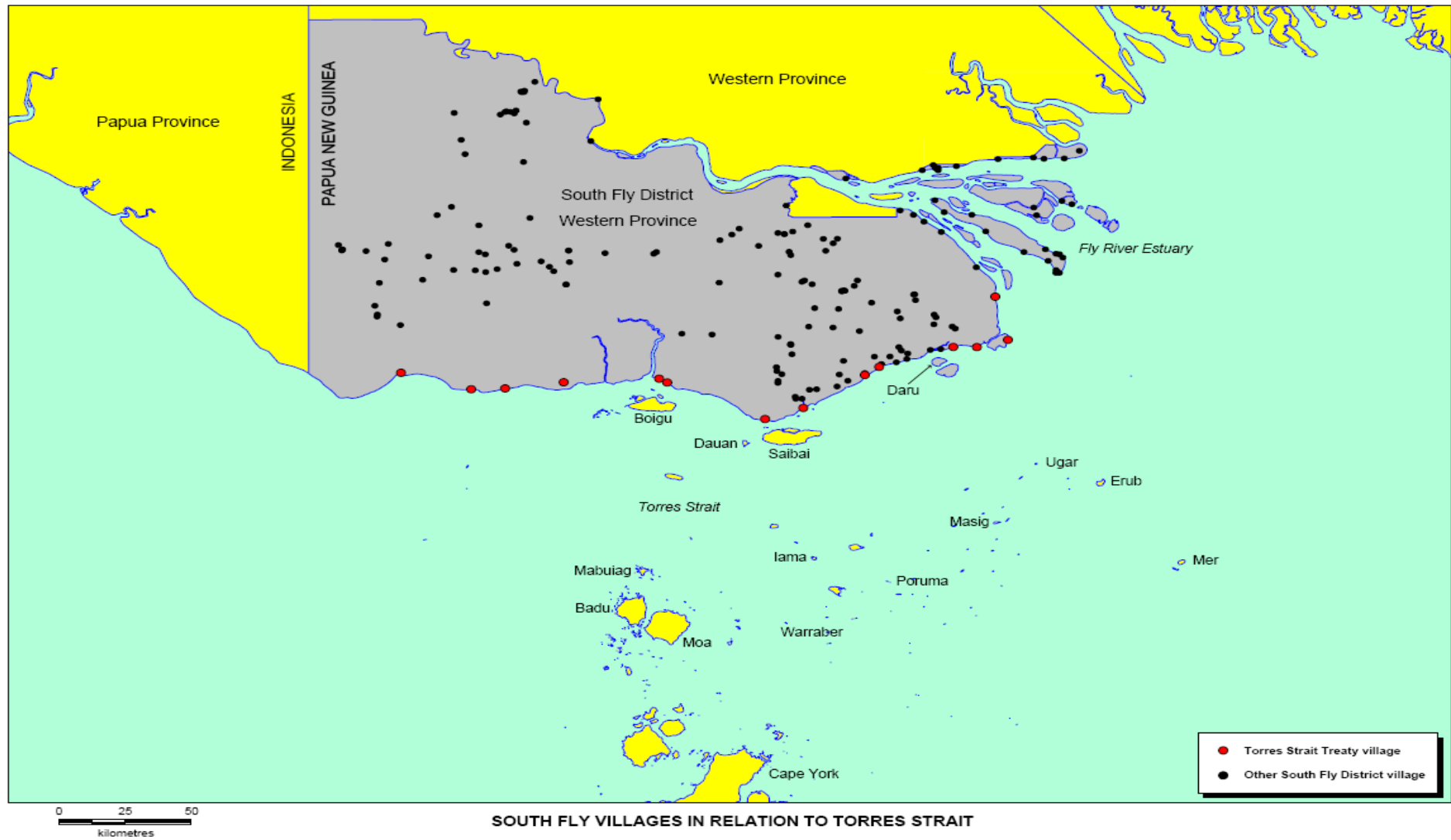
88 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, pp. 19–20.

89 Jennifer Bryant, *Committee Hansard*, 17 December 2009, p. 74.

90 *Committee Hansard*, 25 March 2010, p. 26.

91 *Committee Hansard*, 25 March 2010, p. 21.

Figure 3.1: PNG villages and proximity to the Torres Strait



(Map courtesy of Dr Garrick Hitchcock)

It is much easier for some villagers along the south coast of PNG to travel to Saibai or Boigu to seek medical assistance.

3.53 Australia's level of care extends to medical evacuations to mainland hospitals and providing treatment that may last many months. Ms Nardi noted that 'the reality is that we have made a decision that we treat the acute illness and that does mean that sometimes we have to transport them. That is just what we have to do'.⁹² This transfer may involve transporting patients from outer islands health clinics to the Thursday Island hospital or onto the mainland hospitals in Cairns, Townsville and Brisbane, with the majority transferred to Cairns.⁹³ In the 12 months to September 2009, 92 PNG nationals required medical evacuation, including approximately 15 patients with tuberculosis and another 15 with obstetric-related conditions.⁹⁴ More recent statistics indicate that these numbers have risen significantly.⁹⁵

Table 3.2: PNG Medivac 1 July 2009 to 31 May 2010

Island	2009–10		2008–09	
	Patients*	Escorts	Patients**	Escorts
Saibai	119	61	58	39
Boigu	47	35	16	16
Erub	3	-	4	4
Iama	1	-	0	0
Mer	1	1	0	0
Ugar	1	-	0	0
Badu	-	-	2	1
Total	172	97	80	58

*Of these patients, 23 or 13.4% were from non-Treaty villages

**Of these patients, 15 or 18.8 % were from non-Treaty villages

3.54 Mr Andrew Heath, DIAC, explained that most evacuations are to Thursday Island, with some moving to the mainland upon triage assessment at Thursday Island. He noted that a lot of the medevac cases occur on Saibai and Boigu, with very few from the other islands.⁹⁶

92 *Committee Hansard*, 25 March 2010, p. 26.

93 Queensland Government, *Submission 20*, p. 16.

94 DIAC, *Submission 16*, p. 16.

95 DIAC, Statistical update for traditional movements within the protected zone, Tabled document, 18 June 2010, p. 1.

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

3.55 The following table provides data on evacuations from the Saibai health clinic in 2006 and 2007.⁹⁷

Table 3.3: Reasons for evacuation from the Saibai health clinic in 2006 and 2007

Reasons for Evacuations	2006	2007
Other Problems	39%	23%
TB investigation	18%	7%
Specialist Review	12%	n/a
Wounds/lacerations	10%	n/a
Fractures	10%	n/a
Surgical Elective Cases	n/a	31%
Fractures	n/a	9%
Eye problems/Blindness	n/a	3%

3.56 Queensland Health statistics indicated that during 2007–08, PNG patients spent 3,366 days in Queensland public hospitals.⁹⁸

3.57 Local inhabitants understand the reasons for providing health services to PNG nationals and support the humanitarian approach.⁹⁹ Mr Kris observed that although communities were still being 'inundated with people' coming across with medical issues, 'you cannot turn people away from your doorstep when someone turns up sick'.¹⁰⁰

Public health

3.58 The Australian Government has agreed to treat PNG patients not only for humanitarian reasons but also on public health grounds.¹⁰¹ Public health concerns are particularly important considering the prevalence of tuberculosis and the limited to non-existent facilities in PNG for identifying and treating this disease.¹⁰²

97 TSRA, *Submission 5* to House of Representatives Standing Committee on Health and Ageing, Roundtable forum on regional health issues jointly affecting Australia and the South Pacific, p. 9.

98 Queensland Government, *Submission 20*, p. 16.

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

100 *Committee Hansard*, 24 March 2010, p. 5.

101 See for example Department of Health and Ageing, *Submission 11*, p. 2; and Queensland Government, *Queensland Health: Management of PNG Nationals*, draft policy, p. 2; *Committee Hansard*, 18 December 2009, p. 28.

102 *Committee Hansard*, 17 December 2009, p. 80.

Perceived access to social welfare

3.59 Finally, according to anecdotal evidence, some PNG nationals seek assistance from Australian health clinics under the misguided belief that they would be entitled to social welfare benefits. The committee heard accounts of PNG women choosing to deliver their babies on island health clinics in order to obtain the baby bonus provided to Australian children and/or to obtain an Australian citizenship more easily. When questioned about this, Queensland Health explained that it does not capture data on the reasons for PNG nationals giving birth in Australia and that 'those issues are for Immigration or others to determine'.¹⁰³

Conclusion

3.60 Significant numbers of PNG nationals are crossing the border in the Torres Strait to access Australian health services. There are very strong push and pull factors driving this trend—poor access to health care services in the southern part of Western Province compared to the high standard of health care available in the Torres Strait; the proximity of, and relative ease of transport to, these services; and Australia's humanitarian and public health approach to providing medical assistance to PNG nationals in need.

3.61 The following chapters look at the measures that the Australian Government is taking to reverse the trend of PNG nationals from the South Fly District crossing the border to access health services in Australia.

103 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, pp. 27–28.

Chapter 4

Addressing health issues in Torres Strait

4.1 Despite the Treaty excluding health matters as a valid reason for travel under its freedom of movement provisions, the committee found that inadequate medical services in PNG encourage people from Western Province to seek health care on Torres Strait Islands. The committee noted the lack or absence of health services in PNG Treaty villages, shortage of staff and equipment and the long distances required to travel to seek medical assistance.

4.2 In this chapter, the committee explores the various government initiatives designed to build PNG's capacity to deliver health services to the Treaty villages so that people from these communities seek medical treatment in their own province. It is especially interested in the long term benefits that result from Australia's development assistance to Western Province. First, the committee looks at measures targeted at improving health services in PNG.

Health challenges in PNG

4.3 Many witnesses spoke of the need for Australia to help PNG improve its health facilities and the standard of health care in Western Province. The TSRA submitted that 'health care capacity and the quality of infrastructure in the Western Province have to be raised in order to reduce cross-border pressure on Torres Strait community health services'.¹ Mayor Gela, TSIRC, highlighted the need for Australia 'to ensure that appropriate health infrastructure is provided' within this province.² The Torres Shire Council suggested that a major upgrade would benefit the Daru Island hospital or that health clinics at centre villages such as Mabadauan could be built to facilitate access to ongoing support programs.³

4.4 In this regard, Mr Kenny Bedford, TSRA Portfolio Member for Fisheries and Member for Erub Island, observed that state and Australian government health agencies have finally realised that 'there needs to be a lot more resources and attention given to the other side of the border'.⁴ He recognised that Australia is reducing the risk on its side by 'setting up medical centres and health facilities on that side that help deal with the issues over there before they fall on our doorstep'.⁵

1 TSRA, *Submission 18*, p. 13. See also TSIRC, *Submission 9*, p. 4.

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

3 Torres Shire Council, *Submission 19*, p. 7.

4 *Committee Hansard*, 24 March 2010, p. 12

5 *Committee Hansard*, 24 March 2010, p. 12.

Joint initiatives

4.5 For decades, Australia has provided assistance to PNG to help it improve its health system and together with PNG has initiated a number of strategies and agreements.⁶ Currently, the Papua New Guinea–Australia Partnership for Development agreement is the guiding and practical framework for development work. It was signed by the respective governments in August 2008 as part of the Australian Government's wider initiative to improve cooperation between Australia and its Pacific island neighbours. The agreement aims to 'accelerate progress towards the Millennium Development Goals (MDGs) and other PNG development priorities'.⁷ Through the agreement, a greater proportion of Australian Government funding will be provided for the implementation of district health priority outcomes.⁸

4.6 The agreement supports the PNG Government's efforts in five priority outcomes. Priority number three, 'Improved Health Outcomes', focuses on the implementation of the PNG Government's National Health Strategies and Plans, including reducing the prevalence of malaria and tuberculosis.⁹ Key areas of focus within this priority outcome include:

- improved and expanded delivery of primary health care at provincial, district and facility levels, and efforts to ensure that funds are appropriately matched to the cost of delivery and channelled to basic service delivery; and
- support for national functions needed for an effective health system, such as service delivery planning, budgeting and procurement, health worker training and new service delivery models.¹⁰

4.7 Ministers at the 2009 Ministerial Forum between Australia and PNG announced three new priority outcomes, including HIV/AIDS.¹¹ The joint statement

6 In 2000, the Australian and PNG Governments signed a treaty on development cooperation setting out 'the principles, objectives, management and administrative arrangements' for a joint development cooperation program. The Papua New Guinea–Australia Development Cooperation Strategy 2006–2010 focuses on sustainability and capacity building. Its objectives include improved governance; improved service delivery; and more effective response to the HIV/AIDS epidemic. It is also linked to the PNG Government's medium-term development and fiscal strategies. Australian Government, *Papua New Guinea–Australia Development Cooperation Strategy 2006–2010*, Summary, 2007, p. 1.

7 Australian Government, Papua New Guinea–Australia Partnership for Development, <http://www.ausaid.gov.au/country/partnership/png.cfm> (accessed 21 April 2010).

8 Australian Government, Papua New Guinea–Australia Partnership for Development, Priority Outcome 3: Health, 10 June 2009, p. 8.

9 Australian Government, Papua New Guinea–Australia Partnership for Development, Priority Outcome 3: Health, 10 June 2009, p. 2.

10 AusAID, *Submission 21*, p. 1.

from the PNG–Australia Bilateral Meeting in July 2010 noted that in releasing six million kina to meet the costs of treating AIDS, tuberculosis and malaria, PNG had made an 'important first step' towards fighting these diseases.¹²

4.8 The Australian Government, through AusAID, is working with the PNG Government 'to strengthen the national health system over the long term', assisting in the delivery of immediate essential health services through the funding of non-government organisations.¹³ Australia's country program allocation to the PNG health sector was approximately \$45 million in 2009–10.¹⁴ The funding is aligned with the health priorities of the PNG Government and supports the institutional strengthening and sustainability of the PNG health system.¹⁵ A number of other initiatives targeting particular health issues have also been introduced. But improving PNG's health system is a major challenge. Ms Nardi observed:

I think there is a lot of work that has been occurring, particularly with foreign aid at a Commonwealth level, with Papua New Guinea, and I think that work needs to continue. But there are no easy solutions for this. If there were an easy solution, it would be in place now. This is going to be a long-term process about trying to upgrade and support health care and healthcare provision in Papua New Guinea.¹⁶

Health initiatives for Western Province

4.9 Western Province, particularly the South Fly District, is an important region to the residents of the Torres Strait Islanders due to its proximity and is thus of most relevance to the committee's inquiry. As noted in the previous chapter, inadequate, inappropriate or poorly administered funding is a major impediment to improving the standard of health services, especially for rural and remote areas such as the South Fly District.¹⁷

4.10 Although Australia provides significant amounts of aid to PNG, there are limits to the extent to which Australia can determine how its funding is to be targeted.

11 Joint Statement, 19th Australia–Papua New Guinea Ministerial Forum, Brisbane, 10 June 2009, paragraph 9, http://www.dfat.gov.au/geo/png/19_forum_joint_statement.pdf (accessed 21 April 2010).

12 Papua New Guinea–Australia Bilateral meeting, Alotau, Milne Bay Province, Papua New Guinea, Joint Statement, 7–8 July 2010, paragraph 27, <http://www.foreignminister.gov.au/releases/2010/fa-s100709a.html>

13 AusAID, *Submission 21*, p. 1.

14 AusAID, Answer to question on notice 47, Budget Supplementary Estimates, October 2009.

15 Ellen Shipley, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 11 September 2009, p. 24.

16 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 23.

17 AusAID, *Submission 21*, p. 1.

Even so, according to Ms Shipley, earmarking of funds was possible under the Partnership for Development. She explained that the 'issues that are of particular relevance to Western Province and the Torres Strait area are very similar to those priorities identified under that [partnership] and we do have quite significant consultations with the government of PNG to make sure funding flows'.¹⁸

4.11 The committee now turns to look at initiatives in place to improve health in the South Fly District, PNG.

Health Issues Committee

4.12 The governments of Australia, PNG and Queensland have worked together since 2003 to address health issues arising out of the Treaty arrangements. The countries established a Torres Strait Cross Border Health Issues Committee (HIC) under the Torres Strait Treaty 'to examine health issues associated with the free movement of PNG nationals and Torres Strait Islanders'.¹⁹ The HIC is chaired by DoHA and includes representatives from various Australian government agencies, Queensland Department of Health and Department of Premier and Cabinet, PNG Government and Western Province Administration.²⁰ The committee meets twice yearly in Australia.²¹

Package of Measures

4.13 To improve access to health services for traditional inhabitants in the PNG Treaty villages, the 2008 Australia–PNG Ministerial Forum asked HIC to develop a Package of Measures to resolve cross-border health problems.²² One of the aims of the package was to 'reduce the incidence and transmission of communicable diseases', such as tuberculosis.²³ Ms Fay Holden, DoHA, outlined the range of different measures contained in the Package of Measures that are designed to assist both sides of the border to deal with health concerns and relieve the pressure on Torres Strait health clinics caused by PNG nationals seeking treatment. The primary ones include:

...redevelopment of Daru General Hospital and upgrading of the existing aid posts to community health posts, commencing with the upgrade of the Buzi Aid Post to a two-person community health facility...upgrading and improving the Mabudaun and Kunini health centres...developing a training school for Rumginae community health workers, strengthening their key

18 *Committee Hansard*, 18 December 2010, p. 26.

19 DoHA, *Submission 11*, p. 2.

20 DoHA, *Submission 11*, p. 2; AusAID, *Submission 21*, p. 2. Australian government agencies include DFAT, AusAID, Australian Quarantine Inspection Service (AQIS), Immigration, Australian Customs and Border Protection Service and the TSRA.

21 DFAT, *Submission 23*, p. 3.

22 DoHA, *Submission 11*, p. 2.

23 DoHA, *Submission 11*, p. 3 and attachment A, p. 1.

public health programs, health promotion and community awareness, the establishment of a system of outreach programs, strengthening their human resource capacity, improving transportation within the Western Province, a community water supply project, and assessment of and improvements to the laboratories at Daru General Hospital and at the Mabudaun, Wipim and Kunini health centres.²⁴

4.14 A number of these initiatives have been or are being implemented. For example, the House of Representatives Health and Ageing Committee noted in their report that the Mabadauan health clinic was going to be upgraded to a rural district hospital to provide easier access to health services to South Fly residents.²⁵

4.15 In its 2010 budget, the PNG Government allocated five million kina for the Package of Measures, 'with a view to increasing this funding to 12 million kina in 2011'.²⁶ DoHA informed the committee that PNG had moved to provide enhanced funding for some commitments under the package, including funding towards their laboratories, but that some elements were still awaiting funding commitments. According to Ms Holden, PNG's Department of Health is 'working through the implications of how the funding that they had identified for this current financial year relates to the proposals that they had in the package of measures'.²⁷

4.16 In the previous chapter, the committee noted the difficulties with funding and the allocation of funds for health in PNG. This problem applies also to the Package of Measures. DoHA observed that 'access to supplementary budget funding is essential to PNG implementing' the package.²⁸ In addition, Ms Gardner noted that 'one of the biggest risks is still that [the cooperation between agencies] relies on increasing the capacity within the Western Province and the activities of the Papua New Guinea government and ensuring that the funding and the commitments on that side are maintained'.²⁹

Australia's commitment to the Package of Measures

4.17 In its 2009–10 Budget, the Australian Government allocated \$13.8 million over four years for the Torres Strait Health Protection Strategy, administered by DoHA.³⁰ Ms Bryant explained:

24 *Committee Hansard*, 18 June 2010, p. 27.

25 House of Representatives Standing Committee on Health and Ageing, *Regional health issues jointly affecting Australia and the South Pacific: Report of the Australian Parliamentary delegation to Papua New Guinea and the Solomon Islands*, March 2010, paragraph 3.122.

26 *Committee Hansard*, 18 December 2009, p. 21.

27 *Committee Hansard*, 18 June 2010, p. 27.

28 DoHA, *Submission 11*, p. 6.

29 *Committee Hansard*, 17 December 2009, p. 83.

30 DoHA, *Submission 11*, p. 3.

Our activities through the health issues committee focus on a number of key things. One is trying to build the health service capacity in the Western Province...so that they can provide services directly to their own nationals. We also look at improving communications and linkages across the border as well as the maintenance of health services.³¹

4.18 AusAID is involved in developing the PNG health system. It does not undertake direct activities in Western Province but supports the Package of Measures through a number of initiatives, including facilitation of the relationship between the PNG Department of Health with the provincial and local governments to ensure the flow of funds and effective use of their resources.³² Specific funding has been allocated to projects such as STI clinics, tuberculosis management, communication officers and capacity building initiatives in Western Province.³³

4.19 The Tuberculosis Clinical Management and Laboratory Capacity Building Project is one such initiative, which:

...looks specifically at helping to improve diagnosis and treatment of TB in the Western Province, including in the Daru hospital, and it looks to strengthen PNG's diagnostic capabilities in the laboratory in Port Moresby and so on. So there is funding to improve the laboratory and then train and support staff working in the laboratory.³⁴

4.20 According to DoHA, funding goes toward providing a database of PNG nationals diagnosed with tuberculosis in island health clinics to the Western Province Communications Officer.³⁵ This is to enable data 'dissemination to appropriate health care workers at Daru General Hospital and in Treaty village aid posts or health centres'.³⁶

4.21 The Queensland Government highlighted the importance of AusAID working closely with the PNG Government to ensure the effective implementation of the Package of Measures. In its view:

...it is imperative that the Australian Government works cooperatively with the PNG Government to ensure that the proposed Health Package of Measures in PNG is well targeted and implemented to ensure optimum

31 *Committee Hansard*, 17 December 2009, p. 79; DoHA, *Submission 11*, p. 2.

32 Ellen Shipley, *Committee Hansard*, 18 December 2009, p. 22; see also AusAID, *Submission 21*, p. 2.

33 AusAID, *Submission 21*, p. 3, and Ellen Shipley, *Committee Hansard*, 18 December 2009, p. 21.

34 *Committee Hansard*, 17 December 2009, p. 81.

35 DoHA, *Submission 11*, attachment A, p. 1.

36 DoHA, *Submission 11*, attachment A, p. 8.

service outcomes in the PNG Treaty villages...The Australian Government could consider whether this is an appropriate area of action for AusAID.³⁷

Committee view

4.22 The committee acknowledges the need for the Australian Government to address health service provision in Western Province. It supports the initiatives of the Australian and PNG Governments to establish new, or improve existing, health facilities in the province.

Recommendation 1

4.23 The committee recommends that through the Package of Measures developed by the Health Issues Committee, the Australian Government continue to support PNG initiatives to establish new, or improve existing, health facilities in Western Province so that PNG nationals no longer need to seek health care in the Torres Strait.

4.24 The committee is concerned about the problems with funding arrangements, such as the targeting and allocation of health funds in PNG and its implications for the effectiveness of Australia's development assistance. This aspect of Australia's aid is discussed later in this chapter. In the next section, the committee turns to examine twinning arrangements, another initiative between Australia and PNG to improve the quality of health service provision in Western Province.

Twinning arrangements

4.25 Based on findings from previous inquiries, the committee appreciates the value of using twinning arrangements to deliver development aid. This approach, whereby PNG officials work for a period alongside Australian officers in Australia and vice versa, could be used to build capacity in Western Province.³⁸ It would encourage the development of new linkages between PNG and Australian research and health institutions and strengthen existing ones. One suggestion arising out of a House of Representatives inquiry was establishing a Western Province Australian Clinicians Network to support capacity building at Daru Hospital and the South Fly area.³⁹ The committee supports such proposals.

37 Queensland Government, *Submission 20*, p. 18.

38 See for example, Foreign Affairs, Defence and Trade References Committee, vol. 1, *Economic challenges facing Papua New Guinea and the island states of the southwest Pacific*, November 2009, paragraph 15.10.

39 House of Representatives, Standing Committee on Health and Ageing, *Regional health issues jointly affecting Australia and the South Pacific: Report of the Australian Parliamentary delegation to Papua New Guinea and the Solomon Islands*, March 2010, paragraph 3.15. Also see recommendation 6 which reads 'the Australian government encourage and support further institutional partnerships and/or reciprocal exchanges between the School of Medical and Health Sciences at the University of Papua New Guinea and Australian universities'.

4.26 In this regard, Queensland Health has commenced scoping a memorandum of understanding for a twinning arrangement between it and PNG to exchange and share ideas and skills. It is also looking to provide direct assistance and support to PNG in capacity building to manage demand and reduce the need for PNG nationals to visit health clinics on Torres Strait Islands.⁴⁰ Services such as those of a respiratory specialist are among initiatives that could be considered for twinning arrangements. Ms Nardi observed that due to the service being used mainly by PNG nationals, it 'might be better off being flown into Papua and delivering the service there rather than necessarily delivering it in our clinics'.⁴¹

4.27 The Queensland Government informed the committee that it was 'finalising a funding agreement with the Commonwealth which would allow PNG clinicians to travel to the Torres Strait clinics to increase knowledge and skills in TB management'.⁴²

Cross-border movement of health professionals

4.28 Cross-border movement of health workers from Torres Strait islands of Saibai and Boigu to PNG treaty villages offers the potential to improve the delivery of health services in these villages. Under current immigration regulations, however, health workers who are to deliver health services in PNG, including the villages immediately adjacent to the Torres Strait, are required to travel via the declared ports, for example those of Thursday Island and Daru in the Torres Strait region. Considering the difficulties travelling around the region, this requirement is a considerable imposition, especially since Saibai and Boigu are only a few kilometres off the PNG south coast. DoHA explained:

Travel by health workers and other government officials dealing with Torres Strait Treaty matters between islands in the Torres Strait and Treaty villages along the South Fly Coast is both expensive and time consuming...There is need for an alternative that allows identified health workers and other government officials to travel directly between Saibai and Boigu Islands in the Torres Strait and Treaty villages in the South Fly.⁴³

4.29 Mr Bedford supported the endeavours that would allow doctors and nurses to travel under the same sort of arrangements that exist for traditional visits 'so that they do not have the rigmarole of customs and such to get over there'.⁴⁴ This freedom of

40 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, pp. 22–23.

41 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 29.

42 Queensland Government, *Submission 20*, p. 17.

43 DoHA, *Submission 11*, attachment A, p. 8; see also DIAC, *Submission 16*, p. 16.

44 *Committee Hansard*, 24 March 2010, p. 12

movement for health workers would not only reduce time and cost but could ease the demand from PNG nationals for access to such services in the Torres Strait.⁴⁵

4.30 As part of the HIC Package of Measures and in consultation with relevant agencies, DFAT developed a draft proposal for 'facilitated cross-border movement' through non-proclaimed ports in the Torres Strait, Saibai and Boigu. The joint proposal between the Australian and PNG Governments was designed:

... to streamline administrative arrangements for cross-border movement by specified health officials and professionals, as well as for nominated officials from other agencies e.g. border enforcement agencies.⁴⁶

4.31 The joint statement from the July 2010 PNG–Australia Bilateral Meeting noted that the arrangements for the cross-border movement of government officials and health professionals had been formalised.⁴⁷ The proposal is to receive funding of \$5,000 per year until 2012–15 from Australia as part of the Torres Strait Health Protection Strategy. It should be noted that the scope of the proposal is confined to the administrative costs that would still be associated with the cross-border movements.⁴⁸ Ms Holden informed the committee:

It is not expected, especially in its early development, to be a widely used facility. In terms of the health professionals and in relation to health, we would anticipate around four to five movements a year under that. The purpose of facilitated cross-border movement is primarily to reduce the administrative burden and to make it easier to move between Saibai and the Western Province villages.⁴⁹

4.32 She highlighted the point that the project was 'certainly not intended to be for the provision of health services': that it was a health exercise in terms of better management of referrals back to the health services:

The intent of that movement is not the treatment of PNG nationals, in terms of Australian medical professionals going over to the Western Province to treat people, but to build relationships and awareness of the health service capacity that is in the Western Province, so that they can better manage referrals back to those health clinics and also so that the health professionals that are in the Western Province health services will be able to

45 TSRA, *Submission 18*, p. 14; DIAC, *Submission 16*, p. 16.

46 TSRA, *Submission 18*, p. 14; DIAC, *Submission 16*, p. 16.

47 Papua New Guinea–Australia Bilateral meeting, Alotau, Milne Bay Province, Papua New Guinea, Joint Statement, 7–8 July 2010, paragraph 44. Ms Jennifer Rawson, DFAT, explained that the details of the proposal were being worked through, which involved reaching agreement on the technical aspects of how such an arrangement would operate. She was hopeful that it would finalised within the short term. *Committee Hansard*, 18 June 2010, p. 19.

48 *Committee Hansard*, 18 June 2010, p. 28 and DoHA, *Submission 11*, p. 6.

49 *Committee Hansard*, 18 June 2010, p. 28.

come to the Australian health services in a mentoring and capacity building process.⁵⁰

4.33 According to Ms Holden, when Australian clinicians refer a patient back to PNG, they are 'not necessarily always aware of the conditions' and capacity of the relevant PNG health facility. The project is intended to improve that understanding.⁵¹

Committee view

4.34 The committee sees significant benefits in facilitating the travel of health professionals and other relevant government officials between Torres Strait Islands and Western Province Treaty villages. As noted, it would not only reduce the time and cost of travel but also the risk of transmission of communicable diseases to the islands through the treatment of patients and diseases at their source. Now that the administrative arrangements are settled, the committee is of the view that efforts should focus on developing and implementing programs that can take advantage of this initiative.

Recommendation 2

4.35 The committee recommends that the Australian Government give serious consideration to measures that would further facilitate the proposal for greater cross-border involvement by Australian health professionals in both the provision of services and capacity building on the PNG side of the border.

Cross-border communication officers

4.36 Poor communication between health professionals across the border has been an impediment to effective provision of health care for PNG traditional inhabitants. Evidence to the inquiry suggested that patient records have not been communicated properly between the island health clinics and PNG health professionals. There was also concern about the lack of a coordinated treatment program in Western Province for those diagnosed with TB in a Torres Strait health clinic who have returned to PNG.⁵² As noted earlier, incomplete treatment of tuberculosis may make the disease resistant to drugs and thus become even more difficult to treat.

4.37 AusAID acknowledged that both it and DoHA are aware of the difficulties regarding cross-border communication.⁵³ Several initiatives have been established to resolve the problem. In 2006, AusAID funded Queensland Health to trial a communications officer position on Thursday Island to liaise with the South Fly

50 *Committee Hansard*, 18 June 2010, p. 29.

51 *Committee Hansard*, 18 June 2010, p. 29.

52 Graeme Maguire, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 31 August 2009, p. 10.

53 Ellen Shipley, *Committee Hansard*, 18 December 2009, p. 27.

District Health Officer on cross-border health issues.⁵⁴ The trial was successful and is now funded on an on-going basis on the Australian side as part of the HIC Package of Measures.⁵⁵ The officer's role is to transmit 'confidential patient and surveillance data gathered in respect of PNG nationals diagnosed and treated in Torres Strait clinics'.⁵⁶

4.38 The Western Province Communications Officer based in Daru conducts clinical outreach visits to aid posts and health centres to support the follow-up and treatment of PNG nationals who have been diagnosed with tuberculosis in the Australian health clinics.⁵⁷ Both communications officers are medically trained doctors, and the person on the Australian side, who is also a PNG citizen, has worked in PNG as a doctor.⁵⁸

4.39 The House of Representatives Committee on Health and Ageing recommended that due to their success, additional health communications officer positions should be considered 'on both sides of the border to support the two current positions'. It noted that because compliance is a major issue, 'it is not realistic to expect one or two officers to monitor everything and everyone'.⁵⁹ This committee supports the House of Representatives committee view and recommendation and urges the government to consider additional communications officer positions in the Torres Strait region.

4.40 Despite these initiatives, communication across the Torres Strait remains poor. Evidence to the House of Representatives inquiry suggested that the Torres Strait communications officer has been used 'as a carrier pigeon' who physically takes the information across the border because 'we cannot do it reliably by mail, fax or email'.⁶⁰ A communication protocol is being developed to facilitate the exchange of clinical information across the international border. This is intended to:

54 AusAID, *Submission 21*, p. 3.

55 *Committee Hansard*, 18 December 2009, p. 26. The position is funded for four years. DoHA, *Submission 11*, attachment A, p. 7. Funding of \$0.7 million has been allocated under the HIC package of measures to the extension of the position. Fay Gardner, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 11 September 2009, p. 21.

56 DoHA, *Submission 11*, attachment A, p. 7.

57 DoHA, *Submission 11*, attachment A, p. 1; Ellen Shipley, *Committee Hansard*, 18 December 2009, p. 20.

58 *Committee Hansard*, 18 December 2009, p. 26.

59 House of Representatives, Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, March 2010, p. 105.

60 Graham Simpson, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 31 August 2009, p. 22. There are 'no telephones in the Western Province villages', Queensland Government, *Submission 20*, p. 17.

...enable follow-up and treatment of PNG nationals diagnosed with TB at Torres Strait Island clinics at home in PNG. It will also aid in the tracking and identification of PNG nationals who have been diagnosed with MDR-TB at Torres Strait Island clinics to ensure they are followed up for treatment within the Australian health system until such time as this capacity is built in the Western Province.⁶¹

4.41 Work is also underway to implement a telephone/HF radio interface system that will enable clinical workers on both sides of the border to converse in real time. The system will allow calls from telephones to high frequency radios and vice versa.⁶² Ms Jennifer Lean, AusAID, explained:

Queensland and our own programs in Western Province have equipped them with mobiles and they basically keep tabs on who is coming across, what are they diagnosed with, what are their treatments, how do they get followed up on the PNG side of the border. It is a surveillance mechanism.⁶³

4.42 For a similar purpose, a health services radio network has been established, including the installation of radios at 40 sites in Western Province, to improve health communications in the region.⁶⁴

4.43 The H1N1 (swine flu) epidemic and closing of the Australia–PNG border in 2009 highlighted the need for effective communication. As the Queensland Government noted, 'local clinicians on both sides of the border need to be able to authoritatively communicate about cross-border pandemic management'.⁶⁵

Committee view

4.44 Having identified a problem with communication technology in the region and taken steps to fix the shortcomings, the committee is of the view that the Australian Government should monitor the effectiveness of these measures, taking account of the need to ensure that the improvements are sustainable.

Effectiveness of Australia's aid

4.45 The committee has not examined all projects funded by Australia and undertaken in Western Province to improve health services. While it is clear that Australia is not neglecting this area, a number of witnesses questioned the effectiveness of Australia's assistance. Many of their concerns replicate those identified by the committee in a number of previous reports on the delivery of

61 DoHA, *Submission 11*, p. 4.

62 DoHA, *Submission 11*, attachment A, p. 8; Queensland Government, *Submission 20*, p. 17.

63 *Committee Hansard*, 18 December 2009, pp. 26–27.

64 *Committee Hansard*, 18 December 2009, p. 29.

65 Queensland Government, *Submission 20*, p. 17.

Australian aid. They strongly underline the importance of Australian aid agencies ensuring that their contribution to improved health care is long term and consolidates and builds on earlier successes.

Maintaining and supporting programs

4.46 In his submission, Mr Kevin Murphy, an anthropologist who has worked extensively in the Torres Strait, observed that building infrastructure or other facilities in Western Province will not be enough to reduce the pressure on Torres Strait Island health clinics. In his view, capacity building is also needed. He argued that 'Entrusting these things to the Western Province administration had not been effective in the past' and used the following example:

The person who was employed at the Buzi aid post had very limited training and was not regarded by the people of the village as competent to diagnose or treat anything but the most common and minor injuries.⁶⁶

4.47 Mr Graham Smith drew on his experience with a project in the region to provide a telling example of Australian time and money spent on a facility that 'came to nothing in the end' and 'died from starvation'.⁶⁷ According to Mr Smith, although the South Fly Telecommunication Network was 'successfully designed, purchased, constructed and commissioned, within the approved budget', it no longer functioned after two years. He stated:

The reasons for this are essentially that no one wanted to maintain the network. AusAID only saw their role as providers. It was to be the responsibility of PNG to maintain the network.⁶⁸

4.48 On the demise of this facility, Ms Shipley noted further:

Continual problems with the operation of the network and unattended repairs were raised at a number of Torres Strait treaty meetings, and a core issue with the project was the failure of the government of PNG to provide funds for maintenance and repair. During site visits to locations in Western Province in August 2006, it was noted that no stations were using the network because the majority of the equipment had been stolen or damaged. AusAID was advised at the time that the network was just not operational.⁶⁹

4.49 Also, the frequency band was no longer available for fixed or mobile communications in Australia by the time the project was completed. Mr Smith wanted to highlight for the committee the kind of things that the Australian Government had tried before but the results of which 'can be seen rusting in the coastal villages along

66 Kevin Murphy, *Submission 15*, pp. 5–6.

67 Graham Smith, *Submission 3*, pp. 1–2.

68 Graham Smith, *Submission 3*, p. 2.

69 *Committee Hansard*, 18 December 2009, p. 29.

the PNG coastline'.⁷⁰ According to AusAID, the project was indicative of an on-going problem 'where agreements are made and large infrastructure programs are sought', but where the PNG Government 'does not allocate the recurrent costs necessary to maintain the networks'.⁷¹

4.50 Along similar lines, Mr Kris explained that through the JAC, the TSRA has 'talked about putting infrastructure on the ground in those particular communities to try and cater for some of those needs'. He noted that their biggest issue 'is the security of the infrastructure on the other side of the border and the professional people to actually operate in those remote communities'.⁷² Councillor Pedro Stephen, Torres Shire Council, was also concerned about the lack of attention given to maintaining infrastructure in PNG. He argued that funding for infrastructure projects is made available but it only allows for establishment or building costs; building capacity to maintain the facilities is ignored:

...there is a lot of good infrastructure out there and millions of dollars have been spent by the state to build all the health centres, but there is no money to maintain those health centres. So you have a health centre out there and within 12 months the screen door cannot shut because it is frozen due to the salt content.⁷³

4.51 The committee notes that the issue raised by witnesses about the need for the government to ensure that aid funding covers both the building of a facility and its maintenance is not new. In numerous previous reports, the committee has identified this problem in the delivery of Australian aid programs. Most recently, in its report on the economic challenges facing PNG and the island states of the southwest Pacific, the committee registered its concern that far too often, the achievements from Australia's aid program were 'short-lived and left no tangible lasting benefit'. It cited the problem of infrastructure or equipment falling into disuse when funds and technical assistance were withdrawn. It was of the view that:

...for aid to have an enduring positive influence on economic and human development, policy making and planning has to go beyond the actual period of implementation to how particular programs build on past achievements and are a stepping stone to future progress. Consideration should be given to aspects such [as] the capacity of the recipient country to assume responsibility for maintaining the program, including the required level of skills, and/or the need for recurrent funding or support from donors to ensure that the benefits from aid programs are not lost.⁷⁴

70 *Submission 3*, p. 3.

71 *Committee Hansard*, 18 December 2009, p. 29.

72 John Toshi Kris, *Committee Hansard*, 24 March 2010, p. 13.

73 Napua Pedro Stephen, *Committee Hansard*, 24 March 2010, p. 28.

74 Senate Foreign Affairs, Defence and Trade References Committee, vol. I, *Economic challenges facing Papua New Guinea and the island states of the southwest Pacific*, 2009, paragraph 18.34.

4.52 Importantly, the recent independent review of the PNG–Australia Development Cooperation Treaty drove home the same messages about 'a perceived lack of impact, and failure to obtain value-for-money' from Australia's aid program to PNG. The authors noted that the program was so thinly spread that its impact had become 'hard to discern'.⁷⁵ The review team also referred to the 'historic and persistent underfunding of recurrent expenditure in PNG', noting that 'closer links between the aid program and the recurrent budget should be sought'.⁷⁶

4.53 The committee notes also that its views are further supported by the House of Representatives Standing Committee on Health and Ageing that recommended 'that any new health facility that the Australian government helps construct should provide for staff accommodation and ongoing maintenance, in consultation and partnership with the local community'.⁷⁷

4.54 AusAID acknowledged that the PNG health system remained fragile.⁷⁸ It also noted that the effect of Australia's assistance could be stronger. Ms Shipley stated that 'An overly cautious approach to risk management has delayed financing for health service delivery at the required levels'. In addition, technical assistance had not improved health systems capacity 'commensurate with the cost'.⁷⁹

Accounting for use of funds

4.55 Earlier, the committee considered the problems that PNG has with targeting and allocating funds effectively for health services. In the context of allocating funds, Ms Lean informed the committee that a large amount of the money provided through both AusAID and the Government of PNG into the provincial treasury remained unspent.⁸⁰ Local leaders in the Torres Strait were also concerned about the proper use of Australian development assistance to PNG. TSRA called for 'more stringent control

75 *Review of the PNG–Australia Development Cooperation Treaty (1999)*, 19 April 2010, p. 1.

76 *Review of the PNG–Australia Development Cooperation Treaty (1999)*, 19 April 2010, p. 4.

77 House of Representatives, Standing Committee on Health and Ageing, *Regional health issues jointly affecting Australia and the South Pacific: Report of the Australian Parliamentary delegation to Papua New Guinea and the Solomon Islands*, March 2010, recommendation 11, p. xxii.

78 AusAID, *Submission 21*, p. 1.

79 Ellen Shipley, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 11 September 2009, p. 24.

80 *Committee Hansard*, 18 December 2009, p. 26.

of AusAID funding to the PNG Government' to ensure that funding to develop health services reaches Western Province.⁸¹ Mayor Gela expressed the view:

We get the feeling that the PNG government does not care about the people of the Western Province because Australia is taking care of them via the treaty. The Australian government needs to be tougher on the PNG government, dictating where the foreign aid goes so that it can be directed to the Western Province, as this area is completely neglected. Appropriate consultation in relation to the treaty cannot be one-sided. The Western Province needs to be consulted and not just the PNG government.⁸²

4.56 Mr Kris queried AusAID's audit processes, adding:

For ever and a day Australia has been putting money into AusAID to look at building infrastructure and to look at reducing the numbers, but we still do not see any infrastructure on the ground. We [are] still talking about the same recommendation 10 years after the discussion has started...Who audits the funding that Australia gives to PNG and requires implementation of infrastructure in these communities so that it does reduce the number of issues that are popping up under our treaty?⁸³

4.57 Mr Wayne See Kee, TSRA, recognised the need for a tighter and more robust accountability and evaluation framework. He suggested, for example, that with cross-border facilitated visits, there should 'be a target with these measures now where we can start to quantify whether these things are making a difference'.⁸⁴

4.58 It should be noted that the committee has dealt with the importance of monitoring and evaluating the effectiveness of Australia's aid program in previous reports. In November 2009, the committee noted the importance of tracking the progress of projects and assessing the extent to which achievements endure. It emphasised the need for rigorous evaluation. In doing so, it commended the work of the Office of Development Effectiveness but urged that it 'give greater attention to assessing the long-term effectiveness of Australia's aid program'.⁸⁵

4.59 A finding of the recent review of the PNG–Australia Development Cooperation Treaty reinforced the committee's findings. The review was of the view

81 TSRA, *Submission 18*, p. 13. See also TSIRC, *Submission 9*, p. 4. TSRA also noted in another Senate inquiry that given the 'health challenges facing the region, there is a need for more rigorous oversight of and investment in capacity building and resourcing of health services'. TSRA, *Submission 58* to Senate Select Committee on Regional and Remote Indigenous Communities, p. 13.

82 *Committee Hansard*, 18 June 2010, p. 3.

83 *Committee Hansard*, 24 March 2010, p.13.

84 *Committee Hansard*, 24 March 2010, p. 13.

85 Senate Foreign Affairs, Defence and Trade References Committee, vol. 1, *Economic challenges facing Papua New Guinea and the island states of the southwest Pacific*, 2009, paragraph 18.85.

that 'greater use of monitoring and evaluation, existing beyond audit, would enable AusAID to establish not only that funds had not been misused, but that they have been used effectively'.⁸⁶

Committee view

4.60 The committee outlined a number of initiatives established by the Australian and Queensland governments together with the PNG Government to address health-related concerns, including communicable diseases, staff shortages and lack of infrastructure on PNG side. Western Province is of strategic importance to Australia due to its proximity and, considering the high risk of transmission of communicable diseases, the committee believes that funds should be especially earmarked for Western Province and the South Fly District in particular. It supports strongly Australia's efforts to build capacity in this region but is concerned with the overall effectiveness of such measures. The committee also believes that tighter control and monitoring should be exercised over the way in which Australian development funding is spent in PNG.

Recommendation 3

4.61 The committee recommends that the Australian Government use the Papua New Guinea–Australia Partnership for Development to detail the assistance it is providing to PNG to improve the delivery of health services in the southern part of Western Province and to ensure that projects undertaken in this region are appropriately monitored and evaluated during implementation and after completion.

Recommendation 4

4.62 The committee recommends that to improve accountability and transparency of Australia's development aid spending, AusAID's Office of Development Effectiveness (ODE) conduct an analysis of Australia's funding in relation to Western Province in the Torres Strait region.

4.63 This analysis must provide an accurate and quantifiable account on the effectiveness of Australian aid provided to Western Province in the Torres Strait region. Special consideration must be given to the outcomes of Australian Government initiatives in the region, including both technical achievements and outputs and changes in attitudes and behaviour.

Cooperation between Queensland Health and AusAID

4.64 A state government and two Commonwealth agencies carry the main responsibility for health matters in the Torres Strait region, with responsibilities divided accordingly. Queensland Health, as part of the Queensland state government,

86 *Review of the PNG–Australia Development Cooperation Treaty (1999)*, 19 April 2010, recommendation 10.10, p. 59.

is responsible for the provision of health services on Torres Strait Islands. DoHA, a representative of the Australian Government, is in charge of the coordination and administration of health services. AusAID manages the Australian Government's aid program on the PNG side in cooperation with the PNG and regional governments.⁸⁷

4.65 DoHA considered the cooperation between the various agencies in the Torres Strait to have been 'quite strong over the years', in particular in relation to identifying issues and progressing work arising out of them. It also noted that the Australian and Queensland government agencies cooperate well in sharing information and working collaboratively.⁸⁸ The Queensland Government noted that it would be beneficial for the state and federal governments to 'work together to enhance capacity and capability by providing training' to locals.⁸⁹

4.66 The division of responsibilities between government agencies is understandable and follows the usual arrangements. However, the Torres Strait region is not a typical jurisdiction. The implementation of the provisions of the Treaty call on the coordination of the services of the numerous state and federal government agencies present in the region, including those responsible for health services. The committee considers that the Torres Strait region provides a unique opportunity for Australia and PNG agencies to work together to make significant improvements in the standard of health services available in the South Fly District. The region has to be considered as a whole. Therefore, government agencies, whether state or Commonwealth, need to ensure that there is complementarity and continuity in their work and funding across the border.

4.67 The committee is strongly of the view that projects on both sides of the border should complement and strengthen each other. With regard to health services, the international border provides an ideal opportunity for Queensland Health and AusAID to form a close partnership to ensure that the region as a whole benefits from government funding.

Recommendation 5

4.68 The committee recommends that the analysis mentioned in the previous recommendation also look closely at the extent and effectiveness of AusAID's cooperation with Queensland Health and consider ways to ensure that their work in the Torres Strait region is seamless across the border and that their operations and funding complement each other.

4.69 To this stage, the committee has considered ways to encourage PNG nationals to seek medical assistance in their own country. The main focus has been on pre-border measures that are designed to improve the quality and delivery of health

87 AusAID, *Submission 21*, p. 1.

88 Fay Gardner, *Committee Hansard*, 17 December 2009, p. 83.

89 Queensland Government, *Submission 20*, p. 7.

services in PNG so that people no longer feel the need to travel across the border to Australian health clinics. The following chapter looks at measures designed to discourage, even prevent, PNG nationals from crossing the border to access Australian health services.

Chapter 5

Health and border control measures

5.1 Having outlined the strategies and programs aimed at resolving health concerns and related matters on the PNG side of the border, the committee turns its attention to border control as a means to counter some of the problems associated with health and the free movement provisions of the Treaty. In this chapter, the committee considers the cross border measures that Australia has in place to dissuade or prevent PNG citizens from entering Australia to access medical services in the Torres Strait. The committee also looks at the funding arrangements for the provision of health care in Australia for PNG visitors.

Key border control measures

5.2 Although the Treaty does not provide for traditional inhabitants from PNG to travel across the border to access health facilities in the Torres Strait, many do so. Australia implements a number of measures to manage the movement of people across the border.

Treaty awareness visits

5.3 Education and a sound understanding of the provisions of the Treaty are vital to achieving a high level of compliance with the free movement provisions. To raise awareness and disseminate information about the provisions of the Treaty, a number of government agencies together with their Queensland, Torres Strait and PNG counterparts undertake regular Treaty awareness visits to traditional communities.¹ The visits are conducted by the DFAT Treaty Liaison Officer in the Torres Strait, who is accompanied by officers from several other Australian government agencies such as DIAC and DoHA.²

5.4 One of the important messages conveyed during these visits is that attending health clinics is not a traditional activity. Mr Brett Young, Australia's Torres Strait Treaty Liaison Officer, explained 'we make it very clear at every community we visit that you are not to visit Australia for health purposes'.³ In addition to these visits, the written guidelines for traditional visitors, which make clear that visits to medical clinics are not traditional activities, are distributed to the communities.⁴

1 See for example Mr Brett Young, *Committee Hansard*, 18 December 2009, p. 12.

2 *Committee Hansard*, 17 December 2009, p. 14; DIAC, *Submission 16*, p. 16.

3 *Committee Hansard*, 18 December 2009, p. 12; DIAC, *Submission 16*, p. 16.

4 Copy of the 'Guidelines for Traditional Visitors' Under the Torres Strait Treaty', provided by DFAT to the committee.

Refuse entry

5.5 Despite efforts to inform PNG nationals about arrangements under the Treaty, many continue to cross the border to access health clinics. To prevent such breaches of the Treaty provisions, Australia resorts to border enforcement measures. Mr Young informed the committee that during the Treaty awareness visits, local residents are informed that if they do visit the Torres Strait for health reasons, they:

...will be turned around by an immigration officer, that immigration officers are on the ground in the Australian communities, and we draw a line under that. It is quite clear.⁵

5.6 To enforce the free movement provisions, Australia has Immigration Movement Monitoring Officers (MMOs) based on most Torres Strait Islands. Upon arrival, PNG traditional inhabitants are met by an MMO and asked to identify the reason for their visit. Entry is 'generally refused' if the main purpose is to visit for health reasons.⁶ DIAC noted that travel for the purposes of accessing health care 'is the most common reason for people being refused immigration clearance on Saibai and Boigu Islands'.⁷

5.7 Mr Stephen Allen, DIAC, informed the committee that before MMOs turn people back to PNG, they are required to consider the travellers' health and wellbeing 'to ensure that there is no risk involved' in returning them to PNG.⁸ Traditional inhabitants will undergo a 'fitness to travel' assessment conducted by Queensland Health at the local health clinic.⁹ PNG nationals seeking treatment at island health clinics are 'automatically tested for STIs [sexually transmitted infections] and HIV'.¹⁰

5.8 If the assessment reveals only minor ailments, the traditional inhabitant will not be allowed to stay. However, as noted in chapter 3, if the health problem upon arrival requires further treatment or appears while the person is on the island, PNG nationals 'are in the same position as anyone else in the community who may become ill and may require health treatment'. In deciding whether a person is allowed to stay, immigration officers follow usual procedures.¹¹ In general, PNG nationals seeking medical treatment who become unlawful non-citizens in these circumstances are not detained.¹² Rather, their presence 'is monitored and their departure is facilitated at the

5 *Committee Hansard*, 18 December 2009, p. 12; DIAC, *Submission 16*, p. 16.

6 Stephen Allen, *Committee Hansard*, 17 December 2009, p. 20.

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

8 *Committee Hansard*, 17 December 2009, p. 19.

9 DIAC, *Submission 16*, p. 16 and Stephen Allen, *Committee Hansard*, 17 December 2009, p. 19.

10 Jennifer Lean, *Committee Hansard*, 18 December 2009, p. 24.

11 Stephen Allen, *Committee Hansard*, 17 December 2009, p. 27.

12 DIAC, *Submission 16*, p. 13.

earliest point at which it is reasonable to do so taking account of their health, well being and safety'.¹³

A more rigorous approach

5.9 Recently, Australian border enforcement agencies in the region have applied a more exacting and thorough procedure to screening visitors. Mr Allen explained that a comparison of last year's statistics on traditional movements with this year's statistics demonstrates the success of the 'much more rigorous approach' taken to assess these movements. He informed the committee that this new system has produced 'a substantial increase in the number of refused immigration clearances' and a decline in the number of traditional movements.¹⁴ The statistics show that from 1 July 2009 to 31 May 2010, 1,157 were refused entry on health grounds, with an undisclosed number also refused entry because they were accompanying a person seeking health treatment.¹⁵

5.10 This figure coincides with an 11.7 per cent drop in the number of traditional visits. Mr Andrew Heath, DIAC, explained that this year [2010], particularly on Saibai, MMOs were refusing clearance to people who perhaps should have been denied entry in previous years.¹⁶ He stated further:

Since 1 July last year [2009] we have implemented the new recording structure and protocol, so each of our MMOs on all of the islands are refusing clearances consistently. A case in point is Boigu, for example. Its refusal rate is double, but the difference between Boigu's refusal rate and Saibai's refusal rate over the last 12 months is a lot less.

We established some business rules, and all MMOs are assessing the purpose of their visit.¹⁷

5.11 Mr Allen explained that the new approach is intended to continue into the future and to be a permanent change in DIAC's operations'.¹⁸ The committee considers the effectiveness of this more rigorous system and the overall trend in refusing immigration clearances to PNG visitors to the Torres Strait in the chapter on law and order.

13 DIAC, *Submission 16*, p. 13, and *Committee Hansard*, 17 December 2009, p. 19.

14 Stephen Allen, *Committee Hansard*, 18 June 2010, pp. 12–13; also, *Committee Hansard*, 17 December 2009, pp. 16–17.

15 DIAC, Tabled document, 18 June 2010, p. 2.

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

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

18 *Committee Hansard*, 18 June 2010, pp. 12–13.

Closing the border

5.12 Under the provisions of the Treaty, Australian or PNG authorities may close the border to minimise the risk of transmission of diseases across the border in the Torres Strait. Paragraph 2 of Article 16 determines that both countries shall bear in mind the 'importance of discouraging the occurrence, under the guise of free movement or performance of traditional activities' of practices that could damage effective health protection and control.¹⁹ Therefore, in accordance with sub-paragraph (3)(c) of Article 16 of the Treaty, each party to the agreement may limit or prevent free movement by applying 'such immigration, customs, health and quarantine measures, temporary or otherwise, as it considers necessary to meet problems which may arise'.²⁰

5.13 Free movement may be restricted, for example, when there is a shortage of food or water or concerns exist about the transmission of disease. This provision was used at the time of the H1N1 (swine flu) epidemic in 2009 when authorities closed the border due to concerns about the virus spreading to PNG.²¹ In DIAC's view, the use of these provisions was very effective in limiting the potential spread of the H1N1 influenza virus.²² More recently, all cross border travel under the free movement provisions was restricted due to a cholera outbreak in Daru.²³ As another example, Queensland Health informed the committee that cases of MDR TB would present a valid reason to close the border between Australia and PNG because of 'the inability to treat it and the potential for its spread'.²⁴

5.14 This provision has also been used to relieve the strain on essential services. For example, in June 2010, Mr Young informed the committee that:

Only two weeks ago, the councillor on Badu requested that movement be restricted under the free movement provisions of the treaty while they had a large influx of people and pressure on their water.²⁵

19 Australian Customs and Border Protection Service, *Submission 14*, p. 6.

20 DIAC, *Submission 16*, p. 4.

21 Queensland Government, *Submission 20*, p. 17.

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

23 DFAT website, 'Travel Advice, Papua New Guinea, 11 November 2010, http://www.smartraveller.gov.au/zw-cgi/view/Advice/Papua_New_Guinea (accessed 11 November 2010).

24 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, pp. 21–22. The World Health Organisation (WHO) has introduced medication (fixed dose combinations of tablets) against tuberculosis that simplifies the prescription of drugs and the management of drug supply, lessening the risk of MDR TB developing, House of Representatives, Standing Committee on Health and Ageing, *Regional health issues jointly affecting Australia and the South Pacific: Report of the Australian Parliamentary delegation to Papua New Guinea and the Solomon Islands*, March 2010, paragraph 3.99, p. 96.

25 *Committee Hansard*, 18 June 2010, p. 14.

5.15 On a more regular basis, the border has been temporarily closed 'to restrict the days on which visitors may arrive on Saibai Island to Tuesdays and Wednesdays to address the shortage of water in the latter part of the dry season'.²⁶ According to Mr Young, his office had supported all requests by community leaders for a temporary restriction on cross-border movement, explaining:

There have been a dozen occurrences in the past 12 months of islands requesting that and it has been granted on every occasion—and article 16 of the treaty clearly gives us the power to do that.²⁷

5.16 As discussed later in chapter 7, some local leaders would like to see a strict enforcement of this border measure when communities request a closure.

Providing health care and mixed messages

5.17 The committee has noted that on many occasions, traditional inhabitants are allowed to remain in Australia to receive medical assistance on humanitarian or public health grounds. The committee provided details on the care they receive at Australian health clinics, including being evacuated to the mainland for medical treatment.

5.18 During the course of the inquiry, witnesses did not raise issues about the quality of health care delivered to PNG nationals while in Australia. However, some witnesses raised concerns about the provision of these services generating demand in PNG for Australian services. They argued that by providing health services to visiting PNG nationals, Australia was encouraging more people to seek access to those services. For example, Mayor Gela drew attention to the new health facility on Saibai which has received a 'substantial amount' of Australian Government funding. He stated:

Here we are, utilising taxpayers' money to build a brand-spanking new facility, but I was told it is not only to accommodate the needs of my people; it is to accommodate the people from Western Province who come through.

5.19 Mayor Gela asked, 'what signal are we sending?'²⁸ Ms Nardi appreciated that improving the delivery of health services in the Torres Strait that cater for the needs of PNG visitors sends a mixed message:

It is a strategy to try and see how we can maintain the balance where we treat that which we need to treat but, at the same time, do not make it so attractive that we find that we have an onslaught of Papua New Guineans coming to receive our health services.²⁹

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

27 *Committee Hansard*, 18 June 2010, p. 14.

28 *Committee Hansard*, 18 June 2010, p. 9.

29 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 21.

5.20 Evidence to the inquiry and the committee's conversations with local health professionals indicated that the inconsistency between the Treaty provisions and the reality of PNG nationals presenting at island health clinics has produced confusion among health workers regarding the treatment of these visitors. The Queensland Nurses' Union (QNU) argued that there had been 'continuing lack of clarity about the level of support' that should be provided to PNG nationals visiting Australian health clinics and called for the Australian Government to provide a clear strategy and funding to meet the demand for these services.³⁰

5.21 Responding to calls of this kind, Queensland Health established a policy and issued guidelines for its staff for the treatment of PNG nationals at Torres Strait health clinics.³¹ The guidelines state that treatment should be confined to:

- emergencies;
- where 'timely and appropriate care' in PNG is unlikely; or
- where there is a risk of communicable diseases spreading within the local community.³²

5.22 The guidelines have been submitted for consultation through the HIC and the policy is to be reviewed on a six-monthly basis.³³

Committee view

5.23 The committee acknowledges the significant contribution that health care professionals in the Torres Strait are making to improve the health and wellbeing of PNG nationals seeking medical attention at their clinics. Often they face quite difficult circumstances in delivering these health services. The committee takes this opportunity to acknowledge their work and commend their dedication.

5.24 The committee also understands the need to discourage or deter PNG nationals from crossing the border for medical assistance. In this regard, the committee believes that the tightening-up of protocols for entry and their enforcement is helpful. Ultimately, however, the committee believes that a satisfactory and lasting solution to the problem will only be achieved through marked improvements in the provision of health services in PNG.

5.25 Such improvements will take time and for the foreseeable future, Queensland Health will be called on to continue to provide health services to PNG nationals presenting at its clinics. On humanitarian and public health grounds, the committee fully supports Queensland Health in this endeavour. This situation, however, raises the

30 Queensland Nurses' Union, *Submission 29*, pp. 1–2.

31 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 21.

32 Queensland Government, *Queensland Health: Management of PNG Nationals*, p. 2.

33 Fay Gardner, *Committee Hansard*, 17 December 2009, pp. 78–79 and TSRA, *Submission 18*, pp. 12–13.

question of responsibility and funding. The committee now turns to examine the cost of treating PNG nationals at Torres Strait health clinics and elsewhere in Queensland and funding arrangements between the state and federal governments in this regard.

Cost of health care to PNG nationals in Torres Strait

5.26 During the course of the inquiry, the committee became aware of the significant and increasing expenditure associated with providing health care to PNG nationals at Australian health facilities. These high costs are borne by Australia.³⁴ Over the five years from 2004–05 to 2008–09, bed-day costs have risen from \$1,405 to \$1,875.³⁵ The Queensland Government indicated that pharmaceutical costs for a single admission for the treatment of tuberculosis at Thursday Island hospital in 2008 alone were \$24,588.³⁶ The table below indicates some of the costs of treating PNG nationals in Torres Strait health clinics.³⁷

Table 5.1: Estimated cost to Queensland Health for treatment of PNG nationals, 2004-2009

Year	2004–05	2005–06	2006–07	2007–08	2008–09
Number of patients	242	322	296	260	198
Patient days	2,314	2,486	2,112	3,392	1,940
Patient costs	\$3,247,624	\$4,016,397	\$3,357,552	\$5,809,098	\$3,638,559
At island clinics (underestimations due to inconsistent data capture)					
Patient days	1,636	1,733	1,831	1,759	1,380
Patient costs	\$369,736	\$391,658	\$413,806	\$397,534	\$311,880
Medical transfers	\$688,800	\$705,600	\$769,000	\$763,000	\$637,600
Pharmacy	n/a	n/a	n/a	n/a	\$261,807
Total cost	\$4,306,160	\$5,113,655	\$4,540,358	\$6,969,632	\$4,600,561

34 Queensland Government, *Queensland Health: Management of PNG Nationals*, Appendix 2, p. 11.

35 Queensland Government, answer to question on notice, 'Estimated Cost to Queensland Health for the Treatment of PNG Nationals 2004–2009', 25 March 2010.

36 Queensland Government, *Submission 20*, p. 16.

37 Queensland Government, answer to question on notice regarding 'Estimated Cost to Queensland Health for the Treatment of PNG Nationals 2004–2009', 25 March 2010. Regarding island clinic data, Queensland Health indicated that it is inconsistent due to data capture issues and noted that presentations were mainly on Saibai and Boigu. Regarding medical transfers, data is inconsistent and the data for 2008–09 pertains to nine months only.

5.27 The Queensland Government observed that the figures reflect 'a very conservative estimate of the costs of service delivery to PNG nationals', with actual expenditure likely to be higher.³⁸ It also explained that PNG nationals are more expensive to treat as a result of co-morbidities, interpreter services, etc.³⁹ According to the Queensland Government, a review is being conducted to establish the actual costs of patient transport.⁴⁰

Australian Government funding to Queensland Health

5.28 The division of responsibilities and funding between the state and federal governments regarding the treatment of PNG nationals at Australian health clinics and hospitals has been an issue for a long time.⁴¹ While the Australian Government is committed to providing health care to PNG nationals on humanitarian and public health grounds, it is the Queensland Government, through Queensland Health, that provides that care.

5.29 QNU called on the Australian Government to provide a clear strategy and funding 'to meet the demand for health services'.⁴² Both the Community and Public Sector Union and QNU called for adequate funding towards the treatment of PNG nationals in the Torres Strait.⁴³

5.30 According to DoHA, the Australian Government acknowledges the additional burden imposed on Queensland Health and is keen to reduce it. The Government also recognises the role of Queensland Health in minimising the risk of the transmission of communicable diseases to Australian communities from PNG. In its 2009–10 Budget, the Australian Government provided \$16.2 million over four years towards Queensland Health's costs for providing services to PNG nationals.⁴⁴ In 2009–10, the grant was \$3.8 million, rising to \$4.4 million in the forward estimates for 2012–2014.⁴⁵ The funding comes from DoHA's portfolio budget.⁴⁶

38 Queensland Government, answer to question on notice, 25 March 2010, p. 3.

39 Queensland Government, answer to question on notice, 'Estimated Cost to Queensland Health for the Treatment of PNG Nationals 2004–2009', 25 March 2010.

40 Queensland Government, answer to question on notice, 25 March 2010, p. 3.

41 Graham Simpson, House of Representatives Standing Committee on Health and Ageing, Regional health issues jointly affecting Australia and the South Pacific, *Committee Hansard*, 31 August 2009, p. 21.

42 Queensland Nurses' Union, *Submission 29*, p. 2.

43 Community and Public Sector Union (CPSU), *Submission 28*, p. 2, and Queensland Nurses' Union, *Submission 29*, p. 2.

44 DoHA, *Submission 11*, p. 2.

45 Jennifer Bryant, *Committee Hansard*, 18 June 2010, pp. 30–31; Commonwealth Budget 2010–11, Budget Paper No. 3, Part 2: Payments for Specific Purposes, National Partnership on health services, table 2.2.40.

5.31 Queensland Health pointed out that the \$3.8 million allocation in 2010 would meet only part of the actual costs of providing health services to PNG nationals and that the gap was widening.⁴⁷ Even with the grant rising by \$0.6 million in the forward estimates, the funding still falls short by over two million dollars. Queensland Health made clear that the Australian Government is aware of this shortfall and that there is an 'expectation that there will be a negotiated outcome'.⁴⁸

5.32 DoHA informed the committee that apart from direct funding, 'Additional funds are provided to the Queensland Government through broader agreements', including the National Healthcare and other National Partnership Agreements.⁴⁹ DoHA also provides annual funding for the delivery of health services in the Northern Peninsula Area and the Torres Strait, including funding to Queensland Government, amounting to \$12.2 million dollars in 2009–10. In addition, the Australian Government provides funding for the Torres Strait Health Protection Strategy as follows:⁵⁰

Table 5.2: Funding for Torres Strait Health Protection Strategy

Year	2009/10	2010/11	2011/12	2012/13
	\$4.7m	\$4.8m	\$2.1m	\$2.2m

Committee view

5.33 The committee notes that the Australian Government provides funding to the Queensland Government for the provision of health care to PNG nationals. However, it is concerned that the gap between that funding and the actual costs incurred by Queensland is significant. Furthermore, it is aware that statistics suggest that the demand for health services is increasing. Even though data regarding the treatment of PNG nationals at Torres Strait health facilities is incomplete, the committee believes that Australian Government funding to Queensland Health should adequately reimburse the state for providing these services.

46 Fay Gardner, *Committee Hansard*, 17 December 2009, p. 76. \$3.8 million has been allocated in the 2009–10 Budget.

47 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 24; Queensland Government, *Submission 20*, p. 17.

48 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 24.

49 DoHA, answer to question on notice 2, 17 December 2009; Fay Gardner, *Committee Hansard*, 17 December 2009, p. 75.

50 DoHA, *Budget 2009–2010*, Budget Paper No. 2, Part 2: Expense Measures, Health and Ageing. Torres Strait Health Protection Strategy is part of the HIC package of measures.

Recommendation 6

5.34 The committee recommends that the Australian Government review its funding to Queensland Health to ensure that such funding is commensurate with the actual costs incurred by Queensland Health in providing health care to PNG nationals.

5.35 Comprehensive and reliable data is needed to be able to assess accurately the costs associated with providing health services to visiting PNG nationals. In this section, the committee looks at the current data regarding PNG nationals using Torres Strait health clinics.

Collecting data

5.36 Discussions between the Queensland and Australian governments about the costs of delivering health care to PNG nationals have been complicated by the lack of reliable data on the nature and number of services provided and associated costs. DoHA explained that data regarding the treatment of Australian nationals in the Torres Strait is reported directly to its national surveillance systems.⁵¹ However, under the healthcare agreements, DoHA is not required to keep statistics on PNG visitors.⁵² Queensland Health has collected some data on PNG nationals visiting the island health clinics but the coverage has been incomplete. DIAC collects statistics regarding traditional movements and activities but does not collect information about the number of PNG nationals who subsequently visit the health clinics.⁵³ Immigration statistics 'go so far as to tell us how many of the visitors' were refused immigration clearance.⁵⁴

5.37 Ms Nardi informed the committee that past data capture issues 'have been recently resolved through a process that commenced on 10 March 2010'.⁵⁵ She explained:

The data has been essentially a manual collection. There were also some community issues in relation to the gathering of data around Papua New Guinea nationals. The information system that we used was actually a recall system, so the clinicians who were looking after the Papua New Guinean patients did not want to enter them into the system because they did not want to be in a position where they had to recall them because they were across the border. So there was a lot of myth from that particular community in relation to what capturing the Papua New Guinean data would do. It has taken some time to get the process in place, but we have

51 Jennifer Bryant, *Committee Hansard*, 17 December 2009, p. 80.

52 Fay Gardner, *Committee Hansard*, 17 December 2009, p. 77.

53 Stephen Allen, *Committee Hansard*, 17 December 2009, p. 21.

54 Stephen Allen, *Committee Hansard*, 17 December 2009, p. 26.

55 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, pp. 20–21.

been able to address those concerns and those needs and have been able to get a robust process in place. There is also the issue that data was captured in a whole range of different areas for different purposes. So the primary healthcare data was captured separately from the acute care data. We now have a process, we believe, that will bring all that data together in a meaningful way.⁵⁶

5.38 The type of data now to be collected by Queensland Health staff consists of a range of standard data fields, which include people's names, their home address and presenting conditions. Data would record a person who has been redirected home but returned for a subsequent visit as 'two presentations'.⁵⁷ Queensland Health expressed confidence in its new data-gathering process which, in its view, would render them 'in a far stronger position to provide reliable and robust data'.⁵⁸ For example, the Queensland Health guidelines state that all patients should be recorded on an electronic information system and identified as PNG nationals, if applicable.⁵⁹ DoHA acknowledged the Queensland Government's efforts to develop reporting arrangements to support the improved data collection system.⁶⁰

Committee view

5.39 The committee recognises the importance of having complete and accurate data on PNG nationals accessing health services in the Torres Strait that provides a comprehensive coverage on the nature, number and costs of PNG nationals accessing these services. The data should take account of the costs of transporting patients and the number of patients returning to PNG needing follow-up treatment.

5.40 The committee is encouraged by Queensland Health's assurances about improved data capture and its potential effect on negotiating adequate funding arrangements between state and federal governments. This data should be compatible with that collected by DIAC to provide a comprehensive picture of PNG nationals who enter Australia through the Torres Strait, including the number, nature and length of visits.

Recommendation 7

5.41 The committee recommends the Australian Government offer assistance to help the Queensland Government fund the implementation of the new data collection systems for PNG nationals accessing health services in the Torres

56 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 24.

57 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 28.

58 Bronwyn Nardi, *Committee Hansard*, 25 March 2010, p. 24; Queensland Government, *Queensland Health: Management of PNG Nationals*, draft policy, Appendix 2, p. 11.

59 Queensland Government, *Queensland Health: Management of PNG Nationals*, Appendix 2, p. 13.

60 Fay Gardner, *Committee Hansard*, 17 December 2009, p. 77.

Strait; and provide funding, if required, for a review of the effectiveness of this system.

Recommendation 8

5.42 The committee also recommends that the Department of Immigration and Citizenship ensure that its statistics on PNG nationals visiting Australia, including those in Australia receiving medical treatment, are complete and complement those collected by Queensland Health.

5.43 The committee heard evidence during its visit to the Torres Strait regarding PNG women choosing to give birth in Australia due to a belief that they would be eligible for the baby bonus and an improved chance of obtaining Australian citizenship. It also heard of concerns regarding PNG nationals taking up housing commission accommodation on Badu.⁶¹ The committee urges the Australian Government to investigate the origins, extent and veracity of these claims so that it is better placed to dispel any misconceptions and to devise education programs that will convey correct information to all in the region about entitlements.

Recommendation 9

5.44 The committee recommends that relevant Australian government agencies combine their efforts to ascertain whether, or the extent to which, PNG nationals are coming to Australia to access social services, whether they are misinformed about their entitlements and, if so, the source of this misinformation and how best to correct it.

61 Malawap Ali Benjamin Nona, *Committee Hansard*, 24 March 2010, p. 35.

Chapter 6

Law and order

6.1 There are over 59,000 people movements across the border in the Torres Strait per year.¹ Although more than 90 per cent involve a day trip from PNG, this large influx of people raises law and order issues in the region. In this chapter, the committee considers the presence and behaviour of PNG citizens in the communities of the Torres Strait, the potential for social tensions and concerns about the safety of persons and property.

Movements across the border

6.2 One of the main responsibilities of law enforcement agencies in the Torres Strait is to ensure that the movement of traditional visitors across the border takes place in a safe, orderly and lawful manner. Article 11 of the Torres Strait Treaty provides for freedom of movement for traditional inhabitants engaged in legal traditional activities in the Protected Zone.² This means that traditional inhabitants are not required to have the usual travel documents such as a passport or visa.³ The Australian Customs and Border Protection Service (Customs) explained:

These [treaty] 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.⁴

6.3 A visitor pass system has been established to authorise traditional movements. Traditional inhabitants travelling between PNG and the Torres Strait Islands are required to obtain a pass from their own community as well as prior agreement from the community to be visited.⁵ A traditional inhabitant wishing to travel applies for a pass from their Island Councillor on Torres Strait Islands or village leader in their treaty village in PNG. The leaders exchange letters explaining the reason for and duration of the visit; they have the authority to accept or decline an application for a pass.⁶

6.4 The Queensland Government understands that 'most people obtain appropriate authorisations'; however, establishing a visitor's identity can be hard.⁷ The pass lists

1 Australian Customs and Border Protection Service, *Submission 14*, p. 2.

2 For explanation of the Torres Strait Protected Zone, see chapter 2.

3 DIAC, *Submission 16*, p. 1.

4 Australian Customs and Border Protection Service, *Submission 14*, p. 2.

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

6 TSRA, *Submission 18*, p. 10. AFP, Additional information, dated 1 April 2010, p. 1.

7 Queensland Government, *Submission 20*, p. 4.

the travellers' names but as no identification documentation is required by the traveller, and unless authorities know or recognise them, their identities cannot be verified. Customs referred to the 'Use of a piece of paper with names but no other detail as the primary document for allowing cross border movement'; and the 'Lack of a legal or administrative requirement for photographic identification documents'.⁸ Some PNG nationals visiting the area use different spellings of their names on different occasions, which adds to the difficulties establishing identity.⁹



Visitors from PNG arriving at the designated entry point, Saibai

6.5 DIAC is responsible for border management and facilitates the 'lawful and orderly entry and stay of genuine travellers' under this pass system. It has Movement Monitoring Officers (MMOs), who are Indigenous Australians and Australian Public Service officers, placed on most of the inhabited islands.¹⁰ Upon arrival, traditional visitors are required to land their boats at designated entry points and present themselves to an MMO.

8 Australian Customs and Border Protection Service, *Submission 14*, p. 8.

9 Brett Young, *Committee Hansard*, 18 June 2010, p. 15.

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

6.6 Should a traditional inhabitant have no prior approval for travel, MMOs 'consult with their island councillor to determine whether a visitor is permitted entry or not'. According to DIAC, because of the large number of daily visitors on Saibai, 'the island councillor permits visitors to arrive without prior approval for practical reasons'.¹¹ However, the task of checking arrivals can be a challenge for DIAC officers. For example, the TSIRC noted that on many occasions, they have had more than 500 PNG nationals turn up to a community without prior notification. Also, travellers from PNG may arrive well outside normal business hours and land their boats at various sites around the islands.¹² Mr John Kerlin, Customs, explained that local inhabitants are 'able to pilot their vessels through the strait at night under all conditions'.¹³ TSIRC also cited cases where some visitors from PNG travel over in bad weather and then, to extend their stay, use the excuse of not being able to travel back in the bad weather or not having any money for fuel.¹⁴



Visitors from PNG coming ashore to trade, Saibai

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

12 TSIRC, *Submission 9*, pp. 2–3.

13 *Committee Hansard*, 17 December 2009, p. 34.

14 TSIRC, *Submission 9*, p. 3.

6.7 DIAC informed the committee that when travellers arrive outside the designated hours and landing locations, they should 'at the earliest available opportunity, make themselves known to the movement monitoring officer'.¹⁵ In clear language, the visitors' guidelines also direct visitors to check in immediately with MMOs and Quarantine officers and to land and depart from the designated ramp or wharf. Evidence indicated, however, that these directions are not always followed.



A Movement Monitoring Officer checks visitors' passes at the designated entry point, Saibai

6.8 Mr Allen acknowledged that some travellers 'do not come to our attention' because of the environment, including the closeness of some of the Torres Strait Islands to PNG.¹⁶ In his view, it would be possible for an individual, who did not have a legitimate reason for visiting an island, to subvert the system relatively easily. He qualified his statement by adding:

...what tends to militate against that in the strait is the fact that the MMOs live in and are generally part of the community on the island of arrival, and that, if you like, an irregular arrival of that kind would generally be brought to their attention fairly quickly by the community.¹⁷

15 Stephen Allen, *Committee Hansard*, 17 December 2009, p. 18.

16 Stephen Allen, *Committee Hansard*, 17 December 2009, p. 25.

17 Stephen Allen, *Committee Hansard*, 17 December 2009, p. 18.

6.9 Mr Kerlin also suggested that in most cases, visitors from PNG stand out and would be reported. He explained, 'The moment they set foot in those communities they were identified as outsiders and we were alerted either through the police or directly by the community'.¹⁸ He added:

Torres Strait Islanders are extremely proud people, they are extremely proud of their communities and they do not want outsiders in their communities. They will report outsiders who should not be there.¹⁹

6.10 Despite these assurances from government officials about the early detection of unauthorised visitors, local people informed the committee that PNG nationals sometimes arrive under the cover of darkness and land well away from the designated entry points. For example, Mr Ned David, Director, Magani Lagaugai Registered Native Title Body Corporate, claimed:

I am saying that local Customs officers probably have a 24/7 presence there [Saibai]. That does not in any way, in my opinion, address security issues...I can assure you that there is enough evidence around to tell you that people from PNG can come into Australia any time of the day, any time they like, and stay as long as they like—and not necessarily just on Saibai.²⁰

6.11 Mayor Gela also told the committee that people land on 'any part of the island at any time, day or night'.²¹

Overstayers

6.12 Visitors are permitted to stay only as long as the period stated on their traditional inhabitant's pass. The *Guidelines for Traditional Visitors* note that all islands have a maximum visit of three weeks and stipulate clearly that:

If you stay longer than the approved period on your pass without the approval of the Community then you become an 'overstayer' and you might be asked to leave or you might be forcibly removed.²²

6.13 Despite the requirement to obtain proper authorisation to stay on an island, TSIRC argued that 'Immigration turns a blind eye' to overstayers, which contributes to the problem and 'makes a mockery of the treaty'. It informed the committee that 'it is common knowledge that nothing will happen if you overstay your permit'.²³ On the other hand, there is also sympathy towards PNG nationals overstaying their permit

18 John Kerlin, *Committee Hansard*, 17 December 2009, p. 40.

19 *Committee Hansard*, 17 December 2009, p. 43.

20 *Committee Hansard*, 24 March 2010, p. 34.

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

22 *The Guidelines for Traditional Visitors*.

23 TSIRC, *Submission 9*, p. 2. See also *Committee Hansard*, 18 June 2010, p. 4.

due to poverty but calls were made for the burden to be carried by the PNG and Australian Governments rather than the Torres Strait Islanders.²⁴

6.14 Also, as noted in chapter 3, the presence of PNG nationals places additional strain on the resources of the islands, which can cause tension between Islanders and PNG traditional visitors. The TSRA commented that on Boigu and Saibai in particular, overstaying 'is an ongoing and complex' problem and often results in social problems and places a 'silent burden' on the island communities 'through their use of island infrastructure and health, education and welfare services'.²⁵ However, it acknowledged that 'Much of what is heard about visitor problems in the Torres Strait is anecdotal' and that without detailed statistics, 'it is hard to get an accurate picture of the levels of compliance with the conditions of Treaty visits by PNG people'.²⁶

6.15 Nonetheless, in the view of many local people, the incidence of PNG people overstaying their visit or gaining entry illegally is both high and a source of significant concern. One submitter referred to the illegal influx of Papua New Guineans into the Islands of the Torres Strait, stating:

...currently there are literally thousands of Papua New Guineans residing illegally on the islands of the Torres Strait, particularly on Yam Island, Darnley Island, Badu Island and possibly Yorke Island and Saibai. The Torres Strait Treaty allows people from PNG to trade at the top Islands of the Torres Strait and after trading they are to return to PNG, however, many do not go back. Many have taken up [residence] all over the Islands of the Torres Strait and are utilising the scarce resources of Torres Strait Islanders, such as housing, employment, welfare and health services.²⁷

6.16 Mr Kevin Murphy, an Australian academic who has worked in the Torres Strait region, noted:

The tension is compounded by the fact that there are populations of Papuans who are Australian citizens or permanent residents living on several of the Torres Strait islands. The Australian resident Papuans retain strong connections with their extended families from Papua New Guinea, and it is not uncommon for Papua New Guinea resident traditional inhabitants to live for long periods of time on the Torres Strait islands. They are regarded as 'over-stayers' in the island communities.²⁸

6.17 While Mr Allen, DIAC, admitted that problems had existed with overstayers, he argued that there were misperceptions within the Torres Strait community regarding the definition of an overstayer. He believed that the confusion stemmed

24 *Submission 2*, p. 1.

25 TSRA, *Submission 18*, p. 11.

26 TSRA, *Submission 18*, p. 11.

27 *Submission 2*, p. 1.

28 Kevin Murphy, *Submission 15*, p. 4.

perhaps from 'the informal nature of the treaty arrangements'. Furthermore, he indicated that although DIAC and island councils may be aware of an individual's status, this may not be apparent to other people in the community. He explained:

For those islands in question, which are very close to Papua New Guinea, there are in fact significant numbers of Papuan families who reside lawfully on those islands. Many of those Papuan families acquired permanent residency as part of an amnesty process in the early 1980s, and some have since acquired Australian citizenship. Those people are not overstayers. What we mean by an overstayer is a Papua New Guinean citizen who has arrived since that amnesty and has overstayed their length of approved stay...²⁹

6.18 Adding to the misunderstanding about overstayers is the practice of not classifying traditional visitors refused an immigration clearance for health reasons as overstayers. Mr Allen explained that they are not deemed to be overstayers because 'they only stay as long as it takes any health issues associated with their fitness to return to PNG to be resolved'.³⁰

6.19 In December 2009, DIAC estimated that there were 'probably less than 10 overstayers in the entire region'.³¹ Mr Heath informed the committee that only 2.6 per cent of all visitors to all islands overstay the maximum three-week limit.³² In this regard, Customs noted that the 'number of overstayers can fluctuate' and that while DIAC's statement is true, 'there have been times when they have been much higher'.³³

6.20 Mr Heath told the committee that DIAC's 'ongoing challenge' was to keep appropriate bodies informed of who is and is not a genuine traditional inhabitant visiting communities in the Torres Strait for legitimate reasons.³⁴ As noted earlier, however, the TSRA informed the committee that 'it is hard to get an accurate picture of the levels of compliance with the conditions of Treaty visits by PNG people as detailed statistics are not available'.³⁵ It argued that DIAC's data collection is inadequate because it does not capture the number of visitors overstaying (and duration of stay); arriving without prior advice; engaging in non-traditional activities; and breaking local laws etc.³⁶ The TSRA recommended that DIAC undertake more detailed reporting of non-compliance with Treaty arrangements by PNG visitors to the Torres Strait Islands.³⁷ Another submitter proposed that a thorough investigation

29 *Committee Hansard*, 17 December 2009, p. 24.

30 Stephen Allen, *Committee Hansard*, 17 December 2009, p. 25.

31 Stephen Allen, *Committee Hansard*, 17 December 2009, p. 24.

32 *Committee Hansard*, 18 June 2010, pp. 19 and 22.

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

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

35 TSRA, *Submission 18*, p. 11.

36 *Submission 18*, p. 11, footnote 5.

needed to be carried out on all of the islands to identify illegal Papua New Guineans and to make arrangements to 'either send them back or provide support for them and their families on Mainland Australia'.³⁸

6.21 To minimise the number of overstayers and to ensure that visitors return to their homes, TSIRC suggested that a bond (\$200) could be charged from their sponsors.³⁹

Committee view

6.22 That committee understands that, while DIAC recognises the importance of informing local communities in the Torres Strait about the number and nature of visits made by PNG nationals to their communities, sound and reliable statistics are needed. Otherwise, misperceptions about PNG visitors breaching Treaty provisions, such as alleged overstayers, will persist and continue to be a source of friction.

Disorderly behaviour

6.23 In some cases, visitors and overstayers are linked to anti-social or criminal behaviour. Thus, the second major challenge for law enforcement agencies is to ensure that the visitors conduct themselves in accordance with community values, mores and local laws.

6.24 The committee heard strong complaints about law and order problems associated with visiting PNG nationals. According to the TSRA, the residents of Boigu and Saibai have voiced their concerns about drunkenness and abuse and threats to their safety when disputes arise involving PNG nationals who are temporary residents on the islands.⁴⁰ Indeed, Mayor Gela, TSIRC, told the committee that his council could not express strongly enough its 'concerns regarding the security of our people'.⁴¹ The number of incidents tend to increase during social gatherings when a large number of people travel across the border.⁴² The TSIRC outlined their concerns about:

- the movement of sly grog and drugs and other contraband, including mentholated spirits, across the border;
- the possible abduction of women in particular from the communities in the Torres Strait who are taken to PNG and kept prisoners—TSIRC cited one case

37 *Submission 18*, executive summary.

38 *Submission 2*, p. 2.

39 TSIRC, *Submission 9*, p. 4.

40 TSRA, *Submission 18*, p. 15; see also TSRA, *Submission 58* to Senate Select Committee on Regional and Remote Indigenous Communities, p. 15.

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

42 Brett Young, *Committee Hansard*, 18 December 2009, p. 18.

where the authorities did not 'attempt to determine the welfare or seek a woman's release';

- the lack of recognition for law and order on the PNG side and the 'gang rape of women on the PNG side';
- the regular incidents of major theft, involving boats, tools, equipment; and
- the large groups of PNG nationals that at times walk the streets of local communities brandishing weapons (machetes, knives).⁴³

6.25 Mayor Gela drew on personal experience to cite an incident he had witnessed recently:

After the public meeting finished I walked straight out into the public access road and walking down the street on Saibai there were 15 PNG nationals who had overstayed in Saibai for a period of six weeks. The Saibai community councillor, my councillor, Councillor Enosa, contacted the chief on their side and facilitated a process with the PNG task force. Four officers came over from the PNG side armed with pistols—four officers escorting 15 PNG nationals who were still armed with machetes in their hands, walking down the street.⁴⁴

6.26 He explained that community constituents at the grassroots level can tell him 'which villages behave well during the visits and they can identify which villages misbehave and what incidents occur'. The mayor added: 'There have been instances where brawls have occurred, where people have been hit over the head with a star picket'.⁴⁵

6.27 The situation can also be quite volatile on the PNG side. The Queensland Government reported that some PNG nationals come over to Saibai to escape from their own laws or to traffic in illicit drugs, notably marijuana. It informed the committee that due to limited transport options, 'women and children cannot easily flee violence, and could wait longer periods than on the mainland for assistance to arrive'.⁴⁶ One submitter described an incident that took place in PNG as follows:

...six coastal villages in PNG were involved in violent fighting and houses were torched and burnt to the ground and people were threatened with machetes and the cause of the fighting was about, 'who will have access to the Torres Strait'.⁴⁷

6.28 Moreover, local leaders and the Queensland Government referred to anecdotal evidence indicating that PNG nationals who arrive on the islands for support and

43 TSIRC, *Submission 9*, p. 2.

44 *Committee Hansard*, 18 June 2010, p. 7.

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

46 Queensland Government, *Submission 20*, pp. 5–6.

47 *Submission 2*, p. 1.

protection from violence place additional pressure on the resources of the outer islands.⁴⁸

6.29 DFAT officers told the committee that government agencies were aware of reports about undesirable or illegal activity by PNG visitors; that they were 'of great concern' and the Australian Government took them 'very seriously'.⁴⁹ The level of criminality in the region, however, was considered to be 'relatively low' and, according to Mr Jeremy Bruer, DFAT, some reports were 'possibly...overstated'. He expressed a hope that the presence of the Australian Federal Police (AFP), Queensland Police and the various border control agencies would keep 'that situation relatively stable'.⁵⁰ Mr Brett Young, Australian Torres Strait Treaty Liaison Officer, based on Thursday Island, agreed:

...it is not my experience that this is a widespread, ongoing, large-scale problem. I think it is local and occasional. That does not diminish its importance and the need for us to monitor it and constantly work with other agencies.⁵¹

6.30 While acknowledging that a large volume of people move from PNG across to the northern islands of Saibai, Boigu and Dauan, Queensland Police Commissioner Robert Atkinson did not believe that there has been any increase in criminality associated with that movement. He noted that in terms of criminality, the situation in the Torres Strait region had remained relatively stable. The following table outlines reported crime in the Torres Strait.⁵²

Table 6.1: Reported crime for the Torres Strait, including Thursday Island and Horn Island.

Year	2004–05	2005–06	2006–07	2007–08	2008–09
Property crime	136	153	169	93	121
Violence	90	123	119	113	130

6.31 According to the Commissioner, the police are faced with an important challenge of another kind—the fear and perception of criminal activity. He recognised that the people of Saibai and the other islands were genuinely concerned about the potential for criminal activity, arguing that:

48 Queensland Government, *Submission 20*, pp. 5–6.

49 *Committee Hansard*, 18 December 2009, pp. 16–18.

50 Jeremy Bruer, *Committee Hansard*, 18 December 2009, p. 16.

51 Brett Young, *Committee Hansard*, 18 December 2009, p. 18.

52 *Committee Hansard*, 25 March 2010, p. 8.

...regardless of what the statistical reality is, if people are concerned and worried then that is an issue we have to manage and deal with as well...I do think there is a genuine concern about criminality.⁵³

6.32 He added, 'One of the things they talk about is the fact that people come across carrying machetes, which, just in terms of the physical observation, can cause concern'. The Commissioner also acknowledged a particular difficulty confronting his police force in the Torres Strait and used a recent incident on Saibai to illustrate the problem:

The local community police officer went to the incident, saw the offender, did not recognise him and believed the offender had come across from PNG. The person concerned ran off into the darkness of the night and has not been located. So, in a policing context, it is vastly difficult for a state police agency to have a situation where someone might come across, commit an offence on Saibai and go back to PNG. It is very difficult for a state jurisdiction to police.⁵⁴

6.33 The Queensland Government acknowledged the additional responsibility placed on the TSIRC arising out of PNG nationals' visits.⁵⁵

Committee view

6.34 There can be no doubt that Torres Strait Islanders who reside in the region have deep concerns about the number of PNG nationals who enter the region illegally, overstay the approved time and/or misbehave during their visit. While the crime statistics for the region do not reflect any worrying trend, local communities have a very different perception about the conduct of some PNG visitors and have repeatedly called on the government to resolve the associated law and order issues.

53 *Committee Hansard*, 25 March 2010, pp. 6–7.

54 *Committee Hansard*, 25 March 2010, p. 7.

55 Queensland Government, *Submission 20*, p. 6.

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.

-
- 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.

Chapter 8

Policing the Torres Strait

8.1 The committee has discussed in detail the concerns raised by local leaders about the conduct of some visitors from PNG on the islands of the Torres Strait. The committee now looks at how law enforcement agencies in the Torres Strait manage the numerous challenges posed by the remoteness of the region and the free movement provisions of the Treaty. It considers the measures that Australian law enforcement agencies in the Torres Strait are taking to resolve or address concerns about law and order issues in local communities that derive largely from the behaviour of visiting traditional inhabitants. It also looks at the number and distribution of police on the ground, their training and resources. The committee begins by briefly outlining the composition of the police force in the Torres Strait.

Police presence in the Torres Strait

8.2 The policing role in Torres Strait communities is undertaken by combinations of Queensland Police Service (QPS) officers, Queensland Aboriginal and Torres Strait Islander Police (QATSIPs), Police Liaison Officers, and council-employed Community Police Officers.¹ Commissioner Atkinson informed the committee that there were 52 funded police positions employed by Queensland Police in the Torres Strait, made up of 35 police, seven civilians, one pilot, four police liaison officers and five QATSIPs.² The number of police officers was to rise to 54 with two police officers to be stationed at the new police station in Badu.³

8.3 In addition, the Australian Federal Police (AFP) has two members in its office on Thursday Island and a Senior Liaison Officer in Port Moresby.⁴

Queensland Police Service

8.4 The Queensland Government, which provides law enforcement services through the Queensland Police Service (QPS), has principal responsibility for policing the Torres Strait Islands. It retains a police presence on two islands in the Torres Strait—Thursday Island and Horn Island—and has plans to establish a police station on Badu Island. The estimated cost of the station is around \$10 million, which 'will

1 The Allen Consulting Group, *Independent Review of Policing in Indigenous Communities in the Northern Territory: Policing further into remote communities*, Report to the Australian Government and the Northern Territory Government, April 2010, p. 35.

2 *Committee Hansard*, 25 March 2010, p. 11.

3 Robert Atkinson, *Committee Hansard*, 25 March 2010, p. 9.

4 AFP, Additional information, dated 1 April 2010, p. 1.

enhance policing in the northern and western islands'.⁵ The Queensland Government informed the committee:

QPS responds to incidents, mainly connected to offences against the person, firearm regulations, reports of domestic violence and illicit drug trafficking [and] intelligence involving PNG nationals visiting treaty Islands. QPS also conducts operations targeting the interception of boats travelling in the Torres Strait including vessels carrying PNG nationals visiting treaty Islands.⁶

8.5 The outer islands are serviced by visiting police officers who are based on Thursday Island and travel to the outer islands by aircraft or a vessel. According to Queensland's Police Commissioner, 'The police department, via state government funding, have put a quite significant number of resources into the area and are increasing that'.⁷

Community Police Officers

8.6 While Thursday and Horn Islands have a permanent QPS police presence, the remaining island communities are serviced by Community Police Officers (CPOs). There are around 27 of these officers who are employed by the TSIRC.⁸ The majority of them are engaged under the Australian Government's Community Development Employment Project (CDEP) which the committee discusses later in this chapter.⁹

8.7 According to the Queensland Government, CPOs provide 'first-response capability for the QPS and Australian Government agencies'.¹⁰ They are 'the eyes and ears of the north'.¹¹ While their effect has not been formally evaluated, QPS reported that CPOs 'help prevent crime and increase communities' feeling of safety'.¹² TRSA noted, however, that the CPOs perform 'very minimal types of roles to assist' the police and have no powers of arrest.¹³

5 Queensland Government, *Submission 20*, p. 5.

6 Queensland Government, *Submission 20*, p. 7.

7 *Committee Hansard*, 25 March 2010, p. 3.

8 Queensland Government, *Submission 20*, p. 6.

9 *Committee Hansard*, 24 March 2010, p. 17.

10 Queensland Government, *Submission 20*, p. 6.

11 John Toshi Kris, *Committee Hansard*, 24 March 2010, p. 17.

12 Queensland Government, *Submission 20*, p. 6.

13 *Committee Hansard*, 24 March 2010, p. 17 and TSRA, *Submission 18*, p. 15.

Queensland Aboriginal and Torres Strait Islander Police

8.8 On Badu Island, CPOs are employed and trained by the QPS and are known as Queensland Aboriginal and Torres Strait Islander Police (QATSIPs).¹⁴ Commissioner Atkinson informed the committee that five QATSIPs were based on Badu as part of a trial that was commenced some years ago. He stated that Badu was unique in that there was no state police presence together with the QATSIPs.¹⁵

8.9 According to the QPS, QATSIPs 'provide an effective policing presence within the Community' through regular patrols and attending to incidents. They enforce community by-laws/local laws and advise QPS police officers as appropriate and also 'set a good example within the Community'.¹⁶ According to the Commissioner, the QATSIP is 'a work in progress' and the Queensland Government is currently reviewing its role.¹⁷

Police Liaison Officers

8.10 Police Liaison Officers (PLOs) operate in a liaison role without powers. Their task is 'to establish and maintain a positive rapport between multicultural and Indigenous communities' and the QPS. Their 'training and management regime is similar to that' of the QATSIPs. Police Liaison Officers are located on Horn and Thursday Islands.¹⁸

Adequacy of police presence

8.11 Anecdotal evidence obtained during the committee's visit to the region suggested that the police are viewed favourably and seen as responsive and cooperative. Their presence is welcomed in the communities, and local leaders would like to see more police on their islands. Indeed, numerous witnesses complained about the absence of police in their localities. Mr Bedford explained that the 15 outer island communities within the regional council do not have any QPS presence—'that is for a

14 Queensland Police Service, Queensland Aboriginal and Torres Strait Islander Police, <http://www.police.qld.gov.au/programs/community/CulturalAdvisory/qatsip.htm> (accessed 4 June 2010).

15 *Committee Hansard*, 25 March 2010, p. 11.

16 Queensland Police Service, Queensland Aboriginal and Torres Strait Islander Police, <http://www.police.qld.gov.au/programs/community/CulturalAdvisory/qatsip.htm> (accessed 4 June 2010).

17 *Committee Hansard*, 25 March 2010, p. 11.

18 The Allen Consulting Group, *Independent Review of Policing in Indigenous Communities in the Northern Territory: Policing further into remote communities*, Report to the Australian Government and the Northern Territory Government, April 2010, pp. 35–36.

population of over 4,000 people'. He explained that all the police were based on Thursday Island (TI).¹⁹ Similarly, Mayor Gela explained:

There is the state average where one police officer should be present for approximate the 440 people, here we are within the regional council area where we have a population base of approximately 4700 people and we do not have one officer present in any of our communities. We have approximately 20 to 30 officers sitting on TI which is more than a stone's throw away from our communities.²⁰

8.12 The committee heard that the only time some communities have police present is when there is a government delegation visiting an island community. Mr Ned David, Director, Magani Lagaugai, Registered Native Title Body Corporate, referred to the large number of Commonwealth and state officers from Customs or elsewhere on Saibai during the committee's visit. He noted that he had visited 'that place many times myself and I have seen no-one'.²¹

8.13 Mr Kris observed that the lack of a police presence has resulted in a situation where the police service 'is just not delivering services to our community at the moment'.²² TSIRC also spoke of the need for the QPS 'to be present on ground in every community'.²³ In its view, this would enable the police to undertake preventive measures rather than having to react to incidents. Mayor Gela said, a police presence in the communities 'would assist in reassuring my constituents that their safety is being respected'.²⁴

8.14 According to the mayor of the Torres Shire Council, Councillor Stephen, the government was neglecting the Torres Strait region by applying two standards in policing in Australia—one on the mainland and another in the Torres Strait region. He noted:

The terminology now is that the government will close the gap. At the community level gaps are not closed—whether it is about your peace of mind or your well-being that you stay in your island community or where you are. You are under the safekeeping of Australia and Queensland, yet people have to have eyes behind their heads. They are living up there and they have to dot the Is and cross the Ts because if they say something

19 Kenny Bedford, *Committee Hansard*, 24 March 2010, pp. 15–16. During another Senate inquiry, TSRA claimed that a range of offences have not been appropriately reported by Community Police Officers, including those relating to child safety and welfare. Senate Select Committee on Regional and Remote Indigenous Communities, *Submission 58*, pp. 15–16.

20 *Committee Hansard*, 18 June 2010, p. 7.

21 *Committee Hansard*, 24 March 2010, p. 34.

22 *Committee Hansard*, 24 March 2010, p. 16.

23 TSIRC, *Submission 9*, p. 2.

24 *Committee Hansard*, 18 June 2010, p. 7.

wrong, that night they will find that something has happened to either their families or their property.²⁵

8.15 He argued strongly that a greater police presence would ensure a safer environment.²⁶ A permanent police presence was considered to be of particular importance to the communities on Saibai and Boigu.²⁷

Costs of providing police presence

8.16 Acknowledging the concern about the lack of police on certain Torres Strait islands, Commissioner Atkinson argued that the QPS presence in the region was 'not too bad', with 52 funded positions and at least two additional police officers on Badu, taking it up to 54 fully-funded positions. He informed the committee that 'the cost of putting state police and the appropriate facilities on every one of the 17 islands will be massive', around \$10 million each, based on the cost of establishing a QPS presence on Badu Island.²⁸ He noted that the cost is high because when relocating an officer, 'we have to provide accommodation, an office, a vehicle and training and, of course, there are all the recurrent costs. So it would be expensive'.²⁹

8.17 The Commissioner made clear that due to the high cost, a state or federal police presence on each of the 17 islands in the Torres Strait was highly unlikely. However, he identified a potential solution to increase the police presence:

My sense of it is that we might move towards having a couple of major centres, maybe at Badu and one of the islands in the eastern group and then try and service the other islands by aircraft and vessel on a regular basis.³⁰

8.18 These observations are consistent with a QPS submission to the recent Queensland Crime and Misconduct Commission. The QPS informed the Commission that it was 'not possible to provide a permanent state police presence on all the Torres Strait islands'. It indicated that it would 'deliver the standard service delivery model through a "geographical cluster" approach, with policing facilities on three islands (Badu, Saibai and Yorke Islands)'. According to the Commission, the QPS provided:

...no timetable for these plans, but senior police told us that the Badu police station is likely to be constructed first, possibly within two to three years, because of the 'problematic' presence of the QATSIP and the larger population of Badu and nearby islands.³¹

25 *Committee Hansard*, 24 March 2010, p. 28.

26 Napua Pedro Stephen, *Committee Hansard*, 24 March 2010, p. 27.

27 TSRA, *Submission 18*, p. 15.

28 *Committee Hansard*, 25 March 2010, p. 9.

29 *Committee Hansard*, 25 March 2010, p. 12.

30 *Committee Hansard*, 25 March 2010, p. 10.

31 Queensland Crime and Misconduct Commission, *Restoring Order: Crime prevention, policing and local justice in Queensland's Indigenous communities*, 2009, p. 166.

8.19 As noted earlier, the outer islands are serviced by visiting police officers who are based on Thursday Island and travel to the outer islands by aircraft or a vessel. Commissioner Atkinson stated that there were no specific plans to increase the availability of boats and hence the capacity of police to move around the region. He said:

In an ideal and perfect world, you would have two large vessels so that you would have a degree of comfort if there was an unscheduled maintenance situation—say, the engine broke unexpectedly—there would be another vessel there. In an emergency, we could call on the federal government resources and they would assist. I think that is clearly going to have to be part of the future.³²

8.20 The Queensland Government informed the committee that the acquisition of a fixed-wing police aircraft based at Horn Island 'provides the capacity to respond to incidents occurring anywhere in the Torres Strait Islands, weather permitting'.³³ The Commissioner explained further that the acquisition of the aircraft was of great benefit to the police force by providing it with the ability to get to an island far quicker than by vessel.³⁴ He noted, however, that 'We have had some recent issues with that because we only have one pilot—again, that is not a criticism. So we need to find a balance'.³⁵

8.21 Some local leaders were of the view that the arrangement of having police officers travel to the outer islands by aircraft or boat was unsatisfactory. Mayor Gela noted:

Hammond Island is only 15 minutes adjacent to Thursday Island. It takes QPS 72 hours to even get to Hammond. You can just imagine how long it would take QPS to get from point A to point B especially if we were talking about Murray Island or Saibai. While I do respect and understand there is a human resource issue and there is a funding issue we cannot put a value on lives or people. I think my people are entitled to that.³⁶

8.22 Councillor Stephen also spoke of the delay in taking action:

I know that the police respond to any incidents, but their response time is too long. In the incident at Mabuiag, when that breaking and entering was reported, the police on TI rang the community police, and the community police had to respond. That was in the early hours of the morning. You cannot expect this fella to actually respond to it, to go and do the initial

32 *Committee Hansard*, 25 March 2010, pp. 14–15.

33 Queensland Government, *Submission 20*, p. 5.

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

35 *Committee Hansard*, 25 March 2010, pp. 14–15.

36 *Committee Hansard*, 18 June 2010, p. 7.

interview, when he is not covered for overtime and he has no powers. And then the next morning the police get out there. It is too late.³⁷

8.23 He disagreed with the notion that millions of dollars need to be spent on a new boat or a plane to go out to the islands. Instead, in his view, a greater police presence on the islands would solve many issues.³⁸

8.24 Another witness questioned the effectiveness of relying on police to fly in from Thursday Island to attend an incident on another island. The committee heard that because the QPS aircraft is recognised and its arrival easily noticed, by the time law enforcement authorities have landed, any illegal activities or persons wishing to avoid them would have long disappeared.

Committee view

8.25 The committee notes the desire of communities in the Torres Strait to have a permanent police presence and understands the importance of having regular police stationed on the outer islands. Even so, the committee acknowledges the significant cost of locating police on each island and considers, like Police Commissioner Atkinson, that this would be economically unsustainable. It supports the Police Commissioner's view of introducing 'island cluster' policing.

8.26 In the following section, the committee looks at CPO powers, employment arrangements and their role.

Community police

8.27 As noted earlier, the islands without a QPS force have community police that provide some assistance to the Queensland Police. Police Commissioner Atkinson informed the committee that CPOs do not have the two key elements that state and federal police have which set them apart from the broader community—the ability to prosecute and the capacity to use force.³⁹ He added:

And they do not have the power to carry the normal range of equipment associated with the use of force, such as handcuffs, capsicum spray, firearms and, in some cases, tasers.⁴⁰

The role and status of community police

8.28 Some witnesses expressed concerns regarding the role of the CPOs and their lack of power which severely curtails their ability to engage in effective enforcement measures. Indeed, one of the strongest arguments put by local communities during the

37 *Committee Hansard*, 24 March 2010, p. 23.

38 *Committee Hansard*, 24 March 2010, p. 23.

39 Robert Atkinson, *Committee Hansard*, 25 March 2010, p. 10.

40 Robert Atkinson, *Committee Hansard*, 25 March 2010, p. 10.

inquiry was in relation to the powers of CPOs. Mayor Gela raised the problem not only of insufficient numbers of police but also the inadequacy of the powers conferred on community police. He said:

On the ground in our local communities we do not have people that are charged with, or invested with, the appropriate powers—being police officers, being members of the departments that are meant to be policing and monitoring this arrangement.⁴¹

8.29 Mr Kris expressed similar concerns and noted, for example—'there is no authority within our police force to apply those services in our community'.⁴² He stated that currently they 'cannot detain anyone, let alone apply a fine to someone who is driving without a licence'. In his mind, these were 'some of the real issues on the ground'.⁴³ In its submission, TSRA explained further that a major problem dealing with crime on the islands, whether related to visiting PNG nationals or otherwise, stemmed from the status and training of CPOs. It noted that island police are 'Community Development Employment Projects (CDEP) Program employees and do not have the training in law enforcement, nor the arrest powers, of the Queensland Police'. It stated that there had been calls for Queensland Police to assess CPOs' understanding of their role and responsibilities and their capacity to provide an appropriate level of service to the communities.⁴⁴

8.30 Councillor Stephen expressed the same concern about the CPOs' lack of authority, indicating that many incidences take place because perpetrators 'know that there is no law and order there'. He stated that requests have been made 'for there to be a special recommendation for [CPOs] to be special constables, to be actually empowered under the Commonwealth and the state police legislation'.⁴⁵ He asked:

Why don't you simply empower the people that are on the front line, the young men and women that have put their hand up to be that law and order officer for the island? The presence of a proper policeman or policewoman will then deter any other incident as it would elsewhere in Australia and Queensland.⁴⁶

8.31 The Torres Shire Council considered that the greater empowerment of local police officers 'is paramount for local Indigenous law enforcement officers within the communities throughout our isolated communities'.⁴⁷

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

42 *Committee Hansard*, 24 March 2010, p. 17.

43 *Committee Hansard*, 24 March 2010, p. 16.

44 TSRA, *Submission 18*, p. 15.

45 *Committee Hansard*, 24 March 2010, p. 23.

46 *Committee Hansard*, 24 March 2010, p. 23.

47 Torres Shire Council, *Submission 19*, p. 9.

8.32 Meeting community expectations is another reason for the desire to increase CPO powers. Mr Wayne See Kee, General Manager of TSRA, observed that 'there is an expectation from community, just like anybody else, to have a level of service and to have security in your community'.⁴⁸ He also drew attention to the need to adapt the service to the unique environment of the Torres Strait region:

...the environment here is very different. You are not going to find a model anywhere else in Australia that you can just pick up and apply here. It has to really adapt to the environment...we are seeing the same structures being used down south essentially trying to be used here and it does not work.⁴⁹

8.33 According to Mr Bedford, the QPS has acknowledged that the level of service was inadequate and alternative arrangements were being explored to ensure that they 'meet the needs of this unique part of Australia'.⁵⁰ He informed the committee that the TSRA had discussed with the QPS and the Queensland Minister for Police ways to rectify the situation and 'how we can address the inability...of the community police to act on behalf of Queensland Police'.⁵¹

8.34 During the committee's public hearing, options for improving the status of CPOs were discussed with Police Commissioner Atkinson. Committee members asked about a possible range of alternatives that would confer greater authority on CPOs. As an example, one cited having halfway positions 'between a fully trained police officer in the Queensland Police—with all the powers of that—and a community police officer, who has no power'. Along similar lines, another suggested whether consideration could be given to some form of hybrid arrangement that would provide a functioning police presence for local communities but at less cost than having fully sworn officers.⁵²

8.35 The Police Commissioner indicated that the proposal for a halfway position for CPOs needed to be explored further. He recognised the good work of these officers and the potential to increase their skill level, training, ability and competence. Nonetheless, in his view, there was 'a cut-off point'. He noted that with rights comes responsibility and CPOs would need to be equipped, resourced, trained, backed up and all the things that go with it'.⁵³ He explained:

So if you are going to give someone power to take someone into custody then all of the other things must then automatically follow in terms of duty of care and the safety and observation of a person who is taken into custody. There is a significant flow-on in terms of that sort of power. And

48 *Committee Hansard*, 24 March 2010, p. 17.

49 *Committee Hansard*, 24 March 2010, p. 17.

50 *Committee Hansard*, 24 March 2010, p. 16.

51 *Committee Hansard*, 24 March 2010, p. 16.

52 *Committee Hansard*, 25 March 2010, pp. 10 and 12.

53 *Committee Hansard*, 25 March 2010, pp. 10–11.

what if the person resists arrest? What degree of force should be used? For one community police officer on an island of 100 or 200 people, it is difficult.⁵⁴

8.36 He also noted other problems for CPOs due to the uniqueness of the region. He pointed out that while policing can be demanding in any environment, an additional challenge arises in the Torres Strait because of the 'unique culture that exists for each island in terms of its own traditions and values as well as the clans and family groups'. Further:

In that context the clan family thing is very difficult. One of the challenges for community police is the sensitivity of going to someone's home and saying, 'Look, you're having a domestic violence incident here. I'm going to help you and get involved in this because the neighbours have phoned', and the degree of sensitivity on an island in the Torres Strait would be greater than it is in the mainstream Australian community in that regard.⁵⁵

8.37 Councillor Banu could see a potential problem developing from relying on CPOs to police the outer islands. He suggested that any increased powers for CPOs might prompt the QPS to decide not to place commissioned officers in the communities of Saibai and Boigu.⁵⁶

Employment of community police

8.38 Concern was also raised regarding future employment arrangements for CPOs. These positions are funded by a combination of council and CDEP funds.⁵⁷ Originally, CDEP project funding was used to provide employment to Indigenous job seekers. The reforms to the program since 1 July 2009 have changed the CDEP focus to 'building the skills of participants in remote communities to find jobs outside of CDEP'.⁵⁸ The Queensland Government noted that considering this and other changes, 'TSIRC will need to develop a sustainable municipal service delivery model on the basis of available resources'.⁵⁹

54 *Committee Hansard*, 25 March 2010, p. 11.

55 Robert Atkinson, *Committee Hansard*, 25 March 2010, p. 13.

56 Donald Banu, *Committee Hansard*, 24 March 2010, p. 17.

57 Queensland Government, *Submission 20*, p. 6.

58 CDEP helps Indigenous job seekers to gain the skills, training and capabilities needed to find sustainable employment and improves the economic and social well-being of communities. CDEP is one of the key Indigenous employment programs contributing to the Australian Government's aim of halving the gap between Indigenous and non-Indigenous employment within a decade'.
<http://www.fahcsia.gov.au/sa/indigenous/progserv/families/cdep/pages/default.aspx> (accessed 24 May 2010).

59 Queensland Government, *Submission 20*, p. 6.

8.39 Mr Kris pointed out that the Australian Government has 113 and the Queensland Government 309 CDEP-funded positions. He noted that the Australian Government has given some commitment to convert its 113 jobs to equivalent government position, whereas no firm commitment has been given by the Queensland Government regarding its positions.⁶⁰

8.40 Police Commissioner Atkinson shared his colleagues' concerns about CDEP funding for CPOs. He observed that while lack of CDEP funding had been an issue on mainland Queensland, the effect on Torres Strait Islands would be far more significant. He explained that where CDEP funding was withdrawn from mainland communities, the councils no longer employ community police, which was a concern to QPS. Despite having made things more difficult, in his view it would not go 'anywhere near the potential impact', should CDEP funding be withdrawn 'to the point where the islands could not employ their one or two community police officers'.⁶¹ He proposed that the state and Australian Government could identify a future plan on the issue of security in the Torres Strait:

...maybe there is scope in your considerations to look at some unique model, where there could be a local person, employed as a police officer, who is strongly supported not just by the state but by the Commonwealth as well in terms of training, equipment and resourcing.⁶²

8.41 The TSRA considered that changes to policy, including the transition of community police from current CDEP funding arrangements to full-time, permanently secured positions would 'considerably enhance the security of the international border'.⁶³

Review of community police role

8.42 The Queensland Government informed the committee that the 'legislative basis for community police as a function of Indigenous local governments was currently under review'. In addition, the findings and recommendations of the Review of Policing in Indigenous Communities were expected to inform 'the Queensland Government's future approach to policing in Aboriginal and Torres Strait Islander communities in Queensland'.⁶⁴ In this regard, the review has published its report and found:

The notion of policing services being able to be delivered in Indigenous communities through a standard model of sworn police and PLOs is administratively attractive, perhaps. The situation in the outer islands of the Torres Strait, at the very least, demands that community police or QATSIP

60 John Toshi Kris, *Committee Hansard*, 24 March 2010, p. 3.

61 *Committee Hansard*, 25 March 2010, pp. 4 and 9.

62 Robert Atkinson, *Committee Hansard*, 25 March 2010, p. 10.

63 TSRA, *Submission 18*, p. 15.

64 Queensland Government, *Submission 20*, p. 6.

(or some similar role distinct from sworn police or PLOs) will remain a necessity for a substantial length of time, if not permanently.⁶⁵

8.43 It recommended that the capacity of Indigenous people to undertake policing roles in the Torres Strait Islands should continue to be utilised and further developed.⁶⁶ Furthermore, the Commission recommended that the Queensland Government and the QPS commit:

...to supporting a model, which improves on the QATSIP model, for local people in Queensland's Indigenous communities to be appropriately trained and supervised so that they can play an active role in law enforcement and other policing activities in their own communities. The officers should be employed, trained and supported by the QPS. This role:

- should not be limited to the enforcement of by-laws;
- need not automatically exclude all potential applicants who are local people with prior criminal convictions; and
- should be seen as of particular importance in the Torres Strait Islands, where it can be an important supplement to the policing services otherwise provided by the QPS.

Training for local Indigenous people to perform these roles should be designed specifically with Indigenous learning styles in mind.⁶⁷

Committee view

8.44 Considering the perceived lack of police presence and the significant costs of establishing QPS positions in the region, the committee sees an opportunity for governments to make better use of CPO and QATSIP positions. QATSIPs are already trained and employed by QPS. The cost of funding these positions is significantly lower than that of regular QPS officers, and CPOs/QATSIPs are local people as opposed to officers brought in from other parts of Queensland, reducing relocation costs.

8.45 The committee notes and understands the calls for increasing the powers of CPOs. Evidence before the committee showed that CPOs and QATSIPs supplement the gaps in mainstream policing in the outer Torres Strait Islands. They have the support of their local communities and should remain an integral part of law enforcement in the region well into the future. Even so, the committee notes the concerns of local leaders who are calling for their community police to have greater powers so that they can be more effective in promoting law and order. The committee

65 Queensland Crime and Misconduct Commission, *Restoring Order Crime prevention, policing and local justice in Queensland's Indigenous communities*, 2009, p. 166.

66 Queensland Crime and Misconduct Commission, *Restoring Order Crime prevention, policing and local justice in Queensland's Indigenous communities*, 2009, p. 166.

67 Queensland Crime and Misconduct Commission, *Restoring Order Crime prevention, policing and local justice in Queensland's Indigenous communities*, 2009, p. 170.

notes further that while the role of the community police is to maintain public safety by ensuring the preservation of law and order, and prevention and detection of crime on the community, their powers are limited.⁶⁸ It is strongly of the view that community police need to be resourced adequately, trained appropriately and supported by the QPS.

8.46 If community police are to continue to provide an important service to Torres Strait communities, then their capacity to do so is vital to their success. The committee supports the findings of the Crime and Misconduct Commission as they apply to the Torres Strait: that is that the Queensland Government and the QPS commit to supporting a model that improves on the QATSIP model. This means that local people in Indigenous communities in the Torres Strait be 'appropriately trained and supervised so that they can play an active role in law enforcement and other policing activities in their own communities'. Among other things, the officers should be employed, trained and supported by the QPS; their role should not be limited to the enforcement of by-laws; and they should be seen as an important supplement to the policing services otherwise provided by the QPS.

Recommendation 10

8.47 The committee recommends that the Queensland Government consider, as part of its overall review of policing in Indigenous communities, increasing Community Police Officer powers in order to enable them to respond more effectively to incidents in Torres Strait island communities and providing appropriate training and supervision in the use of these powers. The findings of the recent Queensland Crime and Misconduct Commission inquiry provide an ideal starting point.

8.48 The committee also notes the changes to the CDEP program and the concerns raised by Commissioner Atkinson regarding their potential effects in the Torres Strait region should funding be withdrawn. It shares the Commissioner's concerns and urges the state and federal governments to work together to find a solution to this issue so that Torres Strait local councils can continue funding CPO positions.

Police facilities

8.49 During its visit to Saibai, the committee had the opportunity to visit the CPO facility and found it in a very poor state. It was small and while it could be used at peak times by a number of officers, it had only one desk, a couple of chairs and no computer. The air conditioning unit leaked, causing paint to strip off the walls; and the office lacked private facilities and a kitchen. The Queensland Police Commissioner described it as 'just dreadful; no-one should be expected to work in that sort of

68 Queensland Police Service, Queensland Aboriginal and Torres Strait Islander Police, <http://www.police.qld.gov.au/programs/community/CulturalAdvisory/qatsip.htm> (accessed 4 June 2010). Queensland Government, *Submission 20*, p. 5.

accommodation'. He also noted that the general standard of community police accommodation 'is really terrible'.⁶⁹

8.50 While on Saibai, the committee also visited the new Customs and Border Protection office complex, which is a lock-up structure owned by Customs and Immigration. The unit is modern, well-equipped and located next to the designated entry point. It 'is available for use by other agencies', including QPS whose officers use it as their base when on the island. According to Customs, community feedback suggested that there were 'indications of a decreasing local crime rate and minor detections increasing since inception of the facility'. A second one is planned for Boigu in the next few years.⁷⁰

8.51 The Queensland Police Commissioner suggested that community police officers could use such a facility which 'could be available for state and federal agencies to come and use as well'.⁷¹ The Commissioner was hopeful that, given the uniqueness of the location, some sort of joint Australian and state government approach could be taken. He thought the Saibai model, or whatever model evolved, where community police and visiting federal and state authorities could use the same building and office was really interesting and had potential.⁷²

8.52 The Queensland Government proposed that the establishment of similar multi-agency infrastructures on identified islands should be considered. In its view, 'A memorandum of understanding between State and Federal law enforcement agencies would enhance sharing of resources and information'.⁷³

8.53 Police Commissioner Atkinson also referred to shared facilities with the federal police, such as the watch-house on Horn Island and Thursday Island.⁷⁴

69 Robert Atkinson, *Committee Hansard*, 25 March 2010, p. 12.

70 Australian Customs and Border Protection Service, *Submission 14*, p. 5.

71 *Committee Hansard*, 25 March 2010, pp. 11–12.

72 *Committee Hansard*, 25 March 2010, p. 12.

73 Queensland Government, *Submission 20*, p. 6.

74 *Committee Hansard*, 25 March 2010, p. 14.



The committee inspecting the Customs facility on Saibai

Committee view

8.54 In relation to the CPO office facility on Saibai, the committee agrees with the Police Commissioner and considers that the facility should be upgraded as soon as possible, or, alternatively, other suitable office accommodation and equipment should be provided for the officers to undertake their administrative duties. Considering the CPOs' role as 'the eyes and the ears' for a number of Australian and Queensland Government agencies, the committee believes that these agencies could contribute to improving the standard of office accommodation for CPOs.

8.55 The committee also supports the notion of establishing multi-agency infrastructures on other islands and the sharing of these facilities between federal, state and community police.

Federal police and cooperation between agencies

8.56 As the committee has indicated on a number of occasions, the Torres Strait region is exceptional in many respects: its remoteness and island geography; and its proximity to, and the international border it shares with, PNG.⁷⁵ The Queensland

75 Police Commissioner Atkinson, *Committee Hansard*, 25 March 2010, pp. 3–4.

Government informed the committee that criminal matters or complaints in the Torres Strait are investigated and responded to 'with cooperation and collaboration between the QPS, Australian Federal Police (AFP) and PNG authorities as appropriate'.⁷⁶

8.57 In this regard, enforcement agencies in the Torres Strait work together. The committee heard that joint cross-border patrols, undertaken three times a year and led by Customs, have assisted in addressing some of the public order concerns. For example, they have led to the interdiction of prohibited goods and detention of suspected persons, such as over-stayers on traditional passes and unlawful movements under the guise of traditional travel.⁷⁷

8.58 According to Police Commissioner Zuccato, besides policing drug trafficking, gun running and people smuggling, the AFP is present in the region because of the international border. It investigates crimes against the person committed by PNG nationals visiting on either a passport and visa or a traditional visitor pass, and all other criminal activities deemed a priority by the local criminal intelligence management group.⁷⁸ Although, most of the issues in the region are similar to those confronting the police throughout Australia, in the Torres Strait, border security 'is particularly unique to that environment'.⁷⁹

8.59 The Queensland Police Commissioner explained to the committee that the role of state police in border security stems from their responsibility 'to support federal law'. Cooperation between these various law enforcement agencies works both ways. The commissioner noted that in some cases, it was 'very difficult for a state jurisdiction to investigate in PNG' and that state police needed to work closely with the AFP. As an example of this limited jurisdiction, he referred to a kidnapping incident:

We had a situation for a state police jurisdiction where someone was kidnapped and taken into PNG. That is very difficult for a state jurisdiction to investigate in PNG.⁸⁰

8.60 The Police Commissioner observed that the relationship between the AFP and the QPS is 'excellent'.⁸¹ DFAT's Torres Strait Treaty Liaison Officer also noted the good cooperation between DFAT and the police.⁸²

8.61 While there are a number of Australian border control agencies working in the Torres Strait that have responsibility for the region's security, they benefit from the

76 Queensland Government, *Submission 20*, p. 5.

77 Australian Customs and Border Protection Service, *Submission 14*, p. 6.

78 *Committee Hansard*, 18 December 2009, p. 56.

79 Police Commissioner Atkinson, *Committee Hansard*, 25 March 2010, pp. 3–4.

80 *Committee Hansard*, 25 March 2010, p. 14.

81 Police Commissioner Atkinson, *Committee Hansard*, 25 March 2010, p. 14.

82 Brett Young, *Committee Hansard*, 18 December 2009, p. 18.

assistance provided by local groups, including community police, even though they are not formally tasked in that way. The Queensland Government noted the importance of close cooperation between law enforcement agencies and contact with traditional Treaty villages and the Protected Zone communities in order to reduce crime.⁸³ DIAC also acknowledged the important role of the local communities. Mr Stephen Allen explained:

As with all agencies in the region, as with the community as a whole, I think that there is a general understanding that if something comes to someone's attention that they would refer it to the appropriate agencies. So, while they might not be formally tasked in terms of border protection, as community policing officers if they saw something suspicious in nature there would be an obvious hope and expectation that they would report that to Customs and Border Protection or to ourselves or to the AFP.⁸⁴

8.62 The Queensland Government made clear, however, that it was not appropriate for community police to perform a border security role because this function was 'not the responsibility of local governments or their employees' and because they 'do not have the requisite authority or powers, and are insufficiently qualified or trained, to carry out this function'. It was of the view that 'border security would be more appropriately enhanced by a stronger Australian Government presence'.⁸⁵ When questioned, Police Commissioner Atkinson also thought there was 'room for more' AFP presence in the region.⁸⁶ As noted earlier, the Federal Police have only two officers in the region, both based on Thursday Island.

8.63 Considering the contribution that community police could and do make to law and order matters as well as security interests in the region, the committee believes that the AFP should also have a role in working with their Queensland counterparts to support the development of community police.

Recommendation 11

8.64 With regard to matters dealing with visiting PNG nationals, the committee believes that the Australian Government has a direct responsibility. It recommends that the Australian Government should confer with the Queensland Government on how best it, and particularly the AFP, can assist with any law and order issues that arise because of the shared border and the presence of PNG nationals in the Torres Strait.

83 Queensland Government, *Submission 20*, p. 5.

84 Stephen Allen, *Committee Hansard*, 17 December 2009, p. 28.

85 Queensland Government, *Submission 20*, pp. 6–7.

86 Police Commissioner Atkinson, *Committee Hansard*, 25 March 2010, p. 14.

Conclusion

8.65 In this chapter, the committee discussed law and order in the Torres Strait. It noted the concerns of local people regarding the lack of police presence on the outer islands and the support by both police and the communities for increased powers for CPOs. In this regard, the committee noted that CPOs need to be adequately trained and equipped to deal with situations in the island communities. The Queensland Police Commissioner and the committee support the idea of a 'hybrid' police force, whose officers would have increased training and powers close to the arrangement that currently exists for the Queensland Aboriginal and Torres Strait Islander Police (QATSIP). The committee and the QPS also support the idea of policing through 'island clusters' for the purpose of increasing police presence on the islands. The committee made a number of suggestions and recommendations along these lines to the Queensland and Commonwealth governments.

Part II

Conservation, biosecurity and border control

The remoteness of the Torres Strait Islands, the scattered and sparse population across the region, proximity to PNG, and the free movement of traditional inhabitants across the border create difficulties for those responsible for conserving the environment and for administering biosecurity and related matters in the region.

Part II of the report is concerned with the unique environment of the Torres Strait and the particular conservation, biosecurity and border control challenges it creates for the Australian Government.

Chapter 9

Conservation

9.1 The Torres Strait region forms a rich and ecologically unique ecosystem that supports extensive subsistence and commercial fishing activity. It also contains a number of critical habitats for some vulnerable and endangered species. In recognising the economic and cultural ties of the local inhabitants to their lands and surrounding seas, the Torres Strait Treaty also supports the protection of this complex and fragile environment. Its strong conservation focus is evident in the following articles where Australia and PNG have agreed to:

- acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants, including their traditional fishing and free movement (Article 10.3);
- protect and preserve the Torres Strait marine environment and indigenous fauna and flora (Article 10.4);
- take legislative and other measures necessary to protect and preserve the marine environment in, and in the vicinity of, the Protected Zone (Article 13);
- identify and protect species of indigenous fauna that are or may become threatened with extinction, prevent the introduction of species of fauna and flora that may be harmful to indigenous animal and plant life; and control noxious species of fauna and flora (Article 14); and
- cooperate with each other in the conservation, management and optimum utilisation of Protected Zone commercial fisheries (Article 21).

9.2 In this and the following chapters, the committee considers the main threats to the health of the environment in the Torres Strait and Australia's actions alone and jointly with PNG to mitigate them. The committee starts by identifying the most vulnerable species in the region; their importance to the traditional way of life and the factors that place them at risk of serious depletion. It considers in particular the available data on their stocks in the Torres Strait, fishing practices, population trends, and changes in climate.

Protected species in Torres Strait

9.3 Two marine species in the Torres Strait—marine turtle and dugong—pose particular challenges for, and test the capacity of, Australia and PNG to secure their future survival. Marine turtles are classified as an endangered species and are registered on the International Union for Conservation of Nature and Natural

Resources (IUCN) Red List of Threatened Species. The dugong is deemed to be a threatened migratory mammal and recorded as vulnerable on this list.¹

9.4 Both marine turtles and dugongs are also listed in Appendix 1 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The convention recognises them as animals threatened with extinction which are or may be affected by trade.

Turtles and dugong

9.5 For centuries, dugongs and turtles have figured prominently in the lives of Torres Strait Islanders. Not only are they a main source of animal protein but they hold great spiritual, cultural and social significance for Torres Strait Islanders. Dugong and turtle meat is particularly important for ceremonial purposes—weddings, tombstone openings and feasts. Indeed, for some communities, they are totemic animals and central to their rites of passage.² One researcher, who conducted a case study on Mabuiag, underlined the status and prestige that the local community attaches to a successful dugong take:

...'hunting' for community members on Mabuiag, does not only consist of the fact of 'catching' an animal. The practice of hunting encompasses a whole process which starts with the decision of going out on a dinghy...continues with the hunt itself and the knowledge of '*continuing an old practice*' and finishes with the time the meat is brought back to the community to be cut '*in a traditional way as our forefathers did*' and shared among families on the island.³

9.6 Hunting these protected animals is therefore of the utmost importance for Torres Strait Islanders. But in order for this tradition to continue, the long-term survival of these creatures must be secured. The challenge for Australia and PNG is to find the right balance that allows traditional inhabitants to hunt turtle and dugong, while ensuring that the species remain both culturally and ecologically sustainable.

1 See for example, 'Chelonia mydas', <http://www.iucnredlist.org/apps/redlist/details/4615/0/print> 'Dugong dugon', <http://www.iucnredlist.org/apps/redlist/details/6909/0/print> (accessed 15 April 2-10).

2 TSRA, *Submission 18*, p. 16. According to the TSRA, 'Turtle and dugong are the main sources of meat for people who live in the outer islands of the Torres Strait and are 'prestige' food for islanders who live elsewhere in Australia'. See also Jillian Grayson et al, 'Options for the sustainable use of green turtles by Hammond Islanders', 28th ISTS Symposium on Sea Turtle Biology and Conservation, Mexico, 2008, p. 249 and Australian Academy of Science, *Interviews with Australian scientists*, Professor Helene Marsh, 2002, <http://www.science.org.au/scientist/hm.htm> (accessed 11 January 2010).

3 Aurélie Delisle, 'Perceived costs and benefits of Indigenous hunting of dugongs and marine turtles: Mabuiag Island as a case study', James Cook University, 2009, http://www.ecoeco.org/anzsee09/cd_view_detail.php?id=773 (accessed 12 March 2010).

The Treaty, protected species and traditional activity

9.7 Under the Treaty, there is scope for arrangements to be made that would help achieve this balance between cultural and ecological sustainability. Thus, while the Treaty allows protected animals to be caught, it stipulates that they can be hunted by traditional means only. It defines traditional fishing as 'the taking, by traditional inhabitants for their own or their dependants' consumption or for use in the course of other traditional activities, of the living natural resources of the sea, seabed, estuaries and coastal tidal areas'.⁴ Moreover, Articles 14 and 20 clearly contemplate that even traditional activities may have to be curtailed. For example, under the Treaty, Australia may adopt a conservation measure, if necessary, for the conservation of a species. This measure may apply to traditional fishing, for example for turtles and dugong, provided that best endeavours are used to minimise any restrictive effects of that measure on traditional fishing.⁵

9.8 The Treaty incorporates Australia's and PNG's obligations under international conventions to protect turtles and dugongs as endangered and threatened species. For example, Australia is a party to the Convention on the Conservation of Migratory Species of Wild Animals and a signatory to memoranda of understanding concerning the conservation and management of marine turtles and dugongs and their respective habitats.⁶ Australia and PNG are parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This convention prohibits international trade in specimens of these species except in exceptional circumstances.⁷

9.9 As noted above, the Treaty allows traditional inhabitants to harvest turtles and dugongs in the Torres Strait, despite their protected status, according to established custom. Bêche-de-mer fishing, an important part of traditional fishing in the region, demonstrates the importance of managing threatened species carefully in order to avoid the imposition of drastic conservation measures or to avert permanent harm to vulnerable species.

4 Article 1(l), Definitions.

5 Article 14.1 (a)(b)(c) and 14.4; Article 20 (2).

6 Convention on the Conservation of Migratory Species of Wild Animals, http://www.cms.int/about/Partylist_eng.pdf and http://www.cms.int/about/map/world_english.jpg See also for example, Helene Marsh et al, *Dugong, Status Report and Action Plans for Countries and Territories*, UNEP, UNEP/DEWA/RS.02-1; *ICUN Red List, Dugong dugong*, <http://www.iucnredlist.org/apps/redlist/details/6909/0/print> (accessed 15 April 2010). See for example, 'Chelonia mydas', <http://www.iucnredlist.org/apps/redlist/details/4615/0/print> (accessed 15 April 2-10).

7 Convention on International Trade in Endangered Species of Wild Fauna and Flora, <http://www.cites.org/eng/disc/what.shtml> and <http://www.cites.org/eng/disc/parties/alphabet.shtml> (accessed 8 September 2009).

Bêche-de-mer—case study

9.10 The bêche-de-mer fishery in the Torres Strait is a commercial fishery but, because of over-exploitation, fishing for three species—sandfish, black teat fish and surf redfish—has been closed (since 1998 for sandfish and 2003 for the other two).⁸ CSIRO informed the committee that fishing for the black teat fish and the surf redfish, which were not as depleted or in as bad a shape as the sandfish, was closed as a more precautionary measure and that they were expected to recover more quickly.⁹ Even so, recovery to sustainable levels takes time. In 2006, the CSIRO published the results of a survey on bêche-de-mer in the Torres Strait which showed no signs of recovery in any of the closed species. Indeed, it found that the density of sandfish had actually declined to levels similar to those in 1998 when the fishery was closed.¹⁰

9.11 In 2009, the Torres Strait Scientific Advisory Committee noted that the findings of this scientific survey were consistent 'with experience from overexploited bêche-de-mer fisheries in the Pacific where stock recovery was found to be a lengthy process, potentially taking decades'. It stated further:

Torres Strait Islanders have expressed frustration over the slow rate of recovery of these stocks and the [Protected Zone Joint Authority] PZJA can expect increased pressure in coming years to expedite stock recoveries.¹¹

9.12 The Australian Fisheries Management Authority (AFMA) believed, however, that the bêche-de-mer would 'potentially come back and be a viable fishery' in the region.¹² Indeed, under the closed fishing regime, the black teat species has shown promising signs of increased stocks.¹³

9.13 A recent CSIRO survey suggested that the species could be reopened to fishing, providing there was some management strategy that would 'mitigate against an overshoot of the TAC [total allowable catch] and prevent localised depletion'.¹⁴ The survey indicated, however, that the surf redfish should remain closed to fishing

8 *Committee Hansard*, 18 December 2009, pp. 35–36. See also Torres Strait Scientific Advisory Committee, *Strategic Research Plan for Torres Strait Fisheries*, July 2009, p. 7; Professor Hurry, *Committee Hansard*, 17 December 2009, p. 58.

9 *Committee Hansard*, 18 December 2009, p. 36.

10 Timothy Skewes et al, *Sustainability Assessment of the Torres Strait Sea Cucumber Fishery*, CRS-TS Task Number T1.4, CSIRO Marine and Atmospheric Research, July 2006, p.vii.

11 Torres Strait Scientific Advisory Committee, *Strategic Research Plan for Torres Strait Fisheries*, July 2009, p. 7.

12 *Committee Hansard*, 17 December 2009, p. 58.

13 Mr Timothy Skewes informed the committee that CSIRO had been monitoring that population and thought there had been a recovery, at least in the black teat fish population in the Torres Strait. *Committee Hansard*, 18 December 2009, pp. 36–37.

14 Tim Skewes et al, *Torres Strait Hand Collectables, 2009 survey: Sea cucumber*, Final Report, CSIRO Marine and Atmospheric Research, March 2010, p. 18.

for the time being.¹⁵ A survey was undertaken in February 2010 to assess the status of sandfish in the Warrior Reef area.¹⁶ This fishery has now been closed to fishing for twelve years.

9.14 The strong measures that were required to redress the serious depletion of some species of bêche-de-mer in the Torres Strait provides a powerful lesson for those responsible for the management of turtle and dugong.

Management of fisheries in Torres Strait

9.15 As noted earlier, marine turtle and dugong, which are central to the traditional way of life in the Torres Strait, are under threat and need to be protected from overfishing and extinction. In order to avoid drastic conservation measures such as the long-term closure of hunting, both species require careful management. In the following section, the committee discusses the key challenges to the sustainable management of turtle and dugong in the region.

Data on stocks and level of catch

9.16 Although identified as vulnerable species, the health of the turtle and dugong stock in the Torres Strait cannot be stated with absolute certainty. Indeed, numerous studies have noted that the availability of data required for sound and robust scientific assessment of the sustainability of marine turtles and dugongs in the Torres Strait is limited.¹⁷ Even so, a 2007 stock assessment of these animals in the region suggested that they were 'being overfished'.¹⁸

9.17 Some researchers point out that knowledge of the size and nature of the catch is one notable area of weakness when predicting the overall status of the population of

15 Tim Skewes et al, *Torres Strait Hand Collectables, 2009 survey: Sea cucumber*, Final Report, CSIRO Marine and Atmospheric Research, March 2010, p. 18. *Committee Hansard*, 18 December 2009, p. 37 and Torres Strait Hand Collectable Working Group, Meeting no. 4, 27–28 July 2010, Agenda item no. 2.2 for noting.

16 *Committee Hansard*, 18 December 2009, p. 37 and Torres Strait Hand Collectable Working Group, Meeting no. 4, 27–28 July 2010, Agenda item no. 2.1 for noting. CSIRO, *The Recovery of the *Holothuria scabra* (sandfish) population on Warrior Reef, Torres Strait*, Milestone Report, May 2010, Project 2009/846.

17 See for example, Jillian Grayson et al, *Information to assist Torres Strait Islanders manage their traditional fisheries for dugongs and green turtles*, Final project report prepared for the Ocean Park Conservation Foundation, May 2006, p. 6.

18 *Torres Strait Turtle and Dugong Fisheries Assessment Report*, Prepared by the Australian Fisheries Management Authority on behalf of the Torres Strait Protected Zone Joint Authority, January 2007, p. vi. http://www.pzja.gov.au/notices/notices/2007/Final_TandD_Report.pdf (accessed 7 June 2010).

marine species in the Torres Strait.¹⁹ With regard to marine turtles, the 2007 assessment found that there was 'no formal assessment of the potential productivity of any Torres Strait's turtle stocks or estimates of likely sustainable egg harvest levels', and no reference points had been set for the fishery. The outlook for the green turtle was particularly worrying. The report stated:

The northern Great Barrier Reef green turtle stock is thought to be in the early stages of a population decline, it being considered highly unlikely that the current combined turtle catch within the Northern Planning Area (an area covering the Torres Strait, the Gulf of Carpentaria and north western-Australia) is sustainable and there being a reasonable probability that the stock will experience a severe reduction in numbers of near-adult and adult turtles within a few decades (one generation).²⁰

9.18 Ms Sheriden Morris from the Reef and Rainforest Research Centre noted further that there are two turtle rookeries for green turtle in the region—Raine Island, which is the biggest in the world, and Bramble Cay. She explained that the Centre had monitored failed breeding at both sites and that the hatchings from them 'constitute about 90 per cent of the population, so when they fail there are consequences'. According to Ms Morris, the effects of a failed breeding season would take a decade to come through. She explained that there have been four failed breeding seasons for green turtle, and in about 10 years time, this will have 'a colossal impact on the communities of the eastern side of the Torres Strait'. She stated further:

...we have very good data on take—not on how many are taken but on shell size. We have noticed that females are getting smaller, and that is usually a fairly good indication in the fisheries that the population is under some pressure. We have good empirical data on that.²¹

19 See for example, Jillian Grayson et al, *Information to assist Torres Strait Islanders manage their traditional fisheries for dugongs and green turtles*, Final project report prepared for the Ocean Park Conservation Foundation, May 2006, p. 6. The report noted that there was inadequate data on catch rates of dugongs and turtles, on the geographic ranges of stocks and population sizes in Torres Strait. The UNEP report on dugongs noted that 'current estimates of dugong populations and harvest suggest that the present level of dugong harvesting may not be sustainable in Torres Strait'. Helene Marsh et al, *Dugong, Status Report and Action Plans for Countries and Territories*, UNEP, UNEP/DEWA/RS.02-1, p. 119. See also Helene Marsh et al, *Condition trends and projected futures of marine species of conservation concern*, Final Report, MTSRF Project 1.4.1. August 2007, p. 20 and Torres Strait Scientific Advisory Committee, *Strategic Research Plan for Torres Strait Fisheries*, July 2009, p.15.

20 *Torres Strait Turtle and Dugong Fisheries Assessment Report*, Prepared by the Australian Fisheries Management Authority on behalf of the Torres Strait Protected Zone Joint Authority, January 2007, p. vii. http://www.pzja.gov.au/notices/notices/2007/Final_TandD_Report.pdf (accessed 7 June 2010).

21 *Committee Hansard*, 25 March 2010, pp. 35–6.

9.19 According to experts in the field, the Torres Strait is the most important dugong habitat in the world.²² Ms Morris noted that 'surprisingly, dugong is still in pretty good condition', with sea beds also in good condition.²³ Even though this animal is not under the same level of threat in the Torres Strait as the green turtle, the variability of the data suggests that care should be taken when making definitive assessments about the size of the population now and into the future. For example, the 2007 assessment concluded that 'the difference between the current estimate of a sustainable catch level and current catches is so large that the overall conclusion that current catches are not sustainable is inescapable'. In this report, the AFMA Board Environment Committee took the opportunity to raise its concerns. It noted that the current level of dugong take from the Torres Strait, (currently unknown but 'could be as high as 10 times the Maximum Sustainable Yield') and the illegal take by PNG nationals were, among other things, a threat to the future of the fishery.²⁴

9.20 A 2008 report by the Marine and Tropical Sciences Research Facility (MTSRF) found that the surveys of dugongs in the Torres Strait since the mid-1980s had 'not demonstrated a significant decline in dugong numbers, despite long standing concern' about their sustainability.²⁵ The authors urged caution, however, in using these results to justify postponing management action, and identified a number of threats to the dugong population, including unknown levels of harvest by Indigenous Australians and neighbouring countries, and illegal poaching by Australians and

22 See for example, Helene Marsh et al, *Dugong, Status Report and Action Plans for Countries and Territories*, UNEP, UNEP/DEWA/RS.02-1, p. 115.

23 *Committee Hansard*, 25 March 2010, p. 35.

24 *Torres Strait Turtle and Dugong Fisheries Assessment Report*, Prepared by the Australian Fisheries Management Authority on behalf of the Torres Strait Protected Zone Joint Authority, January 2007, pp. viii and xv, http://www.pzja.gov.au/notices/notices/2007/Final_TandD_Report.pdf (accessed 7 June 2010). A United Nations Environment Programme (UNEP) report on dugongs noted that the status of the animal in the Torres Strait region was unknown.

25 Helene Marsh et al, *Condition, status and trends and projected futures of the dugong in the Northern Great Barrier Reef and Torres Strait*, Commonwealth Environment Research Facilities, Marine and Tropical Sciences Research Facility, James Cook University, April 2008, p. 11. See also, Torres Strait Scientific Advisory Committee, *Torres Strait Strategic Marine Research Plan 2005–2010*, Draft, pp. 10–11.

foreign fishers.²⁶ They noted the impossibility of evaluating the relative impact of these threats without additional data.²⁷

9.21 In their view, there was 'time to work with local Traditional Owners and commercial fishers to develop appropriate management arrangements without dugongs becoming locally extinct within the region'.²⁸ Mr Stephen Oxley, Department of Environment, Water, Heritage and the Arts (DEWHA), informed the committee that if there were to be 'an increased level of harvest we would need better data about the overall size and status of the resource in order to be confident that the fisheries were capable of sustaining high levels of take'.²⁹

Committee view

9.22 Monitoring the status of turtle and dugong stocks in the Torres Strait and complete and accurate data on the health of their population are critical factors in their sound management. Although periodic surveys are undertaken, evidence suggests that important gaps remain in information, especially on the level of harvest.

Long-term projections

9.23 In addition to problems with data, a further complicating factor in assessing the future prospects for turtle and dugong in the Torres Strait is the difficulty predicting the long-term effects of current practices or events that may not become apparent for many years. For example, when considering conservation measures, there are two critical aspects of turtle fishery—hunting the animals for meat and the harvesting of their eggs.³⁰ The 2007 assessment report noted that 'some researchers have suggested that the effects of continued over-harvesting of adults and/or eggs will

26 Helene Marsh et al, *Condition, status and trends and projected futures of the dugong in the Northern Great Barrier Reef and Torres Strait*, Commonwealth Environment Research Facilities, Marine and Tropical Sciences Research Facility, James Cook University, April 2008, pp. 11 and 13.

27 Helene Marsh et al, *Condition, status and trends and projected futures of the dugong in the Northern Great Barrier Reef and Torres Strait*, Commonwealth Environment Research Facilities, Marine and Tropical Sciences Research Facility, James Cook University, April 2008, p. vi. As noted earlier, it urged caution in using the results of its time series aerial surveys of Torres Strait citing problems such as difficulty detecting trends in the abundance of marine mammals, the total area of dugong habitat not being surveyed and dugongs breeding at exceptionally small sizes/young ages which may be a sign that the population is declining, pp. 11 and 13.

28 Helene Marsh et al, *Condition, status and trends and projected futures of the dugong in the Northern Great Barrier Reef and Torres Strait*, Commonwealth Environment Research Facilities, Marine and Tropical Sciences Research Facility, James Cook University, April 2008, pp. vi and 12.

29 *Committee Hansard*, 17 December 2009, p. 69.

30 Torres Strait Scientific Advisory Committee, *Strategic Research Plan for Torres Strait Fisheries*, July 2009, p. 16.

not be seen in terms of reduced turtle abundance for decades, at which point the effects may be rapid, dramatic and possibly irreversible'.³¹ The committee has already mentioned the failed breeding seasons of the green turtle, the results of which may not become evident for many years.

9.24 A number of other factors, including the use of modern technology in traditional activities, increased demand for these stocks, unregulated or illegal fishing and climate change, may further compromise the health of these vulnerable species in the Torres Strait.

Traditional activities and new technology

9.25 While the Treaty defines traditional fishing, it is unclear about the extent to which modern equipment and means of transport are allowed. It stipulates that the term 'tradition' shall be 'interpreted liberally and in the light of prevailing custom'. For the moment, regulations restrict the use of modern technology in traditional fishing activities. For example, turtle and dugong may not be carried in a commercial fishing boat and only a 'wap' (a small spear) may be used to hunt dugong. According to the TSRA, this type of fishing control 'keeps to the "spirit" of the Treaty and also helps the sustainability of the fishery'.³²

9.26 The United Nations Environment Program (UNEP) status report on dugong, however, registered concern about the increased availability of out-powered boats, which may be expected to improve the effective hunting effort. Even so, it stated that there was no evidence to date to support or refute that proposition.³³ Professor Glen Hurry, AFMA, also noted the difficulty created by the move away from the strictly traditional modes of fishing. He said:

...as things move on and better boats become available and people can range further from home there is more of a tendency to take some of the products [turtle and dugong].³⁴

9.27 He recognised that while people have access to improved boats that enable them to increase their hunting range, there had been no evidence of commercial fishery for turtle or dugong.³⁵ It should be noted, however, that, as discussed earlier, some scientists have identified the lack of information on the level of take of dugong and turtle as a problem for those devising management plans.

31 *Torres Strait Torres Strait Turtle and Dugong Fisheries Assessment Report*, Prepared by the Australian Fisheries Management Authority on behalf of the Torres Strait Protected Zone Joint Authority, January 2007, p. vii.

http://www.pzja.gov.au/notices/notices/2007/Final_TandD_Report.pdf

32 TSRA, *Submission 18*, p. 16.

33 See for example, Helene Marsh et al, *Dugong, Status Report and Action Plans for Countries and Territories*, UNEP, UNEP/DEWA/RS.02-1, p. 118.

34 *Committee Hansard*, 17 December 2009, p. 54.

35 *Committee Hansard*, 17 December 2009, p. 54.

Increasing demand

9.28 Dr Garrick Hitchcock, an anthropologist who has worked on both sides of the Torres Strait border, including the Treaty villages, drew attention to future pressures on the environment and natural resources in the region due to population increase in PNG, including Western Province. In his view, the increased demand on resources, specifically the hunting of turtle and dugong, was a key future challenge. He asked:

Are the fisheries of Torres Strait, including turtle and dugong, sustainable in the face of PNG's population growth rate of 2.7 per cent per annum, with the population of Treaty Villages set to double every 26 years?³⁶

9.29 Similarly, Mr Raymond Moore, a commercial fisherman in the region, referred to the growing population in Daru and the coastal villages and the likely escalation in traditional fishing.³⁷ Australia's Torres Strait Treaty Liaison Officer, Mr Brett Young, also mentioned population trends and the respective pressure placed on fisheries which were 'not there in the past'.³⁸ Clearly, increases in population is an important factor bearing on future demand for species such as turtle, dugong, and bêche-de-mer in the Torres Strait.

Unregulated or illegal fishing and hunting

9.30 Finally, some witnesses referred to unreported, unregulated or illegal fishing as a problem for the management of protected species in the Torres Strait. They cited activities by PNG nationals such as the illegal fishing of bêche-de-mer; illegal netting or trapping of turtle and dugong; and unregulated shark fin harvesting in the Torres Strait.³⁹

9.31 Migratory species such as marine turtles and dugong and other species such as bêche-de-mer are found on both sides of the border. PNG traditional inhabitants can fish in the Torres Strait Protected Zone (TSPZ). According to the TSRA, hunting in this zone can only be for subsistence or for ceremonial purposes, and the meat cannot be sold. It also noted that PNG fishers have 'artisanal rights to turtle and dugong in their own territorial waters outside of the TSPZ, which allow meat to be sold or bartered'. The TSRA observed, however, that the open sale of turtle meat in Daru

36 *Submission 30*, p. 2. See also *Committee Hansard*, 18 June 2010, p. 48. Dr Hitchcock noted: '...people seek much of their livelihood from the seas in Torres Strait and there is obviously concern, particularly with species such as turtle and dugong. Many of these communities do not have a history of being gardening people. Of them, the Kiwai in particular only practiced it in a minimal way and have been largely focussed on the coast. Some of the peoples who have now moved to the coast have begun to hunt turtle and dugong. This is cause for concern'.

37 *Submission 6*, p. [1].

38 *Committee Hansard*, 18 December 2009, p. 4.

39 TSIRC, *Submission 9*, p. 4. See also TSRA, *Submission 18*, pp. 16–17; Mr Kevin Murphy, *Submission 15*, p. 7 and Helene Marsh et al, *Dugong, Status Report and Action Plans for Countries and Territories*, UNEP, UNEP/DEWA/RS.02-1, p. 119.

market had 'raised questions about its provenance because of the close proximity of the TSPZ and Australian waters'.⁴⁰ It referred to staff with the Land and Sea Management Unit who:

...have had to respond to widespread concerns in the Torres Strait about illegal fishing activity by PNG nationals, and concerns that management plans must apply equally to Australian and PNG traditional inhabitants of the Torres Strait.⁴¹

9.32 Based on his own research and work in the Torres Strait, Mr Kevin Murphy submitted that some PNG nationals do not regard the international maritime boundary as legitimate. He informed the committee that they frequently cross the border to fish on the rationale that there are insufficient resources on the PNG side and too many people exploiting them.⁴² Ms Morris informed the committee that, based on anecdotal information, 500 turtles are being taken at one time and traded up through Daru into Irian Jaya.⁴³ She also noted that their researchers on the ground come across monitoring sites that have been 'severely raided' or on information that is 'anecdotal, real or monitored' about take, illegal activity and activity with the Treaty villages.⁴⁴ She noted:

The islands closest to the western province of New Guinea, where there are treaty activities in place, are the areas where we have seen quite a deal of poaching and quite a deal of loss of even our sites. Some of this is done by treaty villagers themselves—and they are allowed to do a lot of that work...The other is other players that come in and operate and take—and this is particularly important for turtle in that region.⁴⁵

9.33 Mr Ned David, Magani Lagaugal, Registered Native Title Body Corporate, referred to the many instances where illegal fishers, a large number from PNG, abuse the Treaty arrangement and 'go overboard in accessing our crayfish fisheries and other fisheries that can be sold on Daru'. He stated:

We know the market is open to anything; there is absolutely no regulation existing. Back in 1992 you could sell a turtle for 100 kina and that allowed you to be treated as some kind of millionaire for a couple of weeks. That continues to exist—we are made well aware of that.⁴⁶

40 TSRA, *Submission 18*, p. 16.

41 TSRA, *Submission 18*, pp. 16–17. The Land and Sea Management Unit has overall responsibility for co-ordinating the Turtle and Dugong Program in the Torres Strait.

42 *Submission 15*, p. 7.

43 *Committee Hansard*, 25 March 2010, p. 35.

44 *Committee Hansard*, 25 March 2010, p. 34.

45 *Committee Hansard*, 25 March 2010, p. 34.

46 *Committee Hansard*, 24 March 2010, p. 34.

9.34 The TSIRC argued that it is difficult to regulate fish catches taken to PNG as the authorities tasked to police this area have no powers.⁴⁷ It also noted that PNG has no laws prohibiting the sale of dugong meat, which it noted 'is marketed on a regular basis'. Mayor Gela informed the committee:

...we need to be mindful of the types of practices that PNG has in terms of...the hunting of sea cows. On the Australian side, it is illegal to sell sea cows; on the PNG side, it is commercialised. It is these individuals who enter Australian territorial waters and set up and conduct illegal netting of species that are basically endangered. On our side we are looking at the management and sustainability of species for the next generation to come; we do not commercialise it. We engage in traditional practices, and they are defined. On their side, that is not the case. We need to be mindful also that, whatever rules we put in place, it will be difficult because on their side there will be no legislation and no policing in place to enforce such rules.⁴⁸

9.35 The *bêche-de-mer* fishery also highlighted the problem of illegal poaching from the PNG side. For example, the Torres Strait Scientific Advisory Committee noted that compliance is a key issue in this fishery, particularly the illegal fishing of sandfish on the Warrior Reef.⁴⁹ In this regard, the TSRA in 2009 informed the committee that:

...illegal fishing by PNG nationals for *bêche-de-mer* continues to be reported at Warrior Reef and in the 'home reef' area of communities in the eastern Torres Strait which are located a considerable distance from the PNG coast. Some of those PNG nationals who have been apprehended by Australian fishery protection vessels have falsely presented themselves as 'Treaty' visitors.⁵⁰

9.36 Mr Timothy Skewes, CSIRO, noted that the PNG section of the Torres Strait *bêche-de-mer* fishery is managed by PNG under a set of arrangements that are different from Australia. He also mentioned that there was some concern that poaching from the PNG side was the reason the Australian population remained 'so low'.⁵¹ As a consequence of the October 2009 fisheries bilateral meeting, PNG closed its entire *bêche-de-mer* fishery countrywide for three years.⁵² Based on his observations, Mr Skewes informed the committee that 'the ability to close those species and to have reasonable compliance is quite good'.⁵³ He noted that with the prohibition on *bêche-de-mer* fishing in PNG waters and increased surveillance in the

47 TSIRC, *Submission 9*, p. 4.

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

49 Torres Strait Scientific Advisory Committee, *Strategic Research Plan for Torres Strait Fisheries*, July 2009, p. 17.

50 TSRA, *Submission 18*, p. 17.

51 *Committee Hansard*, 18 December 2009, p. 37.

52 *Committee Hansard*, 18 December 2009, pp. 36–37 and TSRA, *Submission 18*, p. 17.

53 *Committee Hansard*, 18 December 2009, pp. 36–37.

Torres Strait, 'hopefully, there is a chance that the sandfish population will show recovery'.⁵⁴ The TSRA also acknowledged the recent imposition of a total ban on bêche-de-mer in PNG waters—'a decision applauded by Torres Strait Islanders'.⁵⁵

9.37 While local communities expressed disquiet about the level of illegal fishing in the region, government officials appeared satisfied with current fishing practices, especially as they related to illegal fishing on a commercial scale. Professor Glen Hurry, AFMA, informed the committee that while, for some time, there had been rumours about turtle and dugong being fished for commercial purposes, he had not been able to quantify it.⁵⁶ He explained that these animals are usually caught for traditional use at tombstone openings and other ceremonial functions. According to Customs, the number of people apprehended for fishing illegally in the Torres Strait has fallen considerably.⁵⁷

9.38 Although dugong, marine turtle and bêche-de-mer are not subject to commercial fishing in the Torres Strait, reports of the illegal taking of these species by villagers from the PNG side of the border persist. This activity could pose a threat to these animals as evidenced by the slow recovery of the sandfish around Warrior Reef. Clearly, cooperation with PNG in the sustainable management of protected species such as bêche-de-mer in the Torres Strait and compliance with conservation measures is critical to the sustainability and/or recovery of populations under threat in the Torres Strait.

Climate Change

9.39 Changes in climate also have the potential to complicate the effective management of threatened species in the Torres Strait. Drawing on their experiences, Islanders have voiced concerns for a number of years about rising sea levels and the visible changes happening in their localities. They mention 'increased erosion, strong winds, land accretion, increasing storm frequency and rougher seas of a sort that elders have never seen or heard of before' and the effects they are having on the number of turtles nesting, bird life and sea grass.⁵⁸

9.40 In its submission, the TSRA highlighted its concerns about the potential adverse effects on ecosystems, food security and the health and livelihoods of Torres Strait Islanders particularly associated with, but not limited to, temperature and water

54 *Committee Hansard*, 18 December 2009, p. 37.

55 TSRA, *Submission 18*, p. 17.

56 Professor Hurry, *Committee Hansard*, 17 December 2009, p. 53.

57 Information conveyed during committee's tour of detention centre on Horn Island for illegal fishers.

58 Australian Human Rights Commission, 'Case Study 1 Climate change and the human rights of Torres Strait Islanders', *Native Title Report 2008*, p. 231, http://www.hreoc.gov.au/social_justice/nt_eport.ntreport08/index.html (accessed 5 November 2009).

acidification.⁵⁹ It noted that similar issues are thought to effect neighbouring coastal communities in PNG's Western Province and Irian Jaya in Indonesia.

9.41 Although the consequences from increased temperatures and sea inundation are becoming evident, the likely extent of changes to ecosystems in the Torres Strait is unknown. Dr Andy Sheppard, CSIRO, informed the committee that the Torres Strait is influenced by a number of climate drivers such as the Australian monsoon, the El Niño southern oscillation, the Pacific decadal oscillation and, from time to time, tropical cyclones. He explained:

Climate variables such as sea surface temperature, rainfall, wind, mean sea level pressure, solar radiation, cloudy days, humidity, evaporation and apparent temperature play an important role in human and marine life and the ecosystems of the region. However, how these variables will alter with climate change and what future impacts they will have on ecology and livelihoods in the region is not clear.⁶⁰

9.42 Similarly, his colleague, Dr James Butler, stated that basically we 'do not know what the impacts of climate change are going to be on culture there, let alone the broader issues of economy, ecosystem, fisheries and everything else that rely upon the ecosystem. It is really a very open question'.⁶¹

9.43 Despite their inability to predict precisely the effects of changes in climate on ecosystems in the Torres Strait, scientists are already detecting what they regard as detrimental effects on the habitats and life cycles of native flora and fauna in the region. They fear that coastal species such as marine turtles could be affected greatly by sea level rises that would decrease nesting beaches and feeding habitats. Increased sand temperature could also 'alter the sex ratio or potentially result in mortality'.⁶² For example, Ms Morris told the committee that, based on reliable data, researchers are 'seeing a feminisation of the turtle population that is attributable to increased sand surfaces where the turtles are'. She explained:

Turtle sex is determined by temperature, and when there is a slight increase in temperature it feminises and when there is a slight decrease it makes the eggs male. It is just like crocodiles and a lot of bird species. That plays out very strongly.⁶³

9.44 She went on to say that researchers are seeing a lot of turtle eggs drowning from sea level rise or inundation. The committee has already mentioned failed

59 *Submission 18*, pp. 25–26.

60 *Committee Hansard*, 18 December 2009, p. 33.

61 *Committee Hansard*, 18 December 2009, p. 40.

62 See for example, Convention on Migratory Species, 'Migratory Marine Species: Strategic considerations for 2009–11 and beyond', prepared by the CMS Secretariat, Ninth meeting of the Conference of the Parties, UNEP/CMS/Conf.9.26, 10 October 2008, p. 4.

63 *Committee Hansard*, 25 March 2010, p. 35.

breeding seasons at the two turtle rookeries for green turtle, Raine Island and Bramble Cay.

9.45 Scientists are also concerned that rises in the temperatures of the sea's surface could affect coral and sea grasses that would in turn influence the foraging habits of migratory species.⁶⁴ A study on dugongs in the Northern Great Barrier Reef and Torres Strait found that a likely reason for the movement of dugongs within the area is 'the susceptibility of the region to episodic seagrass diebacks, which are now believed to be largely natural events, the frequency of which may be exacerbated by climate change'. Even so, it noted that there was 'considerable uncertainty surrounding the impact of climate change on the frequency of seagrass diebacks'.⁶⁵

9.46 The changes in climate in the Torres Strait also have a number of other potential serious implications, including for the viability of essential infrastructure, especially on the low-lying islands and coastal areas of PNG, Australia's biosecurity, and border control. The committee discusses these matters in relevant sections later in the report, including consideration of the Australian Government's response to these emerging challenges.

Committee view

9.47 The committee is not in a position to make a scientific assessment about dugong and marine turtle stocks in the Torres Strait. Based on various studies and the evidence before it, the committee can with confidence, however, make some general observations. Dugongs and marine turtles in the Torres Strait require careful and informed management if their sustainability into the future is to be secured. A central plank of good and effective management relies on sound understanding of all aspects critical to their survival—breeding and foraging habitats, their behaviour throughout their life cycle, population trends, and the extent and effects of hunting not only in the immediate term but also into the future. Current data on marine life in the Torres Strait is inadequate, which is complicated by the uncertainty around the annual take of turtle and dugong. Population increase in Western Province and illegal fishing add to these concerns about the sustainability of hunting such animals in the Torres Strait, as does the potential adverse effects of climate change on the ecosystem.

9.48 In the following section, the committee looks at the measures that relevant agencies and authorities are taking to ensure that the environment in the Torres Strait is protected from damaging human and natural activity.

64 See for example, Convention on Migratory Species, 'Migratory Marine Species: Strategic considerations for 2009–11 and beyond', prepared by the CMS Secretariat, Ninth meeting of the Conference of the Parties, UNEP/CMS/Conf.9.26, 10 October 2008, p. 4.

65 Helene Marsh et al, *Condition, status and trends and projected futures of the dugong in the Northern Great Barrier Reef and Torres Strait*, Commonwealth Environment Research Facilities, Marine and Tropical Sciences Research Facility, 2008, pp. v and 11.

Chapter 10

Conservation—meeting the challenges

10.1 As noted in the previous chapter, as parties to the Treaty, Australia and PNG have responsibilities for preserving the environment in the Torres Strait so that Indigenous inhabitants can continue to carry out their traditional activities. International agreements also place obligations on both countries to use their best endeavours to protect vulnerable species such as turtle and dugong in the Torres Strait. In this chapter, the committee examines the measures that Australia is taking to fulfil its obligations under the Treaty and international conventions. It considers measures that are being taken in the Torres Strait to: prevent over-exploitation of scarce resources; involve local communities in the sustainable management of their environment; and police and enforce agreements designed to protect the region's ecosystem. It also examines the nature and value of current research on conservation in the region and its practical application to the challenges facing local communities. The committee's focus is on the marine life now under threat of serious depletion.

Sustainable management—Australia's role

10.2 The Australian Government exercises a number of controls to help manage the conservation of species under threat, such as regulations governing seasonal closures, permit and quota systems, and licensing arrangements. For example, with regard to turtle and dugong, the committee noted in Chapter 8 that the Treaty restricts the hunting of these animals to traditional means. The *Guidelines for Traditional Visitors* make clear that dugong and turtle are among the species covered under CITES and that traditional fishers:

...cannot take or trade dugong or turtle specimens and their products for eg: dugong or turtle meat, dugong bone or tusk or turtle shell across the border. Not from PNG into Australia or from Australia into PNG. If you do bring dugong or turtle products (including carvings) into the Torres Strait from PNG these items can be seized by Australian authorities.¹

10.3 Commercial fishing for bêche-de-mer in the Torres Strait Protected Zone (TSPZ) is effectively closed, with a total allowable catch set at zero. For traditional inhabitants the catch is limited to only three per person or six per boat.²

10.4 The committee has noted, however, that unreported, unregulated or illegal fishing is a problem in the Torres Strait, which underscores the need for effective management plans. Moreover, to achieve the objectives of these plans, high levels of compliance is needed.

1 *Guidelines for Traditional Visitors*, DFAT, answer to question on notice, 18 December 2009.

2 *Guidelines for Traditional Visitors*, DFAT, answer to question on notice, 18 December 2009.

Community engagement

10.5 Understandably, because traditional fishing has such strong economic, cultural and social significance for Torres Strait Islanders, they will not accept unquestioningly restrictions on the exercise of these activities. Thus, their active involvement in decisions about, and support for, the conservation of threatened marine life in the Torres Strait is critical to the sustainable management of these species. The 2007 Torres Strait Turtle and Dugong Fisheries assessment stated:

The key issue is the level of stakeholder support. So long as the communities view any more restrictive measures as being thrust upon them by government, the measures are unlikely to succeed. The point at which the communities view the government's actions as helping them to implement measures to protect turtles and dugong for their future generations, that is the point at which the management response will have the greatest prospect of success.³

10.6 Along similar lines, the 2008 study of dugongs in Northern Australia found that the priorities of Indigenous peoples and government agencies are 'almost certainly different'.⁴ It noted the importance of Australia developing 'culturally acceptable and scientifically robust mechanisms to manage indigenous hunting' and cited the 'National Partnership Approach'.⁵ This policy is intended to assist Indigenous communities become actively involved in the sustainable management of turtles and dugongs in their locations.⁶ Professor Glen Hurry, AFMA, agreed with the view that the best way to manage turtle and dugong was 'through the communities' and referred to building a better understanding among the local people of the need for sustainable management.⁷ Indeed, the *Environment Protection and Biodiversity Conservation Act*

3 *Torres Strait Turtle and Dugong Fisheries Assessment Report*, January 2007, p. xv.

4 Helene Marsh et al, *Condition, status and trends and projected futures of the dugong in the Northern Great Barrier Reef and Torres Strait*, Commonwealth Environment Research Facilities, Marine and Tropical Sciences Research Facility, James Cook University, April 2008, p. 14.

5 Helene Marsh et al, *Condition, status and trends and projected futures of the dugong in the Northern Great Barrier Reef and Torres Strait*, Commonwealth Environment Research Facilities, Marine and Tropical Sciences Research Facility, James Cook University, April 2008, pp. vii and 14.

6 Natural Resource Management Ministerial Council, *Sustainable Harvest of Marine Turtles and Dugongs in Australia—A National Partnership Approach*, 2005.

7 *Committee Hansard*, 17 December 2009, p. 54.

1999 (EPBC) seeks to achieve the engagement of Indigenous people in conservation through a partnership that involves the community in management planning.⁸

Community management plans in the Torres Strait

10.7 For a number of years in the Torres Strait, the government has invested in developing community management plans that seek to achieve the ecological sustainability of turtle and dugong with fairness and cultural sensitivity. For example, a Natural Heritage Trust project provided funding to the TSRA to develop community-based management plans for the marine turtle and dugong fisheries.⁹ Since 2006, the TSRA's Land and Sea Management Unit (LSMU) has coordinated the development of management plans by 15 Torres Strait communities. This work has included:

- employing local turtle and dugong project officers to facilitate monitoring activities and planning processes in their community;
- subsequently employing community rangers to support the implementation of community recommendations for turtle and dugong management; and
- developing proposed action plans to manage the fishery in a sustainable way.

10.8 The project has received more than \$2 million in funding from the Australian Government for the development of the community plans and another \$13.8 million to employ 24 community rangers across eight communities until 2013. The Queensland Government has also contributed to this investment and, according to the TSRA, negotiations were to be initiated with the Australian Government for the funding of ranger programs in the remaining seven communities.¹⁰

Progress

10.9 According to the TSRA, the turtle and dugong management plans were to be completed for all 15 Torres Strait communities by the end of 2009.¹¹ In November 2009, the Torres Strait Fisheries Management Advisory Committee noted that dugong and turtle project officers were in place at Saibai, Dauan, Kubin and Masig, with recruitment under way for Warraber, Poruma and Ugar. It also recorded that eight

8 Its objectives include: promoting a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; recognising the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and promoting the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge. See section 3 of the Act.

9 These plans were circulated to key government and research entities for feedback on plan content, for endorsement and for support for the implementation of recommended management tools. *DEWHA, Submission 24*, p. [4].

10 *Submission 18*, p. 17. See also *Submission 24*, pp. [4–5].

11 *Submission 18*, p. 16.

communities had developed dugong and turtle management plans. The completed plans contained tools for the seasonal closure of hunting of these animals which included the collection of turtle eggs in the management areas designated by each community.¹² According to DEWHA:

In many ways these plans are very innovative (and regionally relevant) because they include aspects of traditional and customary law in the management of the take of turtle and dugong together with spatial and seasonal closures to work towards an ecologically sustainable harvest. These management plans also acknowledge and articulate how to accommodate the take of turtle and dugong by hunters from Papua New Guinea as allowed under the Treaty.¹³

10.10 Mr Oxley, DEWHA, noted that the PZJA agencies considered these plans to 'be appropriate mechanisms for the management of the Torres Strait turtle and dugong fishery and that those arrangements are capable of ensuring that the harvest of those species is sustainable in the Torres Strait'.¹⁴

Community rangers

10.11 In November 2009, the Torres Strait Fisheries Management Advisory Committee also noted that community rangers were employed at Mabuiag and Badu, with the recruitment of rangers in process for Boigu, Iama and Erub, and recruitment to take place for Mer and Moa in early 2010.¹⁵ DEWHA explained that each of the ranger groups would undertake activities including:

...marine turtle and dugong monitoring and management, ghost net collection, fire management, invasive species management and other natural resource management activities, as identified in the land and sea management strategy for the Torres Strait. All rangers will also be undertaking accredited (Certificate II/III) training in fisheries management and/or conservation and land management.¹⁶

10.12 The TSIRC employs the project officers and community rangers and provides them, in partnership with the TSRA, with administrative and operational support. The Prescribed Body Corporate (PBC) on each island gives guidance to rangers on their work priorities and on any cultural protocols that they need to follow.

12 Torres Strait Fisheries Management Advisory Committee, Meeting no 11, 11–12 November 2009, Agenda items no. 3.1 and 3.2.

13 *Submission 24*, p. [5].

14 *Committee Hansard*, 17 December 2009, p. 68.

15 Torres Strait Fisheries Management Advisory Committee, Meeting no 11, 11–12 November 2009, Agenda item no. 3.1. According to TSRA, community rangers were due to be employed in eight communities as of early 2010. *Submission 18*, p. 16.

16 *Submission 24*, p. [2].

10.13 In this regard, the TSRA noted in its submission that currently all community ranger positions were funded from grants. It suggested that the transfer of these positions to permanent jobs would 'provide the Torres Strait with the environmental protection that is required of Australia under international treaties and the opportunity to build conservation management and fisheries development partnerships with PNG'.¹⁷

Committee view

10.14 The committee recognises the need to achieve a sustainable harvest to ensure the conservation and protection of turtle and dugong in the Torres Strait. This objective can only be achieved through strong local community support that is based on close involvement in the monitoring and management of vulnerable species in the region. The committee fully endorses the development of culturally acceptable and scientifically robust mechanisms whereby Indigenous communities in the Torres Strait are actively engaged in the sustainable management of vulnerable marine species in their localities, for example, through community rangers. Adequate and a secure source of funding, however, is needed for the effective implementation of the community management plans.

Recommendation 12

10.15 The committee recommends that the Australian Government ensure that funding for the development of community management plans and the employment of community rangers is secure and commensurate with the maintenance and progress of these plans.

10.16 In recognition of the important role of community rangers in both conservation and biosecurity, the committee recommends that the Australian Government in consultation with TSIRC and TSRA, give consideration to making these positions permanent.

Sustainable management—PNG's role

10.17 The Torres Strait forms one eco-region with, for example, PNG and Australia sharing the traditional harvesting of dugong, turtle and bêche-de-mer. Recognising that the Torres Strait is a joint jurisdiction area, Mr See Kee, TSRA, noted that while Australia is making progress on its side of the border, for example, regarding the dugong and turtle program, and taking steps to deal with the climate change challenge, such endeavours are not being matched on the other side.¹⁸ In this regard, the committee has drawn attention to the concerns of some Torres Strait Island leaders that PNG nationals engage in the illegal harvest of marine species or fail to observe conservation measures adopted by Torres Strait Island communities. It noted

17 *Submission 18*, p. 18.

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

comments to the effect that on the PNG side, there are no laws to address these issues or resources sufficiently adequate to police them (see paragraphs 9.30–9.34).

10.18 The Treaty requires Australia and PNG, as appropriate and necessary, to exchange information concerning species of indigenous fauna and flora under threat of extinction and, at the request of either country, to consult in order to:

- (a) harmonise their policies with respect to the measures to protect species of indigenous fauna and flora that are or may become threatened with extinction; and
- (b) ensure the effective and coordinated implementation of those measures.

10.19 According to DEWHA, Australia and PNG are making efforts 'to co-operate and develop complementary mechanisms for the sustainable management of turtle and dugong fisheries, including continuing to develop culturally informed, community-based management plans'.¹⁹ For example, recent attempts have been made at the community level through local gatherings and the Traditional Inhabitants Meetings (TIMs) to obtain PNG's cooperation to support the implementation of community-based management plans. Two meetings held in February and April 2009 have allowed traditional inhabitants to explore issues to do with hunting closures and permit arrangements proposed in the Torres Strait community plans.

10.20 At the first meeting, Torres Strait Turtle and Dugong Project Officers proposed to join Treaty Liaison visits to coastal villages in PNG to identify opportunities for shared cross-border management approaches for turtle and dugong. Further, Treaty villagers requested a visit to Mabuag Island to see how the rangers there work on their community Turtle and Dugong Management Plan. Arrangements for this visit were made in consultation with the Mabuag community.

10.21 Dr Hitchcock, who is concerned about the depletion of local resources particularly turtle and dugong, explained that he participated in a joint awareness visit:

We moved along the treaty villages talking about this very issue, trying to gather data on people's use of turtle and dugong in particular in the strait. I think this is one of the key challenges for the future.²⁰

10.22 The TSRA informed the committee that the main objectives reached at the second meeting were for nominated PNG Treaty villages to be involved in the turtle and dugong management planning process on Saibai and Boigu; and for other PNG Treaty villages to become more aware of the planning process.²¹ In TSRA's assessment:

19 *Submission 24*, p. [4].

20 *Committee Hansard*, 18 June 2010, p. 48.

21 *Submission 18*, p. 17.

A key outcome of both meetings was that Torres Strait Islander engagement with PNG Treaty villages was recognised as a priority in any future cross-border arrangements for the management of turtle and dugong in the Torres Strait.²²

10.23 The TSRA found that 'community level contacts are starting to be established through the collaborative turtle and dugong conservation projects developed by DEWHA and the TSRA'.²³ In its view, it was 'not unreasonable to expect that at some time in the future, bilateral arrangements are made between PNG and Torres Strait communities for the conservation management of the biodiversity values of the Torres Strait'.²⁴

10.24 With regard to compliance, the TSRA reported that communities in the Torres Strait were currently focused on establishing arrangements to enforce the management plans. Its Land and Sea Management Unit (LSMU) was preparing formal declarations of the seasonal turtle and dugong hunting closures and permit system arrangements in each community plan as regulatory 'Fishery Management Instructions' under the Torres Strait Fisheries Act (TSFA).²⁵ An agenda paper for the November 2009 meeting of the Torres Strait Management Advisory Committee noted that further negotiation was needed with PNG on traditional inhabitant support for these proposed arrangements.²⁶ A draft strategic assessment report of the Torres Strait turtle and dugong fishery by DEWHA commended the TSRA for the community-based approach to management and recommended the approach to the PZJA as a tool for future management of the fishery.²⁷

10.25 The committee notes that a Marine Turtle and Dugong Workshop, held in Daru in June 2010, continued to build on the efforts of local communities, government agencies and researchers to engage PNG traditional inhabitants in the sustainable management of turtle and dugong in the region.²⁸

10.26 In addition to these various workshops and community-level meetings with Treaty villages, there are a number of meetings through which conservation matters can be considered jointly by Australia and PNG: namely the Environment Management Committee and the Joint Advisory Committee.

22 *Submission 18*, p. 17.

23 *Submission 18*, p. 24.

24 *Submission 18*, p. 18.

25 *Submission 18*, pp. 16–17.

26 Torres Strait Fisheries Management Advisory Committee, Meeting no 11, 11-12 November 2009, Agenda item no. 3.1.

27 TSRA, *Submission 18*, p. 18. The assessment was conducted in accordance with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBCA).

28 See David Roe, *Marine Turtle and Dugong Awareness Program for Western Province, Papua New Guinea: Outcomes of Development Workshop*, 10 June 2010, Daru.

Environment Management Committee and the Joint Advisory Committee

10.27 The Environment Management Committee (EMC) under the Joint Advisory Committee (JAC) is a key mechanism whereby Australia and PNG can share information and collaborate on matters affecting the environment within the Torres Strait Treaty Zone and surrounding region. DEWHA explained that the EMC would continue to address marine turtle and dugong issues, 'with both Australia and PNG seeking ways and means to implement a framework for their sustainable management'.²⁹

10.28 The TSRA informed the committee that the JAC supports the efforts of traditional inhabitants on both sides of the border to cooperate in the management of these species.³⁰

PNG's capacity to engage in management planning

10.29 These community and higher government-level meetings are only the first step toward establishing a genuine partnership between PNG and Australia to meet key environmental objectives for the Torres Strait. But as noted by the TSRA, PNG has difficulties matching expectations. Mr See Kee noted that at the JAC meetings, there appears to be 'common acknowledgement of issues, many of which are "long standing"'. He explained further that in reviewing environmental related issues over the past five years:

There is a commitment to do it on the other side but not too many resources, so nothing much changes. Torres Strait...is a joint jurisdiction area, so it makes it very hard to move forward...in the eyes of the community it seems that everything is being done on this side to make it sustainable and so people have to give things up in some ways, yet there does not seem to be that reciprocity across the border in the arrangements that are happening.³¹

10.30 The challenge for Australia is not only to secure PNG's support for conservation and sustainable management plans in the Torres Strait but to assist it with the wherewithal to engage actively and with common purpose. There is a clear need to have local communities on the PNG side participate as practical partners in the conservation of marine species in the Torres Strait and for them to develop programs that complement those on the Australian side.

Committee view

10.31 The committee appreciates that community engagement in the formulation and implementation of the community management plans is vital to their success,

29 *Submission 24*, p. [3].

30 *Submission 18*, p. 17.

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

including an effective and committed partnership with neighbouring PNG villages. Thus, when considering the sustainable management of species such as turtle, dugong and bêche-der-mer in the Torres Strait, the role of PNG cannot be overlooked. Support by PNG traditional inhabitants for, and their compliance with, the plans is needed to achieve the objectives.

10.32 The community management plans and ranger programs discussed earlier provide an ideal foundation upon which to build a much broader fisheries management approach in the Torres Strait. The committee recommended that the Australian Government ensure that there is adequate funding available to local communities to allow them to continue and to expand the community management plans and their implementation. Assistance is also needed to support conservation measures on the PNG side of the border.

Recommendation 13

10.33 The committee recommends that AusAID, in conjunction with local communities in the Torres Strait, consider ways that would enable much greater engagement by PNG villagers in the work of community rangers in the Torres Strait as a means of educating and training them in conservation and biosecurity and in managing their environment. In particular, the committee recommends that the Australian Government support the TSRA's efforts to engage coastal communities in Western Province in turtle and dugong conservation.³²

10.34 The committee recommends further that the Australian Government fund a number of scholarships for PNG post-graduate students whose research would be linked to the community management plans now in operation in the Torres Strait and the work of community rangers.

Research on the Torres Strait

10.35 The committee recognises that access to sound and reliable data is vital to developing management plans that would allow traditional inhabitants to continue their activities in the Torres Strait without compromising the health of future fish stocks. In this section, the committee looks at data collection and research with regard to conservation and sustainable management in the Torres Strait.

10.36 In the previous chapter, the committee noted the inadequacy of data on the population status of turtle and dugong in the Torres Strait. Indeed, the committee cited a number of studies that have commented on the limited data that is available for scientific assessment of the sustainability of marine turtles and dugongs in the region.³³ The committee also referred to other factors that complicate predicting the

32 TSRA, *Submission 18*. See recommendation 5.

33 See for example, Jillian Grayson et al, *Information to assist Torres Strait Islanders manage their traditional fisheries for dugongs and green turtles*, Final project report prepared for the Ocean Park Conservation Foundation, May 2006, p. 6.

future health of these stocks, including the long-term effects of current practices or events, the results of which may not become apparent for many years. The possible increased demand on marine resources due to population growth in the South Fly District adds to the mix of factors that could influence the extent to which protected species are harvested. Changes in climate and their potential to damage the breeding and foraging habits of these animals creates further difficulties when formulating and implementing conservation measures and underscores the importance of having data that is current and reliable.

10.37 Mr Oxley explained that on the evidence in front of them and recognising that they were not necessarily working in an information-rich environment, DEWHA was 'reasonably confident that in the Torres Strait those resources were being managed sustainably'.³⁴ He agreed, however, that they would be more comfortable if they had better information at their disposal but that more resources would be needed to address this matter.³⁵ He explained that broadly, the marine environment is 'little understood relative to our terrestrial environment and that one could spend a very large amount of money improving that understanding'.³⁶

Recommendation 14

10.38 The committee recommends that the Australian Government ensure that there is adequate funding available for:

- **regular assessments of stocks of protected or vulnerable marine species in the Torres Strait; and**
- **research into the nature and size of the catch by traditional inhabitants and the illegal or unauthorised harvest of marine turtles, dugong and bêche-de-mer in the Torres Strait.**

Research institutes

10.39 Although there is no commercial turtle or dugong fishing in the Torres Strait, their stocks are monitored.³⁷ For example, studies to gauge the traditional catch of turtles in the Torres Strait first began in the 1970s. The CSIRO and the MTSRF are two of the key institutions that conduct surveys and research work across a range of conservation matters in the Torres Strait.

10.40 CSIRO is one of a few research institutions that has carried out research on turtle fishery.³⁸ It undertook more detailed investigations of dugong and turtle harvests in the early 1990s which were continued by AFMA in the periods 1993–1996

34 *Committee Hansard*, 17 December 2009, p. 68.

35 *Committee Hansard*, 17 December 2009, p. 69.

36 *Committee Hansard*, 17 December 2009, p. 69.

37 *Committee Hansard*, 17 December 2009, p. 59.

38 *Committee Hansard*, 18 December 2009, p. 35.

and 1996–2000/01.³⁹ More recently, it has undertaken numerous biodiversity surveys throughout the region, including deepwater habitats, reef habitats and mudflat seagrass communities. These have been used for mapping, marine habitat characterisation and environmental impact and sustainability studies, particularly of the Torres Strait prawn fishery.⁴⁰ The two surveys on *bêche-de-mer* in the Torres Strait mentioned in the previous chapter are examples of the work that CSIRO is doing to monitor and assess the status of stock numbers in the region so that decision makers are able to formulate sound management plans.

10.41 The MTSRF also conducts monitoring programs in the Torres Strait for turtle and dugong. It has a research program that covers marine species of conservation concern, including the study of the condition and stock trends of dugongs and marine turtles in the Torres Strait and management options to improve their status.⁴¹ The facility places a high priority on working with local communities in undertaking research.

Working with communities

10.42 The committee has already drawn attention to the need for community support and involvement in devising and implementing management plans for vulnerable marine species in the Torres Strait. This level of engagement extends to research projects. In this regard, the 2007 Torres Strait turtle and dugong fisheries assessment found:

There appears to be an underlying level of misunderstanding/distrust between indigenous groups and the research/management agencies involved in the turtle and dugong fisheries, as evidenced by community concerns that any data collected/provided may ultimately be used in ways that are not in the communities' best interests.⁴²

10.43 For some time, a number of island representatives have called on researchers to involve traditional inhabitants in their work 'to ensure communities have faith in

39 Jillian Grayson, Helene Marsh and Mark Hamann, *Information to assist Torres Strait Islanders manage their traditional fisheries for dugongs and green turtles*, Final project report for the Ocean Conservation Foundation, May 2006, p. 9.

40 Dr Andy Sheppard, *Committee Hansard*, 18 December 2009, p. 32.

41 Marine and Tropical Sciences Research Facility, Annual Research Plan 2009–2010, Department of the Environment, Water, Heritage and the Arts updated December 2009, pp. iv and 60–95.

42 *Torres Strait Turtle and Dugong Fisheries Assessment Report*, prepared by the Australian Fisheries Management Authority on behalf of the Torres Strait Protected Zone Joint Authority, January 2007, p. vi. http://www.pzja.gov.au/notices/notices/2007/Final_TandD_Report.pdf p. vi.

research results'.⁴³ For example, concerns were raised in 2009 in relation to researchers not discussing 'research requirements with traditional property owners... regarding research they wish to be conducted in their land and sea country'.⁴⁴

10.44 CSIRO researchers are aware of the importance of finding better ways to 'include community input with Western science and management practices'. They believe that this engagement 'is the only way forward for Torres Strait fisheries'.⁴⁵ For example, an objective of the 2009 bêche-de-mer survey was to transfer resource management skills to traditional inhabitants. It included a consultation phase intended to allow traditional property owners to explain their needs and opinions on the status and management of the sea cucumber and trochus; to inform them of past research and allow them direct input into the survey. There was also a training component where trainees attended a two-day workshop and some went on to assist CSIRO researchers during the survey.⁴⁶ The Torres Strait Scientific Advisory Committee viewed 'favourably' CSIRO's approach to involving and employing Torres Strait Islanders in these surveys.⁴⁷

10.45 Researchers with the MTSRF also understand the importance of ensuring that any new solutions and ideas emanating from research are conveyed in a meaningful way to the people who need to know—managers, policy-makers, practitioners and the general public as well. Ms Morris noted that 'knowledge delivery' is a major focus of the institution's research.⁴⁸ She explained, moreover, that the facility engages and trains many Indigenous technicians:

43 See for example, Torres Strait Hand Collectable Fisheries Working Group no. 2, Minutes, 17–18 July 2008, item 2.1. During a 2008 meeting, the Torres Strait Hand Collectable Fisheries Working Group agreed that 'it was essential that Traditional Owners be involved in a meaningful way in the research process'.

44 Torres Strait Hand Collectable Fisheries Working Group, Meeting no. 3, Minutes, 5–6 August 2009, item 2.1.

45 For example, during a 2008 meeting of the Torres Strait Hand Collectable Fisheries Working Group, Mr Skewes stated that it was time to have better 'community input with Western science and management practices' and that this approach was 'the only way forward for Torres Strait fisheries'. Torres Strait Hand Collectable Fisheries Working Group no. 2, Minutes, 17–18 July 2008, item 2.1. See also comments by Mr Skewes in Torres Strait Hand Collectable Fisheries Working Group, Draft Record of Meeting, No. 1, 9–10 October 2007, item 3.1 and 2.4; and Annabel Jones, AFMA, Torres Strait Hand Collectable Fisheries Working Group no. 2, Minutes, 17–18 July 2008, item 2.1.

46 Tim Skewes et al, *Torres Strait Hand Collectables, 2009 survey: Sea Cucumber*, CSIRO, Cleveland, 2010, pp. 6 and 9 and Tim Skewes and N.E. Murphy, *Torres Strait Hand Collectables: Warrior Reef Sandfish survey*, CSIRO, Cleveland, 2009, p. 4.

47 Torres Strait Scientific Advisory Committee, Meeting no. 52, 16 June 2010, Chair's Summary, p. 3. Torres Strait Hand Collectable Fisheries Working Group, Meeting No. 4, 27–28 July 2010, Agenda items 2.1 for noting and 2.2 for discussion.

48 Marine and Tropical Sciences Research Facility, Press release, 'Delivering for the Torres Strait', 7 October 2009, <http://www.rrc.org.au/mediadirectory/downloads/deliveringfortorresstrait.pdf> (accessed 16 March 2010).

They all have to have commercial dive tickets, they all have to have coxswain tickets, they all have to be trained in scientific technique, and we do as much of that as we can in the region.⁴⁹

10.46 For example, Ms Morris informed the committee that the research facility works together with the 51st Battalion, the Far North Queensland Regiment which, in her view, has proved to be 'very helpful'. The Battalion's C Company is based in the Torres Strait and is composed mainly of reservists drawn from the local communities, including from the outer islands such as Boigu.⁵⁰ They conduct numerous patrols and surveillance activities in the region. She explained that they train many of these soldiers to work as Indigenous technicians with their research scientists. In her view, that is a 'very good' program and has been working for quite a long time. She noted further that researchers share information with the battalion on their monitoring sites and matters relevant to illegal activity.⁵¹

10.47 According to Ms Morris, their researchers also work very closely with each other on the ground in the Torres Strait and invite other researchers and entities to come up and utilise their facilities and structures.

Committee view

10.48 The committee understands that any data gathering or research on the environment in the Torres Strait requires the engagement of the traditional inhabitants not only to secure strong local support for recommendations coming out of projects but to ensure that local communities understand and can apply the results. It notes CSIRO's recent practice of including and employing local inhabitants in its surveys in the region. The committee was also impressed by the approach taken by the MTSRF to involve local communities in their research activities. For example, the committee supports the work being done by C Company, 51st Battalion, Far North Queensland Regiment, in the Torres Strait in helping researchers with their monitoring and reporting on illegal fishing. It would like to see greater recognition for such work and, where possible, every assistance and encouragement given to research institutes to continue, as an integral part of their programs, to provide educational and training opportunities for local people.

49 *Committee Hansard*, 25 March 2010, p. 35.

50 Information provided to the committee during its inspection of the Regiment's facilities on Thursday Island. See also Department of Defence website, <http://www.defence.gov.au/army/51fnqr/Outstations1.asp> (accessed 7 June 2010). The website explained that 'As the only part of Australia where the neighbouring country is visible from the shoreline, the Company has inherited a strategic focus in which we often work with agencies from the State and Commonwealth Governments.'

51 *Committee Hansard*, 25 March 2010, p. 34.

Funding

10.49 With regard to future funding for research, DEWHA informed the committee that MTSRF had concluded its research program (with the exception of some research synthesis products currently being developed) on 30 June 2010. It explained that the intention was to continue funding environmental research in the Torres Strait through a Great Barrier Reef and Torres Strait Hub. According to DEWHA:

Expressions of Interest against specific research areas were received from interested research institutions in May 2010. The research areas included the Torres Strait. These are in the process of being assessed by DEWHA and an expert scientific panel. It is intended that the successful applicants will be contracted to commence this research by the end of 2010. Up to \$7 million per year will be allocated to this hub.⁵²

10.50 Two million dollars has been assigned to MTSRF as an extension of current research funding arrangements to cover the transition to the new program.⁵³

10.51 The committee recognises the contribution that the MTSRF has made over recent years to research in the Torres Strait. It particularly notes the emphasis that the research institute has placed on engaging local communities and would hope that future programs continue this practice. The committee wishes to see these kinds of 'best practice' criteria taken into consideration when the government assesses applications for research funding.

Recommendation 15

10.52 The committee recommends that the Australian Government ensure that when allocating funding for research projects in the Torres Strait, relevant agencies place a high priority on projects that demonstrate a commitment to engaging local communities in the formulation and design of these projects and, where possible, to training local Indigenous people in research techniques and sustainable management.

Working with PNG

10.53 To secure the cooperation of PNG communities in any conservation measure, they need to feel that such measures will not disadvantage them. As noted earlier, having PNG villagers work alongside Torres Strait Islanders in implementing community management plans would provide the villagers with the opportunity to gain an understanding of the reasons for imposing conservation measures. Similarly, their involvement in joint research projects would not only strengthen their appreciation of the long-term advantages of such measures but also encourage greater compliance with, and support for, enforcing these measures. Also, involving local

52 DEWHA, Answer to question taken on notice, 18 June 2010.

53 DEWHA, website, Lists of grants let by the Department of the Environment, Water, Heritage and the Arts, August 2010.

PNG nationals in research is another means of building capacity on their side of the border. For example, with regard to the Warrior Reef sandfish, Dr Sheppard informed the committee that it was vitally important to continue coordinated research with the PNG's National Fisheries Authority for its sustainable exploitation.⁵⁴

10.54 Evidence suggested, however, that cooperation with PNG in the area of research could be strengthened. For example, Mr Skewes, CSIRO, explained that while they have conducted research on Warrior Reef sandfish fishery, 'much less research' had been done on the Papua New Guinea side than on the Australian side. He went on to say:

Where possible, we try to include Papua New Guinea when we do our research and we do joint cruises. We have done at least one significant joint cruise in the Torres Strait to do with the sea cucumber fishery.⁵⁵

10.55 Mr Skewes informed the committee that they had planned to conduct a joint survey of bêche-de-mer with their PNG counterparts in PNG in February 2010. He explained further that although collaboration was looking 'a little bit difficult at the moment, they would still endeavour to arrange a joint survey of the PNG and Australian side. He explained that the AFMA and CSIRO co-invest some resources towards the survey.⁵⁶ According to advice provided to the Torres Strait Scientific Advisory Committee in June 2010, however, while PNG did carry out a survey of bêche-de-mer on the PNG side of Warrior Reef, it was not in partnership with the CSIRO survey.⁵⁷

10.56 The MTSRF and the PNG Department of Environment have also conducted major training exercises on Daru for both the Treaty village and Torres Strait hunters on turtle take, their population trends, and turtle and dugong management plans. Even so, Ms Morris noted that while there may have been meetings, greater engagement was required:

Lots of meetings, no actual doing; this next phase is the doing phase...They are hard to get in touch with sometimes...sometimes they are difficult to communicate with...you do not get any resistance to cooperation and everyone is relatively positive, except actually getting them to a place or organising anything is a work in frustration—it takes a long time.⁵⁸

10.57 Some observations made during the 2010 dugong and turtle workshop held in Daru indicated the importance of support for this type of collaborative activity. For example, over 25 representatives from the Treaty villages attended the meeting and

54 *Committee Hansard*, 18 December 2009, pp. 32–3.

55 *Committee Hansard*, 18 December 2009, p. 36.

56 *Committee Hansard*, 18 December 2009, pp. 36–37.

57 Torres Strait Scientific Advisory Committee, Meeting no. 52, 16 June 2010, Chair's Summary, p. 4.

58 *Committee Hansard*, 25 March 2010, p. 38.

voiced a strong desire for the program to continue. They also stressed the need for continued communication with their communities and raised important issues that could offer guidance for future research. For example, the workshop report noted that economic realities may not give hunters the luxury to reduce their take of turtle and dugong even if they wanted to do so, which produced comments relating to other 'supplies of protein to replace marine turtle and dugongs through government backed schemes'.⁵⁹

10.58 The potential for PNG villagers to guide and assist research in the Torres Strait is considerable. Australia's aid program would appear to be an ideal vehicle to enable them to make such a contribution. In its report on the economic challenges facing PNG and the Pacific islands, the committee considered in detail the work of ACIAR in the region, particularly in PNG. The committee notes that restocking (especially of sea cucumber) is one of the numerous research priorities that ACIAR has identified in PNG. Such research could be carried out in conjunction with the work of CSIRO and MTSRF in the Torres Strait and illustrates the scope for joint research projects.

Committee view

10.59 The committee believes that the ground work started in the Torres Strait with the development of community management plans and efforts to engage Treaty villagers in the sustainable development of the region provides an ideal opportunity for greater collaboration between Australian-funded research institutes working in PNG with those working in the Torres Strait. The committee is of the view that the Australian Government should provide assistance through its aid program to facilitate and encourage the involvement of PNG Treaty villages in the community management plans as a means to build capacity in PNG. It also believes that the government should give priority to measures designed to assist PNG communities to become active and constructive partners in the effective operation of community management plans for the Torres Strait region. In the committee's view, such assistance would go a long way toward achieving a stronger partnership between Australia and PNG researchers and to build much needed capacity in PNG that would enable its people to develop their marine resources in a sustainable way.

Recommendation 16

10.60 The committee recommends that:

- **As a high priority, the Australian Government consider engaging AusAID and other Australian agencies working in PNG such as ACIAR as partners with Australian research bodies working on the Australian side of the border. This partnership, which would include local communities, would be designed to ensure that work on the PNG side**

59 See David Roe, *Marine Turtle and Dugong Awareness Program for Western Province, Papua New Guinea: Outcomes of Development Workshop*, 10 June 2010, Daru, p. 8.

complements, builds on and reinforces the conservation and biosecurity work being done on the Australian side.

- **In line with this priority, the committee recommends that, wherever practical, researchers or project officers working in the Torres Strait are encouraged to establish or strengthen partnerships with counterparts in PNG so that work on both sides of the border is complementary and builds critical networks of researchers who are then well positioned to collaborate in further research. AusAID could act as a key coordinator in forging these links.**

10.61 The committee has concentrated on effective conservation through community engagement in the preparation, formulation and implementation of management plans. Unfortunately, measures such as awareness raising and garnering local support for community management plans may not, by themselves, provide sufficient incentive for all to participate in and observe sound management practices. More coercive measures, including the enforcement of regulations governing the harvesting of protected species, may be required.

Compliance and enforcement

10.62 A number of government agencies in the Torres Strait contribute to the surveillance of activity and enforcement of laws relating to protected species. Firstly, DEWHA monitors illegal fishing activity by obtaining intelligence through a mix of sources—AFMA, the Queensland Boating and Fisheries Patrol, Border Protection Command and also through people in the communities.⁶⁰ DEWHA's compliance branch is generally responsible for taking action on such reports.

10.63 Ms Tania Rishniw, DEWHA, explained that the department's compliance focus tends to be on activities and issues that fall under the EPBC Act. The Act covers any listed migratory or marine species, including seabirds, dolphins or other cetaceans, or any range of species that are protected as matters of national environmental significance under the legislation.⁶¹

10.64 AFMA has four officers in the Torres Strait involved in the management of the fisheries. It also has two foreign compliance officers permanently stationed there who look at illegal boat traffic through the Torres Strait.⁶² The Torres Strait Hand Collectables Working Group reported that AFMA retains a strong focus on

60 *Committee Hansard*, 17 December 2009, p. 54.

61 *Committee Hansard*, 17 December 2009, pp. 72–73.

62 Professor Hurry, *Committee Hansard*, 17 December 2009, p. 54.

responding to illegal, unregulated and unreported (IUU) fishing, noting in particular additional surveillance activities in the Warrior Reef area.⁶³

10.65 The Queensland Boating and Fisheries Patrol also have compliance officers in the Torres Strait. The catch taken in the Torres Strait is monitored through the collection of daily fishing records from non-Islanders and the records of sales of catch from Islander commercial fishers.

10.66 Where on-the-water engagement is required, the apprehension aspect of enforcement with regard to foreign fishing vessels is primarily the responsibility of Border Protection Command (BPC) and informed by AFMA as the management agency. BPC is the central coordinating point and has responsibilities that are delegated under legislation to undertake compliance activities on DEWHA's behalf.⁶⁴

10.67 This on-the-water enforcement extends beyond detecting and apprehending those fishing illegally for protected species in the Torres Strait. It also includes a range of other activities such as people smuggling and drug trafficking. As such, BPC is considered in greater depth in the chapter dealing with border control. At this stage, the committee notes, however, that because of increased surveillance over recent years, there has been a significant decrease in the number of illegal fishers detected in the Torres Strait.⁶⁵ Nonetheless, concerns remain about the lack of information on the unreported harvesting of marine turtle, including their eggs, and of dugongs in the Torres Strait by traditional inhabitants, especially poachers from the PNG side of the border.

Conclusion

10.68 The committee focused on three marine species in the Torres Strait that require effective and sound management if their stocks are to remain viable into the future—marine turtle, dugong and bêche-de-mer. It found that the support and engagement of local communities in their management was essential to protect these species from over exploitation and stock depletion and, where necessary, to restore populations to sustainable levels. Further, that local people need to be equipped with the scientific knowledge to help them manage vulnerable species effectively. The development of community management plans, employment of community rangers and engagement of local people in research and monitoring projects requires the government's continuing support. Although the committee focused on only three

63 The Group noted in July 2010 that AFMA conducted regular surface patrols in the Warrior Reef area and would 'continue to monitor fishing activity on PNG's side of the Fisheries Jurisdiction Line'. Torres Strait Hand Collectable Working Group, Meeting 4, 27–28 July 2010, Agenda item 4.1 for noting.

64 *Committee Hansard*, 17 December 2009, p. 72.

65 See Attachment 5.3A to Torres Strait Hand Collectable Working Group, Meeting 4, 27–28 July 2010. It noted that three PNG vessels were apprehended in 2006–07, fifteen in 2007–08, and nine in 2008–09; of these nine apprehensions, eight occurred on or in proximity to Warrior Reef.

species, it understands that this approach to community management also applies generally to the protection of native flora and fauna in the Torres Strait.

10.69 The committee also recognised that the Torres Strait is a complex eco-system and that people from both Australia and PNG hunt and fish in the region. In this regard, Australia cannot by itself implement conservation measures that would successfully remove concerns about the future health of vulnerable stocks in the region. Any management plan in the Torres Strait requires the involvement and cooperation of the PNG government and PNG traditional inhabitants. The reports of illegal poaching make this particularly important.

10.70 Finally, the committee highlighted the importance of careful and assiduous monitoring and assessment of marine life. It noted some key factors that underscore the need for this level of attention and for continuing research on marine resources in the Torres Strait. They include the unknown level of harvest of protected species, illegal poaching, possible increase in demand for these resources and climate change. Clearly, for some species, especially with regard to marine turtles, time is of the utmost importance. The committee has made recommendations:

- to ensure that there is adequate funding for targeted research on native flora and fauna in the Torres Strait that are classified as vulnerable or endangered;
- for continued Commonwealth support for the ranger program;
- to redouble efforts with PNG to
 - build capacity in the area of conservation research;
 - involve and secure commitment from the PNG Government and local inhabitants to work with Australia to ensure that the fauna and flora of the Torres Strait does not suffer from over exploitation; and
- to ensure that the work of AusAID, through Australian agencies in PNG such as ACIAR, complements that of the research institutes working in the Torres Strait.

10.71 Biosecurity is an important factor in protecting the environment from harm. The following chapter considers threats to the environment introduced from outside the region—noxious weeds, pests and diseases and pollution from vessels passing through the straits.

Chapter 11

Biosecurity

11.1 Fortunately and largely because of its geographic isolation, Australia's livestock remains free of all major epidemic diseases and relatively free of other serious pests and diseases. Australia also has a sound quarantine regime in place. The 2008 review of Australia's quarantine and biosecurity arrangements (the Beale Report) concluded that Australia operates a good system that is 'often the envy of other countries given its comprehensiveness, transparency, and scientific rigour'.¹ Even so, it recognised that improvements could be made to the arrangements with the aim of achieving 'a seamless biosecurity system that fully involves all the appropriate players...across pre-border, border and post-border risk management measures'.² Although this review did not deal specifically with the Torres Strait, its findings have direct relevance for the region.

11.2 Biosecurity is a critical aspect of conservation in the Torres Strait and the Treaty recognises this importance. As noted in chapter 2, Australia and PNG have undertaken to prevent the entry or establishment of species of fauna and flora that may threaten the health of indigenous animal and plant life. In this chapter, the committee identifies the main challenges facing the region from the introduction and spread of harmful weeds, pests and diseases. It also looks at the risk of damage to the environment from the release of toxic or harmful substances from vessels passing through the strait.

Biosecurity in Torres Strait

11.3 The proximity of the Torres Strait Islands to Australia's near northern neighbours, such as PNG, is one of the region's key biosecurity concerns. Less than five kilometres separates the northern-most island, Saibai, from the PNG coastline, with the remaining islands and reefs scattered throughout the region, forming stepping stones that provide an ideal route for the entry of harmful diseases or pests.³ The concern with the introduction of exotic diseases, pests or weeds is not so much coming from Australia northward to PNG but rather the converse.

11.4 There are several exotic pests and diseases of major concern to Australia that lurk on Australia's northern doorstep, including the screw worm fly (SWF), Asian

1 Roger Beale et al, *One Biosecurity: A working partnership*, The Independent Review of Australia's Quarantine and Biosecurity Arrangements', Report to the Australian Government, Commonwealth of Australia, 2008, p. xv.

2 Roger Beale et al, *One Biosecurity: A working partnership*, The Independent Review of Australia's Quarantine and Biosecurity Arrangements', Report to the Australian Government, Commonwealth of Australia, 30 September 2008, p. ix.

3 See for example, Mr Tim Chapman, *Committee Hansard*, 17 December 2009, p. 62.

tiger mosquito, papaya fruit fly and Japanese encephalitis (JE). Classical swine fever, which is a very serious exotic disease of pigs, is another. It has moved into West Papua and, according to Dr Andrew Carroll, Chief Veterinary Officer, DAFF, is 'likely, slowly but surely, to move across into PNG at some time'.⁴

11.5 These pests and diseases can be transmitted through human-assisted movement and natural dispersal. In the following section, the committee examines the potential for harmful pests or diseases to spread to the Torres Strait and the threat they pose to humans, livestock and the environment.

Human-assisted movement

11.6 Under the terms of the Treaty, Australia is required to permit free movement of traditional inhabitants who are undertaking lawful traditional activities in and in the vicinity of the Protected Zone. The presence in PNG of noxious pests and diseases not found in Australia coupled with the free movement provisions creates a significant risk to Australia's biosecurity.

11.7 Because humans or their companion animals are potential carriers of disease or pests, this flow of traditional inhabitants complicates the management of biosecurity in the Torres Strait.⁵ The committee has referred to PNG nationals crossing the border to seek medical assistance. Clearly, they pose a considerable risk of spreading infectious diseases such as tuberculosis. But any person visiting the Torres Strait from PNG to attend gatherings, hunt or trade could carry with them an exotic plant, pest or disease and inadvertently introduce them into the region. People who endeavour to gain entry illegally create a particular problem for biosecurity because their intention is to avoid detection.

11.8 The screw worm fly (SWF), an insect parasite of warm-blooded animals, is an example of a pest likely to be brought into the Torres Strait. This insect is considered to be the most exotic pest threatening Australia's livestock industries and is endemic in a number of Australia's northern neighbours, including PNG's coastal swamps adjacent to the Torres Strait.⁶ Dogs and humans are susceptible hosts of SWF. One study found that:

...companion animals, especially dogs, aboard illegal vessels represent a risk for the introduction of SWF larvae if the origin of the vessel is a SWF-

4 Dr Andrew Carroll, *Committee Hansard*, 17 December 2009, p. 63.

5 Mr Tim Chapman, DAFF, explained, 'The potential pathway of those going to the Torres Strait islands and then moving slowly southwards towards the mainland can be caused by a couple of factors. One is that humans carry them as they move...' *Committee Hansard*, 17 December 2009, p. 62. See also Dr Carroll, *Committee Hansard*, 17 December 2009, p. 63.

6 Animal Health Australia, 'About Screw Worm Fly,' <http://www.animalhealthaustralia.com.au/programs/drm/swf/screw-worm-fly-and-australia.cfm> and <http://www.animalhealthaustralia.com.au/programs/drm/swf/about-screw-worm-fly.cfm> (accessed 14 June 2010).

endemic country. Introduction of the disease through the Torres Strait into the mainland of Australia may also be possible via the legal importation of companion animals if these animals are not examined appropriately before entering the mainland.⁷

11.9 According to the Australian Veterinary Emergency Plan, should this pest reach Australia it would 'have disastrous effects on the cattle industry unless quickly controlled.'⁸

11.10 There are similar issues with regard to plant pests and disease being carried into the region by humans.⁹ Pests that are prevalent in PNG, such as the red-banded mango caterpillar and the papaya fruit fly, have been detected in the Torres Strait and require constant monitoring to contain any further incursions.¹⁰ For example, the number of papaya fruit flies detected in the Torres Strait is 'extremely high', with routine inspections finding 309 in 1995; 1,156 in 1998; 456 in 1999, 113 in 2001 and 118 in 2002.¹¹ It was first found in the Torres Strait in 1993 on Saibai, Boigu, Dauan, Stephen and Darnley Islands. A pest infestation can result in substantial losses in production, restrict market access and damage the environment.¹²

11.11 Commonly known as the climbing perch, *Anabas testudineus* is another example of a pest introduced by humans, in this case by Indonesian villagers. Dr Lawrence explained that people have dumped it in swamps and other places and it has migrated down the Fly River into the Fly estuary in PNG. He explained that although a nice fish to eat, it is a threat to bigger fish such as the barramundi that choke on its spines. According to Dr Hitchcock, that species is now found on Saibai and Boigu in the Torres Strait.¹³

7 Veronica Boero Rodriguez and Bo Raphael, *Review of the Old World Screw Worm Fly trapping program conducted by AQIS in the Torres Strait*, Bureau of Rural Sciences, July 2008, p. 16.

http://www.animalhealthaustralia.com.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=2FE8B761-C7F7-918D-4DA1-C435A5FE2F9E&siteName=aahc (accessed 14 June 2010).

8 Australian Veterinary Emergency Plan (AUSVETPLAN), 'Disease strategy: Screw-worm fly (Version 3.0)', Canberra, 2007, Appendix 5.

9 Dr Carroll, *Committee Hansard*, 17 December 2009, p. 63.

10 See pamphlets on AQIS website, http://www.daff.gov.au/data/_assets/pdf_file/0017/120761/naqs_topwatch.pdf (accessed 14 June 2010).

11 Tom Kompas and Nhu Che, 'A Practical Optimal Surveillance Measure: The Case of Papaya Fruit Fly in Australia', Australian Centre for Biosecurity and Environmental Economics, Canberra, 2009, p. 14.

12 Tom Kompas and Nhu Che, 'A Practical Optimal Surveillance Measure: The Case of Papaya Fruit Fly in Australia', Australian Centre for Biosecurity and Environmental Economics, Canberra, 2009, p. 7.

13 *Committee Hansard*, 18 June 2010, p. 50.

11.12 Because of the high level of shipping traffic through the straits—recreational, commercial, indigenous and illegal fishing vessels—the region is also at risk from ships introducing invasive marine species. Some species of marine pests such as the Striped Barnacle and Upright Moss Animal can travel long distances as a fouler on ships' hulls. Their presence has been recorded in the Torres Strait. Pests can also be introduced through contaminated ballast.¹⁴

11.13 As shown in the illustration opposite, the activity of foreign vessels in the Strait may result in the introduction of weeds, pests or disease harmful to plant, animal or human health in the region.¹⁵

11.14 The transmission of human diseases such as dengue fever is another major biosecurity concern in the Torres Strait. A patient with dengue can transmit the virus to mosquitoes that may then infect other people. According to Queensland's management plan for dengue fever, 'It only takes one imported case of dengue to start an outbreak'. It explained:

Because dengue is not endemic to Australia, local dengue outbreaks in Northern Queensland all begin with a single imported case—a 'patient zero'.

11.15 For example, the outbreak in 1996–97 started with one person returning to Mer after contracting the disease in Daru. The management plan noted:

Because of high *Ae. aegypti* populations on Mer, this one case led to a further 70 cases on the island. Subsequent travel of viraemic patients between the islands led to infections on at least six other islands in the Torres Strait. Within seven months, 201 cases were confirmed, reaching locations as far south as Townsville.¹⁶

Natural dispersal

People and accompanying animals are not the only means by which noxious weeds and exotic pests and diseases find their way into the Torres Strait and then onto mainland Australia. Dr Andrew Carroll, DAFF, explained that there are many ways that things can come across from PNG besides the more commercial movements assisted by people: they can 'also float across, blow across, fly across and swim across'.¹⁷

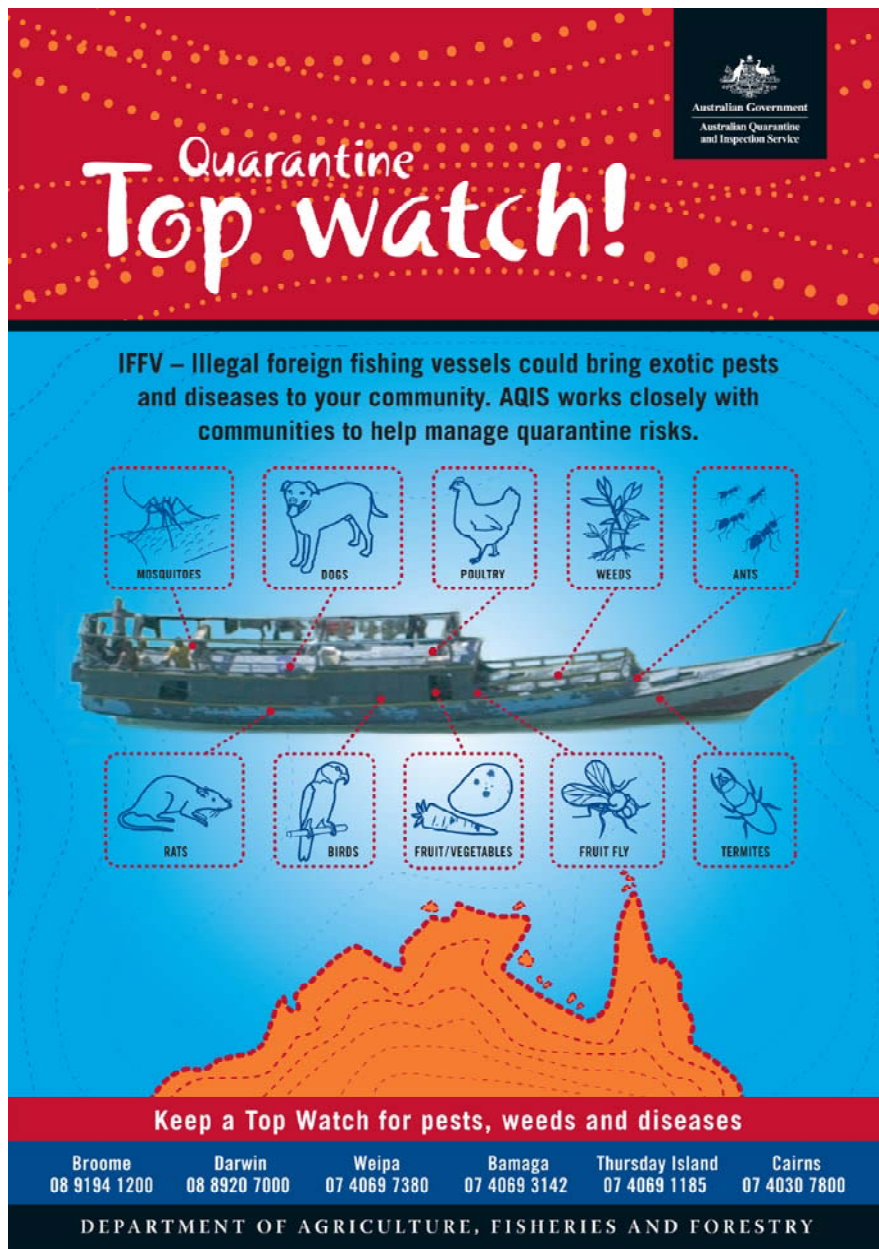
14 Heath Stafford and Richard C. Willan, *Is it a Pest? Introduced and naturalised marine animal species of Torres Strait Northern Australia*, CRC Torres Strait and Queensland Government, 2007, pp. 10, 12, 16, 18 and 20.

15 DAFF's website, http://www.daff.gov.au/data/assets/pdf_file/0009/790785/illegal-fishing-vessels.pdf (accessed 12 January 2010).

16 Queensland Health, *Dengue Fever, Management Plan for North Queensland 2005–2010*, Queensland Government, p. 16.

17 *Committee Hansard*, 17 December 2009, p. 63.

Figure 11.1: Quarantine poster—risks from illegal fishing vessels



(Image courtesy of Department of Agriculture, Fisheries and Forestry)

11.16 DAFF explained that the prevailing climatic and environmental conditions can 'facilitate the unassisted movement of risk organisms through natural pathways including seasonal wind and tidal actions and migratory bird movements'.¹⁸ Papaya fruit fly, for example, may not only be carried across the border in plant material but can be blown from the mainland to the islands.¹⁹

18 Department of Agriculture, Fisheries and Forestry (DAFF), *Submission 13*, p. 4.

19 Mr Chapman, *Committee Hansard*, 17 December 2009, p. 63.

11.17 The movement of nomadic waterfowl between northern Australia and PNG has been identified as 'a potential route for the introduction of avian influenza (AI) (and other disease agents) into Australia'. With islands located so close to PNG and hundreds and thousands of birds moving back and forth across the strait each year, it is 'the major bio-security threat for Australia' and 'the obvious pathway of any disease like bird flu moving into the country'.²⁰ Thus, there is an ever-present risk of the transmission of AI through infected birds.

11.18 Also, Ms Morris informed the committee that there has been 'a movement of a number of vectors into the Torres Strait and increased concern associated with the prevalence of new vectors and pests—fish and the like—that they have not seen there before'.²¹ One particular area of interest is mosquitoes, particularly the *Aedes albopictus*, commonly known as the 'Asian Tiger mosquito'. This mosquito is a potential vector of flaviviruses, including dengue and chikungunya, and Australian viruses such as Ross River virus and Barmah Forest virus.²²

11.19 As noted above, the dengue virus is not endemic to Northern Queensland but arrives via a human reservoir from outside the region. The disease is vectored by the dengue mosquito, an exotic but very human-associated species.²³ According to DoHA, there have been repeated incursions of the Asian Tiger mosquito in past years.²⁴ This mosquito, which is very aggressive, outcompetes the dengue mosquito and, although a poorer vector of dengue, feeds on more hosts and can transmit many more zoonotic diseases.²⁵ While not currently established in Australia, it presents a serious risk of spreading to the Torres Strait.

11.20 Another disease, Japanese encephalitis (JE), is endemic to PNG. This potentially fatal disease is caused by the JE virus and is spread by the bite of an infected mosquito. Pigs, which are particularly good hosts, and wild birds have an important role as hosts in the spread of the virus.²⁶ Mosquitoes feeding on infected pigs are likely to pick up the virus and may then transmit it to humans.²⁷ In 1995, JE

20 This view is based on a statement by Dr Rohan Clarke, a research fellow in the School of Life and Environmental Sciences in Deakin University, Media Release, 'Deakin University research maps bird flu pathways to Australia', 8 September 2008, <http://www.deakin.edu.au/news/upload/080908avianmalaria.pdf> (accessed 21 January 2010).

21 *Committee Hansard*, 25 March 2010, p. 41.

22 Dr Sheppard, *Committee Hansard*, 18 December 2009, p. 33.

23 Dr Sheppard, *Committee Hansard*, 18 December 2009, pp. 33 and 40.

24 *Submission 11*, attachment A, paragraph 3.2.

25 Margie Beilharz, 'Climate change raises the disease threat', *Science Alert*, 18 December 2008 and *Committee Hansard*, 18 December 2009, p. 33.

26 Professor John Mackenzie, Professor of Tropical Infectious Diseases, Curtin University of Technology, Perth, 'Emerging viral diseases: what are the threats and how should we respond?', *Safeguarding Australia 2007–2008, Public Lectures*, 4 September 2007.

27 Centre for Disease Control, Northern Territory, *Japanese Encephalitis*, web site.

first appeared in the Torres Strait on Badu. During the next couple of years, the virus recurred in the north of the Torres Strait, with a significant outbreak in 1998, when for the first time, the virus was detected further south in Cape York. Scientists were able to show that the virus found in Western Province, PNG, was genetically the same as the virus in Australia.²⁸ According to a researcher:

We think it [the virus] island-hopped, with localised transmission cycles between birds and mosquitoes—or perhaps pigs and mosquitoes—on each island, as it moved through the Indonesian archipelago, finally coming to Papua New Guinea and then down to the Torres Strait.²⁹

11.21 The concern now is that the virus will spread and become established further south.³⁰ In 2002, the virus was detected on Darnley soon after being found on Badu. At that time, the Northern Australia Quarantine Strategy (NAQS) noted that the end of the monsoon season and climatic conditions are perfect for an influx of JE-infected mosquitoes, blown south from PNG.³¹

11.22 The varroa mite, a highly invasive parasite that feeds on the blood of adult and larval honey bees, also poses a significant threat to Australian agriculture. According to Dr Carrol, DAFF, 'recent developments with varroa in PNG are of considerable concern, because varroa would be a serious pest for our honey bees'.³² These mites can establish themselves in other colonies by, for example, hitchhiking on an infected bee or through the activities of bee-keepers acting as agents, including through the use of contaminated equipment.

Increased risk

11.23 The committee has not identified all the weeds, pests or diseases present in PNG or Indonesia that have the potential to enter Australian territory through the Torres Strait and cause significant damage to sectors of Australia's farming industry, to the environment and to human health. According to an Animal Health Australia

28 Professor John Mackenzie, Professor of Tropical Infectious Diseases, Curtin University of Technology, Perth, 'Emerging viral diseases: what are the threats and how should we respond?', *Safeguarding Australia 2007–2008, Public Lectures*, Australian Academy of Science, 4 September 2007.

29 Professor John Mackenzie, Professor of Tropical Infectious Diseases, Curtin University of Technology, Perth, 'Emerging viral diseases: what are the threats and how should we respond?', *Safeguarding Australia 2007–2008, Public Lectures*, Australian Academy of Science, 4 September 2007.

30 Fiona Sinclair, 'Pest and Vector Control: Badu, Torres Strait Australia', *Journal of Rural and Tropical Health*, vol. 5, 2006, pp. 59–69.

31 Established in 1989 to address the unique quarantine risks in this northern region, NAQS conducts surveys along Australia's northern coastline and neighbouring countries for early signs of new pests or disease. DAFF website, <http://www.daff.gov.au/aqis/quarantine/naqs> (accessed 21 January 2010).

32 *Committee Hansard*, 17 December 2009, p. 63.

spokesperson 'it only takes one serious disease or pest to slip through to significantly disrupt our accepted way of life in Australia'.³³ Such infestation could result in the widespread destruction of plant and animal life and the cost of eradication could amount to millions of dollars.³⁴

Pests like fire ant, and invasive weeds, have already cost the nation dearly in foregone revenue and control measures.³⁵

11.24 Although the committee noted only a few examples of pest or disease intrusion into the region, the threat of such incursions is ever present and could be increasing.³⁶

Population movements

11.25 According to Dr Carroll, the risks of harmful exotic weeds, pests and diseases entering the Torres Strait are generally rising due to more trade and other activities involving the movement of people. He explained:

There was an outbreak last year or the year before of a very virulent form of newcastle disease up on the top of Papua New Guinea that had been brought in by, we believe, loggers coming in and bringing their fighting cocks with them...Also there are the risks coming across from Indonesia into Indonesian Papua and then moving across as more settlement develops there. Things like the big gas pipeline and various mining activities will mean a lot of mining equipment comes in. Unless great care is taken, that will introduce a whole range of soil-borne pests, particularly plant pests, and also hitchhiker pests—insects et cetera. So the risk in general, yes, is increasing.³⁷

11.26 Dr Garrick Hitchcock, an anthropologist who has worked on both sides of the border, also referred to population trends in PNG and likely implications for the Torres Strait. He said:

It is clear that a key issue for the region is Papua New Guinea's rapidly expanding population, which will have a profound impact on the future of Torres Strait, as more and more Western Province people use the waters for subsistence and cash-producing activities, and visit the Australian islands to

33 Animal Health Australia, Media Release, 'The other Border Security', 20 November 2004.

34 Tom Kompas and Nhu Che, 'A Practical Optimal Surveillance Measure: The Case of Papaya Fruit Fly in Australia', Australian Centre for Biosecurity and Environmental Economics, Canberra, 2009, pp. 13–14 and 23.

35 Animal Health Australia, Media Release, 'The other Border Security', 20 November 2004.

36 For information on the range of biosecurity threats to northern Australia see for example, Northern Australia Quarantine Strategy, *Quarantine Pocket Guide*, DAFF, 2005 and J.F.Grimshaw et al, 'The value of early detection and internal quarantine boundaries in the management of incursions: some examples in plant protection from northern Australia and Papua New Guinea', *ACIAR Technical Reports* No. 62, Canberra, 2006

37 *Committee Hansard*, 17 December 2009, p. 64.

access their infinitely better health and other services. When I commenced research at Bensbach in 1995, none of the locals had ever been to Torres Strait; more recently, it is quite common for sick and injured villagers to make the long journey to Boigu Island's clinic.³⁸

11.27 Although his main concern was with health problems due to increased numbers of PNG nationals visiting the region, his suggestion of increased subsistence and cash-producing activities in Western Province could have significant biosecurity consequences for the Torres Strait.³⁹

Climate change

11.28 The 2008 independent review of Australia's quarantine and biosecurity noted that the challenges from climate change were an emerging risk for Australia. It referred to an increased potential for pest and disease incursions as the number of viable natural pathways for exotic pests and diseases increase.⁴⁰ Ms Morris explained that the problems associated with rising sea levels 'will become more acute because of the inundation and because of the difficulties in habitation and then for straight-out biosecurity and security reasons'.⁴¹

11.29 Scientists have suggested that the life cycle of organisms in the region is likely to be influenced because of changes in climate. For example, CSIRO's research indicated that the main biosecurity threat to the Torres Strait Islands comes from climate change and the associated southern movement of key disease-vectoring mosquitoes from PNG and their potential to increase disease type and incidence.⁴² Dr Andy Sheppard, CSIRO, explained that the insects are very sensitive to small environmental changes, so their ability 'to survive and also transmit the diseases will be heavily temperature dependent'. In his opinion, climate data is a key variable that is going to change the impact or the virulence of this problem.⁴³

38 *Submission 30*, p. 1.

39 See also observations made by J.F.Grimshaw et al, 'The value of early detection and internal quarantine boundaries in the management of incursions: some examples in plant protection from northern Australia and Papua New Guinea', *ACIAR Technical Reports* No. 62, Canberra, 2006, p. 154. They noted the large-scale movement of people along the Indonesian archipelago, particularly to Papua (formerly Irian Jaya) which 'was changing the pest, weed, and disease spectrum on that land mass'.

40 Roger Beale et al, *One Biosecurity: A working partnership*, The Independent Review of Australia's Quarantine and Biosecurity Arrangements', Report to the Australian Government, Commonwealth of Australia, 2008, p. 3.

41 *Committee Hansard*, 25 March 2010, p. 40.

42 Dr Sheppard, *Committee Hansard*, 18 December 2009, p. 34.

43 *Committee Hansard*, 18 December 2009, p. 38.

11.30 According to Dr Sheppard, mosquitoes have expanded from PNG since about 2004 to most Torres Strait Islands, which may be linked to climate change.⁴⁴ He could not make a general observation about the risks of exposure as a result of the easy vectoring of diseases in the north because the research was 'very much ongoing'. Although scientists do not have a definitive answer yet, he suggested that if the predictions of those models were realised then, potentially, they would have quite a serious impact on the risks to which people are exposed in the region.⁴⁵ He noted further that while the broadly predicted changes in climate could have 'a significant impact', the predictive capacity is 'hampered by a lack of high-quality observational data'.⁴⁶ In fact, he explained that, because of a perceived level of increased risk, research started only about 12 to 18 months ago. He informed the committee:

So, while we believe the risk is on the increase, we have not been able to take it to the point where we can actually define how it might impact the local community. One reason we cannot do that is because there is a lack of detailed localised climate data that allows us to do climate modelling around the biology of the vector and the interaction between the vector and humans. We have these clear observations that the mosquitoes are on the move and we know about the biology and the interactions between mosquitoes as to how that might change the impact on the diseases, but I am afraid at the moment the rest is rather speculative and it really is dependent upon us having better data for some good biological modelling.⁴⁷

11.31 In summary, he stated:

It is a very complex question because it is not just a question of the impact of the climate change or increasing temperatures on the mosquito populations. It is also about that interaction between the mosquitoes and their ability to transmit the viruses. That is why we have started this research. It is to really bring the virologists and the entomologists back together to better understand the system.⁴⁸

11.32 As noted earlier, changes in climate may affect the life cycle of a range of organisms, and not just mosquitoes. For example, climatic conditions and other physical factors determine the potential for the SWF to survive and increase in number in a geographic area.⁴⁹ In the committee's view, there is a clear need for a comprehensive study of changes in climate and their implications for the Torres Strait as a single but complex ecosystem in the short and long term.

44 *Committee Hansard*, 18 December 2009, p. 33.

45 *Committee Hansard*, 18 December 2009, pp. 38–39.

46 *Committee Hansard*, 18 December 2009, pp. 33–34, 38.

47 *Committee Hansard*, 18 December 2009, p. 37.

48 *Committee Hansard*, 18 December 2009, p. 38.

49 Veronica Boero Rodriguez and Bo Raphael, *Review of the Old World Screw Worm Fly trapping program conducted by AQIS in the Torres Strait*, Bureau of Rural Sciences, July 2008, p. 13.

Conclusion

11.33 A number of exotic weeds, pests or diseases are present in Australia's near northern neighbours that, if introduced into Australia, could cause significant harm to people, animals, plants and other aspects of Australia's unique environment. As the main gateway through which such threats may enter Australia, the Torres Strait is a major biosecurity concern for the country. The region's isolation, low-density and dispersed population, proximity to an international border, geography and climate generate significant challenges for Australia's biosecurity. The free movement of local inhabitants allowed under the Treaty, projected population increase in PNG's Western Province, illegal activities, especially by unauthorised fishers, and climate change add to the difficulties facing those responsible for Australia's biosecurity in the Torres Strait. The following chapter considers how Australia attempts to manage the numerous biosecurity threats that exist in the region.

Chapter 12

Strengthening Australia's biosecurity

12.1 There is little doubt that the introduction of exotic weeds, pests or infectious diseases into Australia poses a considerable threat to the health of its plant and animal life and, ultimately, its economy. Through careful management, Australia's biosecurity regime seeks to minimise the risk of these weeds, pests and diseases entering or gaining a foothold in the region.

12.2 Although the Treaty does not set down specific standards on environmental protection and conservation, it does require PNG and Australia to use their best endeavours to prevent the introduction of fauna or flora that could harm indigenous plant and animal life and to control noxious species.¹ In this chapter, the committee examines the operation of Australia's quarantine and biosecurity regime in the Torres Strait.

Australia's quarantine and biosecurity arrangements

12.3 A recent comprehensive review found that, although Australia has in place sound and effective quarantine and biosecurity arrangements, the system is not perfect. Further, the Executive Director of the Biosecurity Services Group, Rona Mellor, told a conference in March 2010 that Australia's biosecurity status was 'the responsibility of all Australians'. She said:

Each member of the community has a role to play—before the border, at the border and within Australia—to prevent, prepare for, detect and mitigate biosecurity risks, and respond to, manage and recover from biosecurity incidents should they occur.²

12.4 This statement is relevant to the Torres Strait which, as detailed in the previous chapter, presents a number of challenges for biosecurity. In the following section, the committee considers the pre-border, border and post-border measures being taken by Australia to manage the biosecurity risks emanating from the region.

Pre-border measures

12.5 It is in Australia's interest that diseases, pests and noxious weeds should be contained at their place of origin or eliminated before they find their way south of PNG and across the Torres Strait. Thus, Australia's first line of defence against the introduction of invasive species is off-shore at the source of the problem. This involves dealing with the threat wherever it is present in PNG or Indonesia and

1 Article 14.

2 ABARE, Media release, 'Enhancing biosecurity through risk-based intervention', 2 March 2010, http://www.abareconomics.com/corporate/media/2010_releases/ol_2mar_2_10.html (accessed 15 May 2010).

educating people so that they do not carry something into the Torres Strait that poses a threat to plant or animal life in the region.

Intelligence

12.6 It is critical for Australia's quarantine agencies to have a good understanding of the potential biosecurity threats that exist in PNG and Indonesia. For example, a 2008 report that reviewed Australian Quarantine and Inspection Service's (AQIS) surveillance program found that one of the largest unknowns was 'the SWF and host density in the south-western PNG, especially in and around the treaty villages and hence the probability or risk of a SWF incursion into the Torres Strait'. It recognised the difficulty of quantifying the risk without the necessary data or information and stated that it was 'imperative that AQIS gain a greater understanding of the risks posed by SWF in southern coastal PNG'. The report recommended that 'some SWF monitoring be implemented in southern coastal PNG, including SWF trapping and systematic myiasis monitoring of local livestock in the Treaty villages'.³

12.7 With regard to this important area of off-shore monitoring and surveillance, DAFF informed the committee that it conducts animal and plant health survey activities in PNG to manage pre-border quarantine risks in the Torres Strait. The Office of the Chief Veterinary Officer (OCVO) and the Office of the Chief Plant Protection Officer (OCPPO) co-ordinate collaborative activities with the PNG Government so that the biosecurity agencies have a better idea of threats and how to respond promptly should an incident occur.⁴ For example, the surveillance activities in PNG that OCPPO coordinates jointly with PNG's National Agricultural Quarantine and Inspection Agency (NAQIA) provide 'invaluable intelligence on these countries' animal health status, thereby forewarning Australia of new or emerging threats in our northern region'. DAFF explained further:

Early warning enables timely implementation of risk mitigation measures where appropriate, and greatly improves the success of subsequent control and eradication programs. In addition, the strong support gained from the neighbouring countries through these activities strengthens relationships and facilitates the exchange of pest and disease information between these countries and with Australia.⁵

12.8 Avian influenza (AI) provides a case study of the type of monitoring that Australia undertakes. As noted in the previous chapter, the movement of nomadic waterfowl between northern Australia and PNG provides a potential route for the introduction of AI and other disease agents into Australia. The Northern Connections project, which studied the movement of birds between Australia and its northern

3 Veronica Boero Rodriguez and Bo Raphael, *Review of the Old World Screw Worm Fly trapping program conducted by AQIS in the Torres Strait*, Bureau of Rural Sciences, July 2008, p. 31.

4 Dr Carroll, *Committee Hansard*, 17 December 2009, p. 63 and DAFF, *Submission 13*, p. 9.

5 DAFF, *Submission 13*, p. 9.

neighbours, involved satellite tracking of birds in PNG and DNA sampling of birds on both sides of the Torres Strait.⁶ According to Animal Health Australia, wild-bird surveillance and laboratory programs, which enhance Australia's diagnostic and surveillance capacity for detecting AI, would continue in 2009.⁷ Dr Carroll also cited DAFF's investment of 'quite a lot of resource' in helping PNG control and eradicate an outbreak of a very virulent form of Newcastle disease that occurred at the top of the country.⁸

12.9 Any type of monitoring or surveillance activity in PNG or Indonesia intended to identify potential threats to Australia's northern area requires the cooperation of the relevant country. For example, DAFF noted that access to Indonesia for surveillance activities can be erratic due to political turbulence.⁹ Based on previous inquiries, the committee appreciates the importance of the Australian Government and research institutions maintaining close links through joint endeavours and people-to-people contacts as a means of overcoming political difficulties that could otherwise disrupt worthwhile projects.¹⁰ The committee recognises and supports the work of people such as the Chief Veterinary Officer and the Chief Plant Protection Officer that helps to build these necessary institutional networks.

Containing threat

12.10 Understanding and identifying a biosecurity risk off-shore is only the first step to minimising its potential to cause harm in Australia. The next stage is to contain or eradicate the threat. Indeed, as noted by Dr Carroll, the more diseases there are in Australia's northern neighbours and 'the less they are controlled the more pressure is put on diseases to jump across and then island-hop or even move directly to the mainland'.¹¹

Off-shore capacity building—PNG side

12.11 The capacity or political willingness of Australia's nearest neighbours to contribute to activities designed to contain or eliminate biosecurity threats affects the success of Australia's quarantine programs. For example, DAFF noted that PNG's

6 Daff, *Submission 13*, p. 9; Animal Health Australia, *Animal Health in Australia*, 2008, 2009, p. 73, http://www.animalhealthaustralia.com.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=518AA619-046C-2E4B-55AE-DED5E23F1F8A&siteName=aahc (accessed 4March 2010).

7 Animal Health Australia, *Animal Health in Australia*, 2008, 2009, p.72, http://www.animalhealthaustralia.com.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=518AA619-046C-2E4B-55AE-DED5E23F1F8A&siteName=aahc (accessed 4March 2010).

8 *Committee Hansard*, 17 December 2009, p. 64.

9 *Submission 13*, p. 9.

10 See in particular, Standing Committee on Foreign Affairs, Defence and Trade, *Australia's public diplomacy: building our image*, August 2007, Chapter 7.

11 *Committee Hansard*, 17 December 2009, p. 63.

quarantine service, NAQIA, has major capacity constraints delivering its core functions in animal health and quarantine. Most notably, PNG has a critical shortage of qualified personnel, especially veterinarians, as well as poor infrastructure.¹² Dr Carroll similarly noted that the resources for capacity building in these areas are always stretched in PNG.¹³

12.12 DAFF's relationships with NAQIA and PNG's Ministry of Agriculture and the quarantine service in Indonesia are intended to build capacity. Mr Paul Morris, DAFF, noted that in addition to the animal and plant health surveillance conducted in PNG, the department also:

...engages in collaborative activities with the PNG government with the objective of enhancing its capacity to monitor and manage existing and emerging quarantine risks of potential impact to PNG and Australian territories, including the Torres Strait.¹⁴

12.13 DAFF outlined the work that the OCPPO and OCVO undertake with NAQIA and Indonesia's MOA (Directorate General of Horticulture) to strengthen regional biosecurity and quarantine capacity and reduce the risk of pest and disease incursions into Australia. The surveillance and biosecurity capacity-building activities undertaken in those countries include animal disease surveys, public awareness programs and training. Their aim is to enhance PNG's capacity to monitor and manage existing and emerging quarantine risks to PNG and Australian territories, including the Torres Strait.¹⁵ According to DAFF, collaboration between Australia and PNG is supported by both departmental and AusAID funding.¹⁶

AusAID

12.14 AusAID provides funding for DAFF for a range of activities in both PNG and Indonesia. For example, Dr Carroll explained:

We are trying to investigate various things with AusAID, particularly under the Strongim Gavman Program, to try to get veterinarians over there and to train locals through universities here. It is a long and difficult process.¹⁷

12.15 OCPPO manages the AusAID Papua New Guinea Australian Quarantine Twinning Scheme (PAQTS). This scheme commenced in March 2007 and was to

12 Animal Health in Australia (2010), *Animal Health in Australia 2009*, Canberra, Australia, p. 107.

13 *Committee Hansard*, 17 December 2009, p. 64.

14 Mr Paul Morris, *Committee Hansard*, 17 December 2009, pp. 49–50.

15 DAFF, *Submission 13*, p. 8.

16 DAFF, *Submission 13*, pp. 8–9.

17 *Committee Hansard*, 17 December 2009, p. 64. The committee discussed the Strongim Gavman Program in detail in its report, *Economic Challenges facing Papua New Guinea and the island states of the southwest Pacific*, November 2009, pp. 236–9.

continue to 30 June 2010. Its objective was to strengthen regional biosecurity and quarantine capacity and assist NAQIA to address some of its capacity constraints. Funding for the period was \$1.5 million. Some of PAQTS activities included:

- addressing PNG's need for more veterinarians through veterinary case development;
- training in plant and animal pest and disease surveillance; and
- implementing a surveillance and control program in the Eastern Highlands of PNG in response to a new pathogenic form of the honeybee mite, *Varroa Jacobsoni*. The pest was identified in an AQIS survey of PNG and Indonesian Papua in July 2008.¹⁸

12.16 The Queensland Government is also developing projects to improve biosecurity capability in PNG to reduce the risk to Torres Strait.¹⁹

Research institutes

12.17 Research institutes provide important linkages and networks that assist in gaining a better understanding and early knowledge of emerging and continuing threats to Australia's biosecurity as well as in building capacity off-shore. Professor John Mackenzie noted in particular the importance of developing informal person-to-person linkages with colleagues overseas, perhaps through joint research programmes. He suggested that important early knowledge may be gained:

...through better international linkages at the person-to-person level, particularly through common research interests but also through increased capacity building and training in regional laboratories to better detect, diagnose and respond to new, potential threats.²⁰

12.18 In his view, if Australia were 'much more proactive through AusAID, the Australian Centre for International Agricultural Research (ACIAR), and other aid-funding mechanisms', they could 'help provide a basis for building these different networks and other linkages which are going to be so important...in the future'.²¹ This observation reinforces similar observations by the committee in previous reports about

18 DAFF, *Submission 13*, pp. 10–11.

19 Queensland Government, *Submission 20*, p. 8.

20 Professor John Mackenzie, Professor of Tropical Infectious Diseases, Curtin University of Technology, Perth, 'Emerging viral diseases: what are the threats and how should we respond?', *Safeguarding Australia 2007–2008, Public Lectures*, Australian Academy of Science, 4 September 2007.

21 Professor John Mackenzie, Professor of Tropical Infectious Diseases, Curtin University of Technology, Perth, 'Emerging viral diseases: what are the threats and how should we respond?', *Safeguarding Australia 2007–2008, Public Lectures*, Australian Academy of Science, 4 September 2007. ACIAR is a statutory authority that operates as part of the Australian Government's development cooperation programs. ACIAR's website, <http://aciar.gov.au/>

the value in strengthening people-to-people links with PNG and assisting it build local capacity across a range of sectors.²²

Committee view

12.19 One of the dominant themes to emerge from this inquiry so far is that in many cases, when dealing with problems facing the Torres Strait, PNG must be involved as a cooperative and active partner. Furthermore, while cooperation and collaboration with PNG is important in meeting challenges, PNG is often constrained in making a contribution by its lack of resources. Thus, in areas such as biosecurity, one of Australia's key priorities is to promote greater awareness of threats and garner PNG's support to help control or eradicate them. Australia must also help PNG build capacity so that it can effectively work with Australia in combating threats to the region.

12.20 The committee's recommendations in chapter 10 designed to encourage greater involvement of PNG villagers in local conservation activities are also relevant to strengthening biosecurity in the region.

Education and awareness

12.21 Another precaution against the spread of unwanted pests or disease is to use education to discourage people from bringing prohibited goods into the Torres Strait. The Treaty recognises Australia's and PNG's right to apply such immigration, customs, health and quarantine measures, temporary or otherwise, as they consider necessary to meet problems that may arise.

In particular each Party may apply measures to limit or prevent free movement, or the carriage of goods, plants or animals in the course thereof, in the case of an outbreak or spread of an epidemic, epizootic or epiphytotic in or in the vicinity of the Protected Zone.²³

12.22 Both countries, however, are required by Article 16 to apply these procedures 'in such a way as not to prevent or hinder free movement or the performance of traditional activities by traditional inhabitants'. The Treaty stipulates that 'otherwise, normal customs and quarantine safeguards apply in the Torres Strait'.²⁴

Quarantine zones and prohibited items

12.23 In this regard, Australia has imposed restrictions on the movement of goods and animals deemed to be a threat to Australia's biosecurity. Certain animals, plants and products are not allowed to be brought into the quarantine zones. Mr Chapman, DAFF, noted that the structure of the Torres Strait Protected Zone and the quarantine

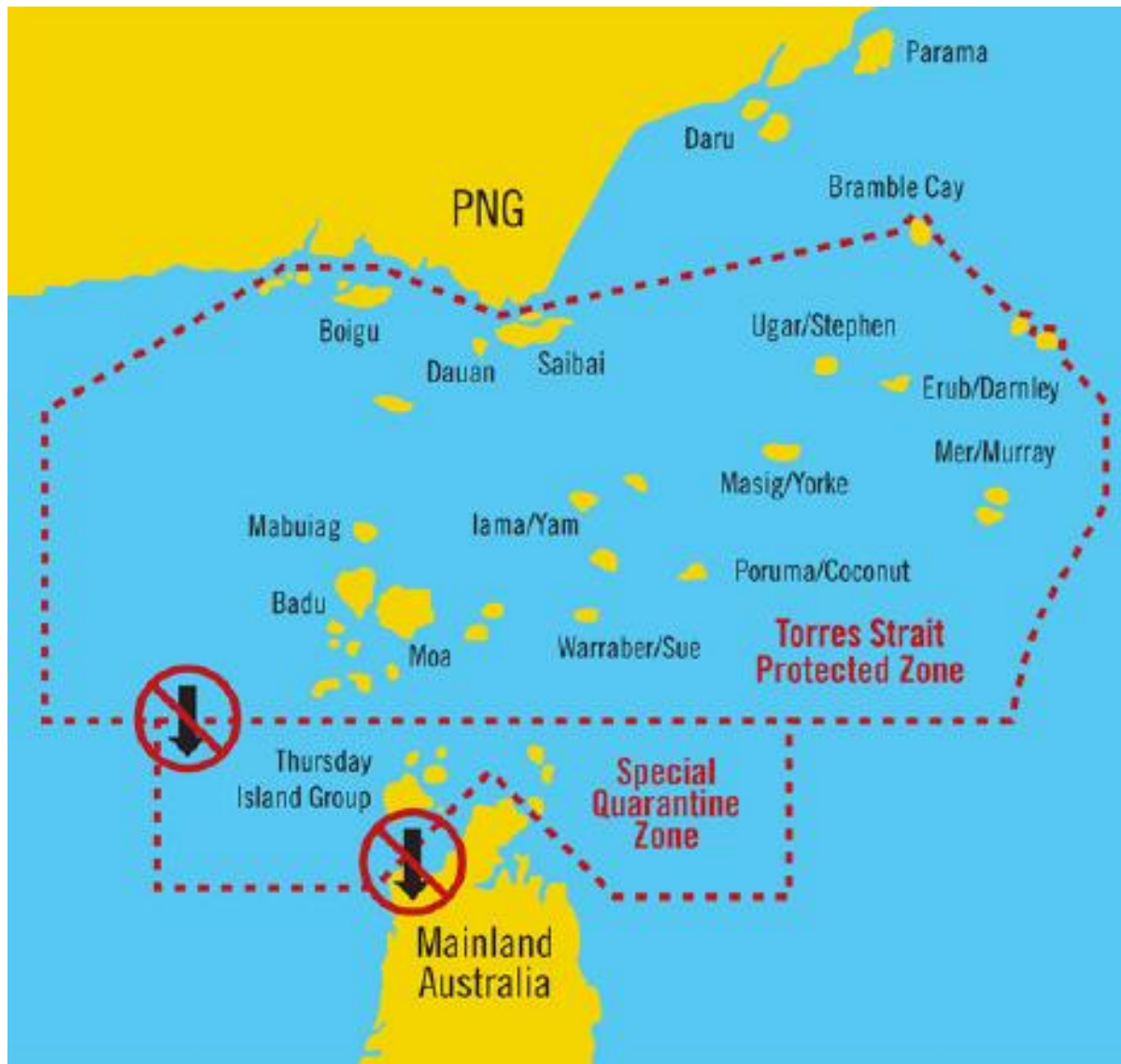
22 Foreign Affairs, Defence and Trade References Committee, *Economic Challenges facing Papua New Guinea and the island states of the southwest Pacific*, November 2009, chapter 6.

23 Article 16(c).

24 See also Australian Customs and Border Protection Service, *Submission 14*, p. 6.

zones provides a series of filters designed to prevent the southward movement of any problem items. The following illustration shows the quarantine zones that operate in the Torres Strait.²⁵

Figure 12.1: Quarantine zones in the Torres Strait



12.24 Traditional inhabitants are allowed to trade fish, crab, clean feathers (no skin), pandanus mats, baskets and skirts, carved wood, shells, beads, processed sago and coconut without the husk.²⁶ Mr Murphy explained to a House of Representatives committee:

25 *Committee Hansard*, 17 December 2009, p. 63. DAFF website, http://www.daff.gov.au/_data/assets/pdf_file/0011/790805/special-laws-torres-strait.pdf (accessed 12 January 2010). The image copied courtesy of DAFF.

26 Australian Government, *Protect our island homes, Vital quarantine information*, DAFF, p. 13, http://www.daff.gov.au/_data/assets/pdf_file/0017/120761/naqs_topwatch.pdf

Fresh meat cannot be brought across but seafood can. There are magpie geese that fly back and forth between the swamps of Saibai and the mainland of New Guinea. If you shoot one in Saibai you are allowed to eat it but if you shoot it over there you are not allowed to bring it across to eat in the islands.²⁷

12.25 To comply with these regulations, traditional visitors from PNG need to be fully aware of them. Mr Chapman noted that over a number of years, there has been 'a very strong community education program dealing with quarantine matters in the Torres Strait'. As part of this important education program, AQIS publishes pamphlets that explain clearly Australia's quarantine laws and provide illustrations of items that are not permitted into Australia without proper clearance.²⁸

Figure 12.2: Quarantine poster—products that cannot be moved around the Torres Strait



(Images courtesy of Department of Agriculture, Fisheries and Forestry)

27 House of Representatives, Standing Committee on Aboriginal and Torres Strait Islander Affairs, Reference: Community stores in remote Aboriginal and Torres Strait Islander communities, *Committee Hansard*, 5 February 2009, p. 7.

28 *Committee Hansard*, 17 December 2009, p. 52. See <http://www.daff.gov.au/aqis/about/public-awareness/top-watch/posters> (accessed 12 January 2010).

Treaty awareness visits

12.26 Quarantine officers in the Torres Strait also participate regularly in Treaty awareness visits to PNG Treaty villages that are designed, *inter alia*, to promote understanding of, and compliance with, Australian quarantine requirements. Mr Young informed the committee that these visits, which have been running since the 1980s, were bilateral, multi-agency delegations, coordinated by DFAT.²⁹ Representatives from DIAC, AQIS, TSRA, AFP, QPS, AFMA, DoHA, DEWHA, DAFF, Queensland Health, ADF, and their PNG counterparts may accompany the Australian and PNG Liaison Officers on these visits.³⁰

12.27 This outreach program to communities on both sides of the border is intended to make sure that the requirements, obligations and responsibilities of people under the Treaty are well understood.³¹ Mr Young explained that, because quarantine and customs regulations change over time, part of the Treaty awareness visits is to talk about the requirements that visitors to Australia need to satisfy.³²

12.28 The delegations seek to visit all Treaty communities annually to convey information about the Treaty provisions, receive enquiries on technical Treaty matters, and resolve issues arising from the Treaty.³³ Mr Young noted, however, that while the intention was to visit each village once a year, visits were 'fairly sporadic rather than regular' due to remoteness, coupled with unsurveyed waters, dangerous seas, reefs and so forth.³⁴ He explained that it could take two or three years, for instance, to get back to a community.³⁵ The *Guidelines for Traditional Visitors*, which inform PNG villagers about prohibited items, are distributed among the villagers.

12.29 According to Mr Chapman, the education programs have helped to achieve a high degree of awareness on both sides of the border, which has led to 'very high levels of compliance'. He also drew attention to the valuable contribution that quarantine officers, who are local people on the islands, make to securing the integrity of the border. In his view, they are respected members of these small communities who understand the importance of quarantine measures, 'so there are very high levels of awareness'.³⁶

29 *Committee Hansard*, 12 December 2009, p. 12.

30 Department of Foreign Affairs and Trade, *Submission 23*, p. 8.

31 Mr Jeremy Bruer, *Committee Hansard*, 18 December 2009, p. 9.

32 *Committee Hansard*, 18 December 2009, p. 12.

33 Mr Stephen Allen, *Committee Hansard*, 17 December 2009, p. 14.

34 *Committee Hansard*, 18 December 2009, p. 12.

35 *Committee Hansard*, 18 December 2009, p. 12.

36 *Committee Hansard*, 17 December 2009, p. 52.

At the border—enforcement

12.30 If pre-border measures fail to contain a biosecurity threat, the next line of defence is at the border crossing where Australia enforces its quarantine regulations. According to Mr Morris, DAFF dedicates significant resources to the identification and management of quarantine risks in and to the Torres Strait region.

12.31 DAFF runs a program called the Northern Australia Quarantine Strategy (NAQS) which is based primarily in Darwin and Cairns. A component of this program operates from a base on Thursday Island with seven staff and at least one person based permanently on each of the inhabited outer islands.³⁷ They are permanent employees, with all but one locally engaged which, according to Mr Chapman, is 'a key issue for the success of our operations up there'.³⁸ The department's 2008–09 Annual Report stated that AQIS has five officers stationed permanently on the three most northerly islands—Boigu, Saibai and Dauan—and around 20 officers on the remaining 12 islands. One of their key tasks is to clear passengers and cargo boarding boats and aircraft travelling south.³⁹

Vessel checks

12.32 Quarantine officials inspect every vessel that arrives at one of the designated entry points and the goods carried by people disembarking. Even traditional visitors have their goods checked by quarantine officers before bringing them ashore. They are required to 'arrive at designated entry points, within specified entry times and present themselves for clearance' by Immigration and AQIS officers.⁴⁰ Signs are located at the designated entry points on Boigu and Saibai that clearly illustrate items that cannot be brought ashore.

12.33 The entry checks are intended to ensure that items likely to carry unwanted pests and diseases are free of them.⁴¹ Similarly, people leaving one of the outer islands to go to Thursday Island are inspected to ensure they do not bring with them material not permitted to be carried between the zones.⁴²

12.34 The freedom of movement of traditional inhabitants creates some difficulties for quarantine officials. As noted in previous chapters, traditional inhabitants do not always land at the designated entry point nor arrive during set business hours. Mr

37 *Committee Hansard*, 17 December 2009, pp. 50–1

38 *Committee Hansard*, 17 December 2009, pp. 50–51 and Mr Paul Morris, *Committee Hansard*, 17 December 2009, p. 49.

39 Department of Agriculture, Fisheries and Forestry, *Annual Report 2008–09*, 'Managing pest and disease', 1.4.

40 Department of Immigration and Citizenship, *Submission 16*, p. 7.

41 Mr Chapman, *Committee Hansard*, 17 December 2009, p. 62.

42 Mr Chapman, *Committee Hansard*, 17 December 2009, p. 52.

Chapman noted that while AQIS officers work a normal day, the arrival of traditional inhabitants is 'sporadic and uncertain' with no estimated time of arrival for the boats provided. He explained that with unexpected arrivals one of two things occurs:

...either the people arrive and say, 'We are here,' or people in the local community will say that a boat has just arrived. The small community and the high level of understanding of our requirements mean that invariably happens. But in most cases, especially on the islands that are closer to PNG, people know when the boat is going to come across each day. There are always going to be exceptions to that, but patterns of behaviour and high levels of understanding mean that, as far as I am aware, there are very few instances where a boat would arrive without our officers being aware of it.⁴³

12.35 Mr Chapman also reported that immigration and border protection personnel have a good and close working relationship—that, even though each agency is pursuing its own responsibilities, they look out for each other and provide support when necessary.⁴⁴ He explained:

So while Immigration would carry out their functions when a traditional vessel turns up, our officer will be there and will have a look at any artefacts they might be carrying to make sure they do not have pests in them and they will make sure that they are not carrying with them goods which cannot move either from PNG into the Torres Strait protected zone or from the Torres Strait protected zone into the special quarantine zone.⁴⁵

12.36 Mr Allen, DIAC, noted similarly that their monitoring officers do some sharing of responsibilities with AQIS officers in the region.⁴⁶ Indeed, the *Guidelines for Traditional Visitors* advise that should AQIS officers not be present, 'the Immigration MMOs can check you and your dinghy for quarantine purposes'.

43 *Committee Hansard*, 17 December 2010, pp. 51–2.

44 *Committee Hansard*, 17 December 2009, p. 51.

45 *Committee Hansard*, 17 December 2009, p. 51.

46 Mr Stephen Allen, *Committee Hansard*, 17 December 2009, p. 18.





AQIS officers inspecting goods brought ashore on Saibai by traditional visitors from PNG

12.37 While Australian officials were relatively confident that the screening process for visiting PNG nationals worked well, evidence from local leaders conveyed a different picture about the effectiveness of immigration and quarantine checks at the border on the islands close to PNG. At the community meeting on Saibai, local leaders

told the committee of the 'influx of people coming over from PNG, sometime under cover of darkness and hard to detect'. They wanted more local enforcement on the ground and asked 'why not treat this border like other international borders'.⁴⁷ Mr Ned David, Director, Magani Lagaugal, Registered Native Title Body Corporate stated that many people could speak about PNG people walking 'in and out of the Torres Strait any time they like'.⁴⁸ He informed the committee that he had visited Saibai many times and had seen no one policing arrivals. In his experience:

People are quite free to come across and sell anything. So if we are interested in ensuring that this treaty is working as it should then these sorts of things should be reviewed and some real changes made.⁴⁹

12.38 In the chapter on law and order, the committee considered the undetected entry and unauthorised visits of PNG nationals. It found that there was a definite difference in perceptions about the effectiveness of Australia's border screening process in the Torres Strait. The same difference is apparent when it comes to quarantine checks—some traditional leaders clearly believe that PNG visitors can come ashore anytime unnoticed by authorities and remain on islands in the Torres Strait. On the other hand, government officials expressed faith in the effectiveness of the quarantine regime.

Illegal fishing

12.39 Illegal fishers or poachers in the Torres Strait pose a significant biosecurity threat because they successfully breach the border crossing without undergoing any checks and are determined to avoid detection. As noted in the previous chapter, illegal fishing goes beyond the activities of traditional inhabitants from PNG carrying out illegal or unauthorised activities in the Torres Strait region. Vessels, some from Indonesia, also enter the strait to fish on a more commercial scale.

12.40 According to DAFF, the Australian Government has set about establishing a strong deterrence regime against illegal foreign fishing in Australia's northern waters. It has two main prongs: addressing the illegal fishing problem at source, through education and awareness-raising; and direct enforcement, through vessel detection, apprehension, and the prosecution of illegal fishers.⁵⁰ The committee has considered the education programs and now looks at the detection and apprehension of suspicious vessels.

12.41 Animal Health Australia noted that since 2006, the Australian Government had placed a high priority on quarantine surveillance associated with illegal foreign

47 Information conveyed to committee during meeting on Saibai, 23 March 2010.

48 *Committee Hansard*, 24 March 2010, p. 34.

49 *Committee Hansard*, 24 March 2010, p. 34.

50 DAFF, *Submission 13*, p. 19.

fishing activity.⁵¹ Evidence suggests that these deterrent activities have 'made a significant impact on the level of that activity'.⁵² Customs' 2008–09 Annual Report confirmed the trend:

The deterrent effect of enforcement efforts over the last two years has seen a reduction in illegal fishing activity in Australia's northern waters to the point where large concentrations of vessels sit just beyond the Australian Exclusive Economic Zone boundary, undertaking frequent shallow incursions into Australian waters.⁵³

12.42 While the decrease in the number of foreign fishing boats in the Torres Strait region reduces the biosecurity threat, the observation that 'large concentrations of vessels' sit just beyond Australia's boundaries underlines the importance of Australia maintaining a high level of vigilance.

12.43 As noted in chapter 9, Australia's maritime surveillance activities are not confined to illegal fishers; they are used to detect and deter people engaged in a range of activities, including people smuggling and drug or gun running. These matters and the deterrence regime for organised crime are discussed later in greater detail when considering the work of the Australian Customs and Border Protection Service.

Summary

12.44 The committee notes the potential harm that could result from any weakness or breakdown in quarantine processes at the border in the Torres Strait. Australian border protection agencies have a multi-pronged approach to prevent the introduction of harmful weeds, pests or diseases. These include surveillance and monitoring activities in PNG and Indonesia; programs to build capacity on the PNG side so that it can better manage biosecurity threats; education programs to raise awareness of the importance of observing quarantine regulations; and screening processes at the border to stop the importation of any weeds, pests or diseases.

Post-border activities

12.45 Despite pre-border and border efforts to prevent the entry of noxious weeds, pests or disease, incursions do occur. Should such an incident happen in the Torres Strait, a prompt and effective response is required.

Surveillance

12.46 The post-border biosecurity risks in the Torres Strait are exacerbated by the remoteness of the region, lack of extensive infrastructure and difficulties putting in

51 Animal Health Australia, *Animal Health Australia 2009*, Canberra, 2010, p. 62.

52 Australian Customs Service, *Annual Report 2006–07*, Australian Government, p. 121.

53 Customs and Border Protection Service, *Annual Report 2008–09*, Australian Government, p. 62.

place sophisticated quarantine treatments. Both in the Torres Strait and in the Cape York region, there are very low population densities, which mean that if something harmful does gain a foothold, it has the opportunity to develop and multiply before being identified. Also some pests, such as papaya fruit fly, are hard to detect, especially during the early stages of their development, and may not be discovered at border inspection.⁵⁴ They increase in numbers rapidly and can disperse quickly over large distances.⁵⁵

12.47 As noted in the previous chapter, pest infestations can result in substantial losses in production, restrict market access and damage the environment.⁵⁶ Moreover, destroying an infestation of harmful exotic pests can be expensive. For example, the eradication costs dealing with the 1995 outbreak of papaya fruit fly in Queensland was estimated to be 'roughly AU\$43 million'.⁵⁷ Thus, timely detection remains the best protection against damaging incursions.

12.48 While DAFF staff on Thursday Island look after border management matters, scientific staff in either Darwin or Cairns undertake specific survey work in the Torres Strait for particular pests or diseases in conjunction with the operational border-management staff in the Torres Strait.⁵⁸ For example, DAFF has quite extensive insect trapping regimes on the islands closest to PNG to identify the prevalence of insect pests. Mr Chapman informed the committee that 'potential risks are well recognised and there are quite extensive surveillance activities, border management activities and community education activities which are all designed to minimise that risk'.⁵⁹ For example, in 2009, surveillance relating to AI included 'sample collection and testing of more than 1,000 migratory waders and waterfowl across northern Australia and domestic poultry in the Torres Strait'.⁶⁰ The Northern Australian Quarantine Strategy (NAQS) division continues to undertake limited monitoring for transmission of JE in the Torres Strait and mainland Australia.

54 Tom Kompas, ANU, 'The Economics of Biosecurity: Risk, Returns, Quarantine and Surveillance', Australian Centre for Biosecurity and Environmental Economics, National Outlook Conference, 2010, http://www.abare.gov.au/outlook/_download/bio_kompas.ppt (accessed 4 August 2010)

55 Tom Kompas and Nhu Che, 'A Practical Optimal Surveillance Measure: The Case of Papaya Fruit Fly in Australia', Australian Centre for Biosecurity and Environmental Economics, Canberra, 2009, p. 14.

56 Tom Kompas and Nhu Che, 'A Practical Optimal Surveillance Measure: The Case of Papaya Fruit Fly in Australia', Australian Centre for Biosecurity and Environmental Economics, Canberra, 2009, p. 7.

57 Tom Kompas and Nhu Che, 'A Practical Optimal Surveillance Measure: The Case of Papaya Fruit Fly in Australia', Australian Centre for Biosecurity and Environmental Economics, Canberra, 2009, p. 23.

58 Mr Chapman, *Committee Hansard*, 17 December 2009, pp. 50–51.

59 *Committee Hansard*, 17 December 2009, p. 63.

60 Animal Health in Australia, *Animal Health in Australia 2009*, Canberra, 2010, Australia, p. 62.

12.49 Surveillance for SWF and fruit fly provides an example of Australia's early-warning approach to identifying incursions. Sentinel animals/herds and extensive and targeted adult trapping are used as key detection tools.⁶¹ One of the duties of AQIS officers on the northern-most islands in the Torres Strait includes clearing fruit fly and SWF traps and spraying any detected fruit flies. With regard to the sentinel herd, Mr Chapman explained that usually it consists of about three pigs that are tested every week to determine if anything is happening to the animal population and whether any infestations are moving southwards.⁶² Referring to SWF, Animal Health Australia provided advice that:

Although long and intensive monitoring has confirmed that there is not a major risk (except for the possibility of an infested animal being illegally transported from countries to Australia's north), vigilance needs to be maintained.⁶³

12.50 This observation applies to all surveillance activity in the northern part of Australia.

Working with Queensland quarantine

12.51 The Biosecurity Queensland group of the Queensland Department of Primary Industry and Fisheries (QDPIF) administers animal biosecurity in the Queensland tropics. It conducts surveillance activities for exotic pests and diseases across tropical north Queensland, which includes Cape York Peninsula, the Torres Strait and the Gulf of Carpentaria. It also conducts targeted surveillance for high-risk pests and diseases through seasonal surveys at specific locations through Cape York.

12.52 Research institutions contribute to this surveillance activity. Ms Morris, MTSRF, explained that they are doing better monitoring and assisting Biosecurity Queensland with this type of activity in the Torres Strait. She noted:

It is very expensive to put researchers in the field so if researchers are there they do collect data for other players, with the joined up government happening there. That is excellent.⁶⁴

12.53 The Queensland Government also works with NAQS on surveillance and response programs in the Torres Strait and investigates unusual pest disease events.⁶⁵ According to DAFF, the Queensland Department of Employment, Economic Development and Innovation (DEEDI) and AQIS are maintaining a watching brief on

61 Australian Veterinary Emergency Plan (AUSVETPLAN), 'Disease strategy: Screw-worm fly (Version 3.0)', Canberra, 2007, p. 45.

62 *Committee Hansard*, 17 December 2009, p. 63.

63 Australian Veterinary Emergency Plan (AUSVETPLAN), 'Disease strategy: Screw-worm fly (Version 3.0)', Canberra, 2007, p. 18.

64 *Committee Hansard*, 25 March 2010, p. 40.

65 Queensland Government, *Submission 20*, p. 8.

detected outbreaks of the Mango Leaf Gall Midge, Red Banded Mango Caterpillar, Vegetable Leafminer and Spider Mite. The activities complement those of other programs, such as border security and quarantine barrier activities undertaken by AQIS. Queensland Health continues to work closely with AQIS in relation to the risks of JE in the region.⁶⁶

12.54 In its submission, the Queensland Government strongly supported a more collaborative approach to national biosecurity issues, as recommended in the Beale Report, including activities in the Torres Strait.⁶⁷ In this regard, it welcomed the Australian Government's re-establishment of the NAQS Steering Committee with representation from relevant agencies.⁶⁸

12.55 Australia also has an Emergency Plant Pest Response Deed that was established in 2006. It underpins national decision making regarding emergency plant pest responses in Australia. The Australian Government and Queensland biosecurity authorities join forces to coordinate response actions for such an emergency in the Torres Strait area through to the north of Cape York.

Public awareness and community engagement

12.56 Whether the threat comes from the introduction of a weed, pest or disease through human activity or through natural migration, local knowledge and engagement is vital to identifying and containing unwanted incursions.

12.57 In addition to its education programs designed to stop people bringing prohibited goods or products into Australia, AQIS also engages with local communities in the Torres Strait to inform them about post-border biosecurity measures. Animal Health Australia noted that a significant proportion of NAQS activities associated with quarantine risks were undertaken in collaboration with Indigenous communities. It cited their involvement in brokering access for NAQS survey teams to Indigenous land, sampling feral animals, pest trapping and coastal patrol activities.⁶⁹

12.58 The Queensland Government also conducts education and awareness-raising activities with producers and landholders to encourage them to report unusual pest or disease findings.⁷⁰ For example, Biosecurity Queensland uses its expertise to educate and provide training to government and non-government personnel in areas such as

66 DAFF, Annual Report 2008–09, 'Managing pest and disease risk', 1.4, and Animal Health Australia, *Animal Health in Australia*, 2008, 2009, p. 62, http://www.animalhealthaustralia.com.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=518AA619-046C-2E4B-55AE-DED5E23F1F8A&siteName=aahc (accessed 4 March 2010).

67 The committee referred to this report in paragraph 11.1.

68 Queensland Government, *Submission 20*, p. 8.

69 Animal Health Australia, *Animal Health Australia*, 2009, Canberra, 2010, p. 62.

70 Queensland Government, *Submission 20*, p. 8.

the management and minimisation of zoonotic disease, emergency pest and disease incident management, decontamination, movement controls, sample collection, and identification and reporting of suspect animal pests or diseases.⁷¹

12.59 While education is important, it does not necessarily mean people act on the information.⁷² One study noted that public awareness campaigns on SWF resulted in an initial increase in submissions of larvae of SWF, which declined over time, 'suggesting that community members become complacent unless the awareness is continually raised'.⁷³ This observation relates back to the observation by Animal Health Australia about the need for constant vigilance (paragraph 12.49–12.50). Ms Morris reinforced this message, stating that Australia needs to 'be increasingly alert in that region' which requires 'more monitoring, more awareness of what is moving and how and more education' in the communities about biosecurity'.⁷⁴

12.60 The committee has highlighted the important role of community management plans in conservation. These plans also recognise the threat that incursions of exotic weeds, feral animals and disease organisms pose to the health of native plant and animal populations. Thus, local community participation in these management plans is also of benefit to biosecurity in the Torres Strait and could provide another means of strengthening the capacity on the PNG side to manage biosecurity threats. The committee's recommendations regarding government support for the community management plans and for involving PNG villagers in their development and implementation also apply to biosecurity.

Minimising the risk of infestation in local communities

12.61 An area where awareness raising and education appear to have fallen down is in regard to the restrictions placed on the farming activities of local communities in the Torres Strait. The TSIRC informed the committee that environmental laws and regulatory bodies are preventing local inhabitants from sourcing their own food locally. It indicated that communities were not able to farm pigs, chickens and so forth: that they were being deprived of 'the right to stay alive and to create economic wealth'.⁷⁵

71 Animal Health Australia, *Animal Health in Australia, 2008*, Canberra, 2009, p. 61. http://www.animalhealthaustralia.com.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=518AA619-046C-2E4B-55AE-DED5E23F1F8A&siteName=aahc (accessed 4 March 2010).

72 See Fiona Sinclair, 'Pest and Vector Control: Badu, Torres Strait Australia', *Journal of Rural and Tropical Public Health*, vol. 5, Centre for Public Health and Tropical Medicine, James Cook University, p. 65.

73 Veronica Boero Rodriguez and Bo Raphael, *Review of the Old World Screw Worm Fly trapping program conducted by AQIS in the Torres Strait*, Bureau of Rural Sciences, July 2008, p. 23.

74 *Committee Hansard*, 25 March 2010, p. 42.

75 TSIRC, *Submission 9*, p. 4.

12.62 Dr Carroll did not think there were any complete prohibitions on the holding of animals but that certain practices were encouraged in the Torres Strait. He explained that people have to comply with quarantine requirements when moving from one zone to another; and that a product 'not allowed to move into the mainland is not allowed to move around Torres Strait either'.⁷⁶ He did note, however:

One of the risks can be if there are susceptible species on the island. Particularly for pests that can move naturally and island hop even having a species there can create a quarantine risk. If you were to establish a large pig herd on an island they could act as a spot where diseases such as classical swine fever if it were to get into Papua New Guinea...could move across and infest. That is why we pay particular attention to what is held on the islands because they can pose a quarantine risk by posing a susceptible population that could become infected.⁷⁷

12.63 In light of the concerns raised by the TSIRC about certain farming restrictions in the region, the committee suggests that DAFF should look closely at the information and education programs it delivers in the Torres Strait.

Committee view

12.64 There is little doubt that early knowledge and detection of the presence of biosecurity threats is crucial to eradicating or minimising their damaging effects. Building capacity in local communities to detect and contain the spread of such pests or diseases should be an important component in Australia's quarantine regime. In this regard, the committee recognises the valuable work of committed Indigenous quarantine officers who have the knowledge and training required to effectively police the movement of people and goods across the border, and to engage in public education on quarantine restrictions. It also notes the potential that the community management plans have for strengthening the local contribution to biosecurity. In this regard, the committee refers to recommendations in chapter 10 which place a heavy emphasis on involving local communities in research projects. These recommendations apply with equal force to strengthening the capacity of local communities to detect and prevent the spread of unwanted weeds, pests or diseases in their localities.

Recommendation 17

12.65 The committee recommends that the Australian Government assist Torres Strait Islanders to assume a central role in biosecurity-relevant studies, including research into management of indigenous flora and fauna, and surveying and monitoring threats to their localities, such as illegal fishing or the introduction of harmful weeds or pests.

76 *Committee Hansard*, 18 June 2010, p. 40.

77 *Committee Hansard*, 18 June 2010, p. 40.

Climate change and biosecurity

12.66 In the previous chapter, the committee noted the challenges that changes in climate in the Torres Strait present for Australia's biosecurity—for example, the possible increase in the incidence and distribution of infectious diseases already in Australia and the spread of diseases not currently present. Vector-borne diseases, such as dengue, are of concern because changes in climate are predicted to increase the range of the vector *Aedes aegypti*. A second vector, *Aedes albopictus* now occurs in the Torres Strait.⁷⁸ The CSIRO is undertaking significant biosecurity research associated with the risk from mosquitoes as vectors of human diseases.

12.67 The committee has already highlighted the need for greater understanding of changes in habitats and the life cycle of insects and animals due to variations in climate and their likely effects on the environment. Changes in climate could have serious implications for Australia's biosecurity in the Torres Strait region and, ultimately, for Australia as a whole. This potential underlines the importance of having a sound understanding of what is happening and is likely to happen in the Torres Strait because of climate change. The committee discusses such matters in greater detail and makes recommendations about dealing with the effects of climate change in chapter 14.

Pollution from vessels

12.68 The Torres Strait qualifies as an international strait under Chapter III of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The international route passes just to the north of Thursday Island and then turns northeast through what is called the Great North East Channel. During the 2008–09 financial year, 1,332 ships made 3,281 voyages through the Prince of Wales channel.⁷⁹

12.69 With its shallow water, many reefs, shoals and bars strewn across the area, the Torres Strait poses significant challenges for large vessels travelling through the region. The strong tidal streams and currents and, at times, poor visibility due to flash squalls and storms make navigation even more hazardous.⁸⁰ As such, the sea route through the strait presents a significant biosecurity risk from ships damaged during transit or from vessels discharging harmful substances.

78 See also Margie Beilharz, 'Climate change raises the disease heat', *Science Alert*, 18 December 2008, <http://www.sciencealert.com.au/features/20081812-18603.html> (accessed 21 January 2010). National Climate Change Adaptation Research Facility, *National Adaptation Research Plan (Human Health)*, Consultation Draft, 28 November 2008, p. 22.

79 Department of Infrastructure, Transport, Regional Development and Local Government, answer to question on notice, 17 December 2009, no. 1.

80 See for example, 'Compulsory Pilotage in the Torres Strait', *Maritime Studies*, March/April 2007, Canberra. See also International Maritime Organization, Sub-committee on Safety of Navigation, 'Routeing of Ships, Ship Reporting and Related Matters', Results of a safety navigation assessment conducted for the Torres Strait, Submitted by Australia, Annex 2, NAV 50/INF.2, 2 April 2004, p. 1.

12.70 Since Australia has sovereignty over the islands in the vicinity of the sea route, it has specific obligations and is responsible for the safety and control of ships using the route. Under Article 13 of the Treaty, Australia and PNG are 'to take legislative and other measures necessary to protect and preserve the marine environment in and in the vicinity of the Protected Zone'. They are to include measures for the prevention and control of pollution or other damage to the marine environment from the release of harmful substances from land-based sources, rivers, through the atmosphere, or by dumping at sea; and from vessels or installations and devices used in exploring and exploiting the seabed and subsoil.

12.71 In 2003, Australia and PNG lodged a proposal with the International Maritime Organization (IMO) to designate the Torres Strait as a Particularly Sensitive Sea Area (PSSA). This initiative was intended as a means to protect the area's vulnerability from damage caused by international shipping and to increase marine safety.⁸¹ In 2005, the IMO designated the Torres Strait as PSSA.⁸²

12.72 As another protective measure, Australia and PNG also proposed an extension of the existing Great Barrier Reef compulsory pilotage system to the Torres Strait.⁸³ In their submission to the Marine Environment Protection Committee, they spelt out the potential damage that could result from an oil spill in this fragile area:

In Torres Strait there is an extremely high rate of water movement due to currents, tidal streams and surface winds. In the event of an oil or chemical spill, this would result in the rapid movement of oil or chemical plumes, possibly to even more remote areas. Logistical problems associated with moving response personnel and equipment to remote areas and the fact that much of Torres Strait is unsurveyed may cause considerable difficulties in mounting an on-water response to an oil or chemical spill.

The extremely high cultural, social and economic significance of marine resources to the people of Torres Strait could lead, in the event of an oil or chemical spill, to a total failure of their subsistence fisheries and abandonment of affected islands, or a completely imported diet, until the marine ecosystem re-established itself.⁸⁴

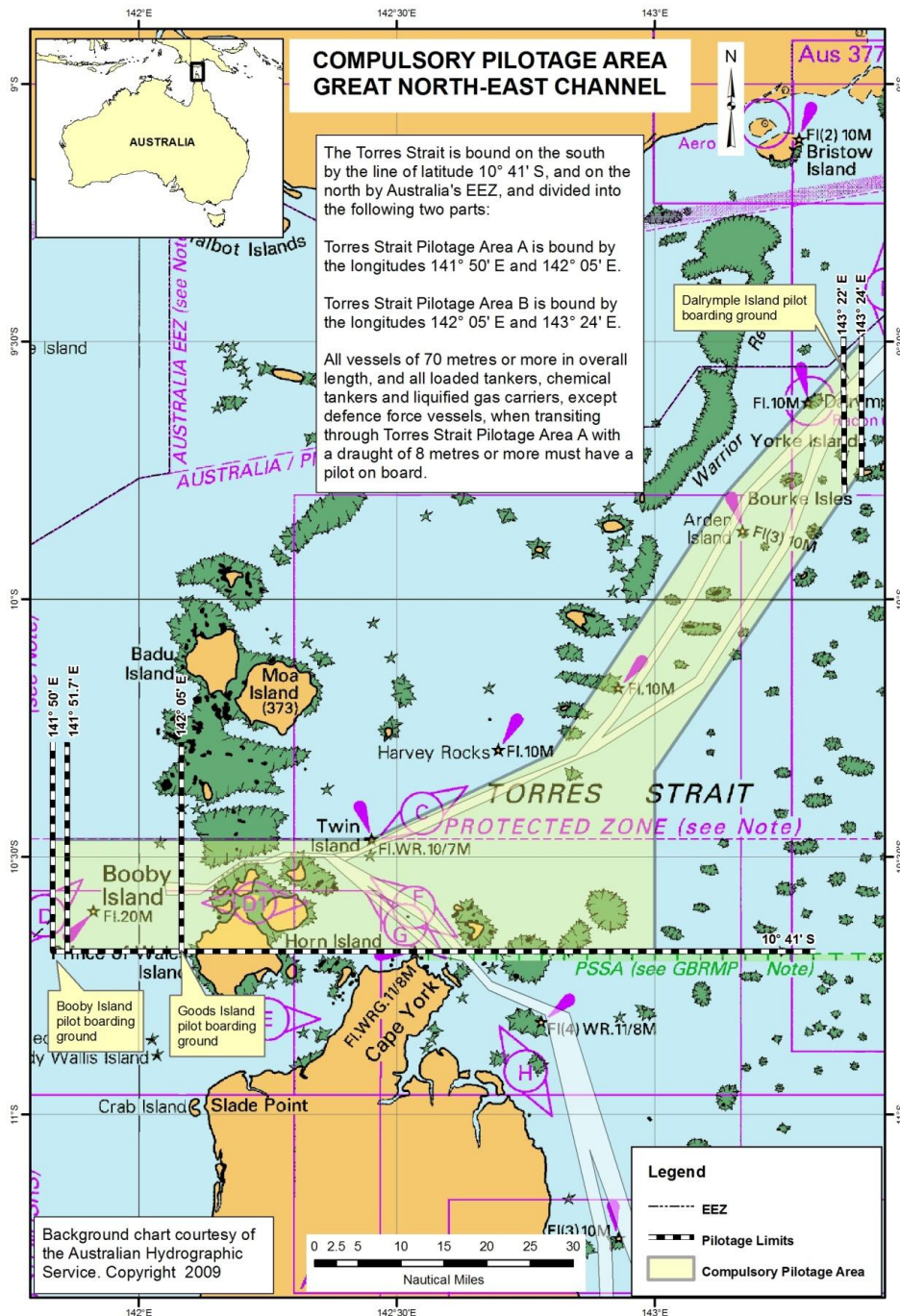
81 The IMO defines a PSSA as an area that 'needs special protection through action by IMO because of its significance for recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities'. IMO A 24/Res.982, 6 February 2006.

82 IMO, Resolution MEPC 53/24/Add.2, adopted 22 July 2005.

83 Marine Environment Protection Committee, 49th session Agenda item 8, 'Identification and Protection of Special Areas and Particularly Sensitive Sea Areas- Extension of Existing Great Barrier Reef PSSA to include the Torres Strait Region, Submitted by Australia and Papua New Guinea, MEPC 49/8, 10 April 2003.

84 Marine Environment Protection Committee, 49th session Agenda item 8, Submitted by Australia and Papua New Guinea, MEPC 49/8, 10 April 2003. The IMO approved the extension of the Great Barrier Reef PSSA to the Torres Strait, p. 15.

Figure 12.3: Map of the international sea route through the Torres Strait



(Map courtesy of the Australian Maritime Safety Authority)

12.73 In 2004, Australia submitted a waterway safety assessment and waterway risk assessment to the IMO's Sub-committee on Safety and Navigation. The risk assessment found that 'compulsory pilotage would significantly improve navigational safety of transiting ships throughout the Torres Strait'. It stated:

...compulsory pilotage reduces the risk of groundings by 45% and collisions by 57%. In specific areas such as the Prince of Wales Channel,

mandatory pilotage would reduce the risk of groundings by 54% and collisions by 67%.⁸⁵

12.74 Some countries and international shipping organisations argued that this measure requiring a pilot would contravene Article 42 of UNCLOS in relation to international straits. Their main concern was the restraint that compulsory pilotage may place on the right of transit passage through the straits. For example, before the General Assembly in 2007, Singapore disagreed with Australia's actions: it was of the view that Australia had no authority under the convention to legislate a regime of compulsory pilotage on ships passing through the straits.⁸⁶ It believed that:

The requirement to take a pilot on board, which Australia will enforce using its criminal laws, seriously undermines the right of transit passage, which all States enjoy under the Convention.⁸⁷

12.75 Concerned that other coastal states may 'use any new entitlement to interfere with freedom of navigation within their EEZ for less benign motives', the International Chamber of Shipping was disappointed that Australia had chosen to introduce compulsory pilotage in the Torres Strait.⁸⁸ In his March 2008 report, the UN Secretary-General noted the concerns expressed, including in the General Assembly, regarding the introduction of compulsory pilotage in the Torres Strait. He explained that 'views differ on whether the compulsory pilotage scheme is in conformity with UNCLOS'.⁸⁹

12.76 In December 2008, the Australian representative informed the General Assembly that of the 3,000 vessels or so that transited the Strait each year, only 35 per cent carried a pilot in 2003 which, since the introduction of system of pilotage, had increased to 100 per cent. He reiterated Australia's belief in the need for the system and of its consistency with international law.⁹⁰

12.77 The committee notes that the Australian Government's 2010 Budget Papers indicated that AMSA's operating environment would be influenced by a number of

85 Sub-Committee on Safety of Navigation, 50th session, Agenda item 3, Routeing of Ships, Ship Reporting and Related Matters—Results of a safety of navigation assessment conducted for the Torres Strait, submitted by Australia, NAV 50/INF.2, 2 April 2004.

86 United Nations General Assembly, 'General Assembly Reaffirms Importance of Long-term Sustainability of Marine Resources', Adopting 13-Part Consensus Text, GAO/10681, 18 December 2007.

87 United Nations, General Assembly, A/62/PV.65, 10 December 2007, p. 22.

88 International Chamber of Shipping and International Shipping Federation, 'Towards a future maritime policy for the Union: A European vision for cleaner seas and clearer oceans', Preliminary comments on European Commission 'Green Paper', COM(2006)275FINAL, 7 June 2007, pp.19–20.

89 United Nations General Assembly, Report of the Secretary-General, 'Oceans and the law of the Sea', A/63/63, 10 March 2008.

90 United Nations General Assembly, GAO/10793, 4 December 2008.

external factors, including 'progressing pilotage issues associated with the Torres Strait and Great Barrier Reef, and implementation of under keel clearance management arrangements in the Torres Strait'.⁹¹

Mining and drilling

12.78 It should also be noted that a ten-year prohibition on mining and drilling in the TSPZ was agreed under Article 15 of the Treaty in 1985, and has been extended on a number of occasions by an exchange of letters between the Australian and PNG governments. In February 2008, Australia and PNG agreed to extend the moratorium indefinitely.

12.79 The TSRA supported this move 'as a positive and significant outcome in the battle to preserve the delicate marine environment in the Torres Strait and consequently, the way of life of its traditional seafaring people'.⁹² The committee notes, however, that traditional owners or inhabitants had 'no prior and informed consent in terms of negotiating for the tenure' of the more recent extension of the Torres Strait mining moratorium. During the committee's open forum on Thursday Island, Mr Stephen, chair of the registered native title body for Stephen Island, stated his belief 'that traditional owners and traditional inhabitants should have a say in the review in terms of the tenure of this moratorium'.⁹³ The committee draws DFAT's attention to this situation.

Conclusion

12.80 There is no doubt that all government agencies associated with protecting Australia from unwanted incursions of weeds, pests or diseases are active on a number of fronts to prevent such incursions. Nonetheless, the potential harm that could flow from breaches of, or lapses in, enforcing quarantine regulations or failure to detect and control the presence of an exotic weed or pest could be serious. The committee made a number of recommendations primarily aimed at increasing the involvement of local communities in protecting their environment from invasive weeds, pests and diseases and strengthening their capacity to prevent or contain their spread. The committee also stressed the need to take account of what is happening on the other side of the border and through Australia's aid program to work toward achieving greater cooperation and collaboration in tackling biosecurity threats to the region. The overriding message was

91 Infrastructure, Transport, Regional Development and Local Government Portfolio, *Budget Portfolio Budget Statements 2010–11*, Budget Related Paper No. 1.14, p. 112.

92 Torres Strait Regional Authority, 2008 Press Releases, 'Torres Strait Regional Authority Supports Indefinite Extension of the Torres Strait Mining Moratorium', 25 February 2008, <http://www.tsra.gov.au/media-centre/press-releases/2008-press-releases/torres-strait-mining-moratorium.aspx> (accessed 24 May 2010). Also, the Hon Stephen Smith MP, Australian Minister for Foreign Affairs, 'Extension of the Torres Strait Mining Moratorium', 12 February 2008, http://www.foreignminister.gov.au/releases/2008/fa-s033_08.html (accessed 24 May 2010).

93 *Committee Hansard*, 24 March 2010, p. 36.

the need for all working and living in the region to remain vigilant before, at or behind the border to ensure that harmful weeds, pests or diseases do not gain a foothold in the region.

Chapter 13

Border Protection

13.1 The committee looked at local policing in the Torres Strait in chapter 7 and noted Police Commissioner Atkinson's observation that although most of the issues in the region are similar to those confronting the police throughout Australia, border security is 'particularly unique' to the Torres Strait.¹ In this chapter, the committee examines from a national security perspective how Australia protects its border in the Torres Strait. It is interested in organised groups or well-resourced individuals who attempt to circumvent Australia's border control measures in the region and test Australia's enforcement capabilities. The committee's focus is on criminal activity such as the importation of illicit drugs, people smuggling, illegal immigration, and illegal fishing on a larger commercial scale. It looks at how Australia manages these security concerns. The committee is also interested in social, economic, demographic or environmental factors in the region that are likely to affect border management and Australia's broader national security concerns. In this regard, the committee looks at population growth and settlement patterns in Western Province, competition for marine resources in the strait and climate change.

Main security risks

13.2 In the previous chapters, the committee discussed a number of matters that indicate that there are vulnerabilities in Australia's border control in the Torres Strait. It referred to a number of PNG nationals gaining unauthorised entry onto islands in the strait or staying beyond their allocated time in order to gain access to health or other services, for social or sporting gatherings or to poach or fish illegally. Although these breaches of border security do not pose a significant threat to Australia's national security, they do indicate that there is a risk that more organised groups may take advantage of and exploit any weaknesses or lapses in border control.

13.3 According to the Attorney-General's Department, the main maritime security risks to Australia are:

- illegal exploitation of natural resources
- illegal activity in protected areas
- unauthorised maritime arrivals
- prohibited imports and exports
- maritime terrorism
- maritime pollution
- compromise to biosecurity, and

1 *Committee Hansard*, 25 March 2010, p. 3.

- piracy, robbery and violence at sea.²

13.4 The committee has already dealt with a number of these matters (unauthorised arrivals, overstayers, illegal fishing and poaching of natural resources, quarantine and biosecurity). It now considers those security risks that are of most concern to Australia's national security and border enforcement agencies in the region. Firstly, from a border security perspective, the committee deals with the movement of traditional inhabitants.

Movement of traditional inhabitants

13.5 In its submission, Customs stated that there are over 59,000 traditional movements (arrivals and departures) recorded each year in the Torres Strait.³ According to Customs, while Saibai and Boigu are the most popular crossing points for traditional movements, the whole region is of interest to the agency because of its proximity to PNG and the ability of travellers to move through the strait.⁴

13.6 The committee has discussed the screening process that takes place on the islands for the arrival and departure of traditional inhabitants and noted the concerns by members of local communities that some people slip through undetected and remain in the region either as illegal entrants or overstayers.⁵ Assistant Commissioner Kevin Zuccato, AFP, was of the view that the unrestricted way in which people can travel down through Indonesia and the strait creates a significant risk of transnational crime within the region.⁶ He recalled that the federal police have had occasions in the past where people leave Australia through that area, to evade scrutiny by Immigration and Customs.⁷ The AFP submitted that the recent PNG/Australia Transnational Crime Conference 'highlighted difficulties with the enforcement of Immigration law'. It stated:

...there are obvious issues pursuing crime groups and individuals across the PNG/Australian maritime border as a result of the freedom of movement provisions contained within the Torres Strait Treaty (traditional visits).⁸

13.7 The difficulties for border enforcement agencies created by the high volume of people moving across the border under the free movement provisions are further complicated by the unique operating environment of the region. This includes its remoteness, disbursed nature of settlement, lack of infrastructure and proximity to

2 Australian Customs and Border Protection Service, *Annual Report 2008–09*, p. 58. See also Australian Customs and Border Protection Service, *Portfolio Budget Statement, 2010*, p. 134.

3 Australian Customs and Border Protection Service, *Submission 14*, p. 2.

4 Mr Kerlin, *Committee Hansard*, 17 December 2009, p. 34.

5 See for example, TSRA, *Submission 18*, p. 11, footnote 5.

6 *Committee Hansard*, 18 December 2009, p. 57.

7 *Committee Hansard*, 18 December 2009, p. 61.

8 Australian Federal Police (AFP), *Submission 25*, p. 1.

PNG. Indeed, this distant region of shallow sea, uninhabited cays and sparsely populated islands serves as a potential haven for would-be poachers or smugglers.

Illegal fishing on a commercial scale

13.8 The committee has considered illegal fishing in the Torres Strait from a conservation and biosecurity perspective. The activity of foreign fishers in the region is also a border security issue. Between 2000 and 2006, the Australian Government became increasingly concerned about the number of illegal foreign fishers in Australia's northern waters. In 2005, during a debate on legislation designed to strengthen Australia's ability to manage foreign fishers found operating illegally in Australia, the then Minister for Agriculture, Fisheries and Forestry highlighted the extent of the problem. He noted that illegal fishers were 'expanding their operations' and 'venturing further east towards and within the Torres Strait Protected Zone'. He stated:

It is important to both Australia and PNG that a strong stance is taken against the illegal foreign fishers that pillage the natural resources of the Torres Strait.⁹

13.9 Although the number of illegal fishers in the Torres Strait has declined in recent years, illegal fishing remains a significant maritime security risk to the region.

Drug and gun running

13.10 In its submission, the TSIRC referred to the ease with which sly grog and drugs and other contraband are carried across the border and into local communities.¹⁰ During the committee's visit to Saibai, local leaders gave similar accounts of drugs passing through the strait. They referred to incidents of vandalism and trade in illicit drugs, such as marijuana, and asked for the border to be treated as any other international border. Commissioner Atkinson, Queensland Police, noted that drug trafficking had been an issue in the region for some years and that PNG has the ideal climate to produce cannabis. Consistent with this observation, Assistant Commissioner Zuccato informed the committee that the AFP's main focus in respect of PNG is trafficking dangerous drugs, including cannabis. In December 2009, he informed the committee that within the past 24 months, 26 individuals had been arrested for trafficking some form of narcotics. One of the most recent incidents involved 18½ kilograms of cannabis seized in PNG which led to several people being charged with conspiracy to import 500 kilograms of cannabis.¹¹ The AFP also looks at

9 House of Representatives, *Hansard*, 17 February 2005, p. 5. In 2006, the Secretary of DIMA also drew attention of the dramatic increase over the past five years of illegal fishing in Australia's northern waters. Department of Immigration and Multicultural Affairs, Secretary's Review, *Annual Report 2005–06*.

10 TSIRC, *Submission 9*, p. 2.

11 *Committee Hansard*, 17 December 2009, p. 58.

drug-related property crime which aims at obtaining commodities to exchange for narcotics.¹²

13.11 Ms Roxanne Kelly, Customs, was of the view that while there is criminal behaviour in the region, some of the reporting 'exaggerates the activities'. She explained:

When we look at the significant risks and the operations that we have undertaken in the last 12 months to two years, one of the significant issues is the movement of cannabis. When you start to look...that is also influenced by the actual market that is available there. We understand why cannabis is probably a popular drug, whereas other powdered forms of drugs are probably far too expensive. But I suppose there have been issues around it being a transit point from where people can move drugs on to the mainland.¹³

13.12 With regard to gun running, Assistant Commissioner Atkinson did not consider the exchange of drugs for firearms as 'in reality an issue'.¹⁴ Similarly, Assistant Commissioner Zuccato supported other government agencies in their view that there had not been a significant movement of firearms and ammunition to and from PNG, 'certainly not in the last little while'. Furthermore, he noted that one program conducted in relation to firearms and ammunition had 'since ceased, given the lack of apparent movement'.¹⁵

Human trafficking

13.13 Customs and Border Protection is responsible for leading and coordinating the efforts of all agencies to 'disrupt maritime people smuggling ventures'.¹⁶ Assistant Commissioner Zuccato informed the committee that the AFP, which looks at some people-smuggling issues and also trafficking in people within the region, had not seen a lot of human trafficking through PNG.¹⁷ Even so, he noted that while he was in the Torres Strait, Customs officers had raised the issue, particularly with regard to the growing presence of the Chinese community and the potential to establish routes for trafficking human beings through PNG and then down into Australia. He was unsure about the likely success of such activities, 'given that there are other ways through which they can bring in particular women to Australia'. He said:

12 *Committee Hansard*, 18 December 2009, p. 56.

13 *Committee Hansard*, 17 December 2009, p. 39.

14 *Committee Hansard*, 25 March 2010, p. 8.

15 *Committee Hansard*, 18 December 2009, p. 56.

16 Australian Customs and Border Protection Service, *Portfolio Budget Statement, 2010*, p. 115.

17 *Committee Hansard*, 18 December 2009, p. 58.

I do not know whether the return on investment would be enough to explore that. Certainly it is something which was brought to my attention when I was there.¹⁸

13.14 Clearly, those engaged in criminal activity, as with any business venture, consider the likely gains from an enterprise before starting up. For would-be criminals, the likelihood of being caught operating or engaged in illegal activities is a major consideration.

Opportunistic crime

13.15 There are a number of factors that provide an ideal environment for organised crime to flourish, notably the opportunity to move about a region with ease, and to operate undetected or unreported. In this regard, the committee has noted the remoteness of the Torres Strait area, the lack of a police presence in the outer islands, and the free movement provisions of the Treaty, which allow a large number of people to cross the border without any rigorous screening process. Overall, however, while there are some factors that would entice criminals to the region, there are others that keep them at bay. Ms Kelly explained that from a business point of view, the logistics of moving illegal goods or products through the various islands to the mainland is 'pretty unviable'. She suggested:

...sometimes you just have to look at the business side of it and why people are involved in some of that activity—it is to make money. Part of our risk assessment is asking, 'Is it a viable option?' For some of those commodities it really is not.¹⁹

13.16 In addition, the tendency for Islanders, who are 'extremely proud people', to report 'outsiders who should not be there' assists border protection agencies to monitor cross-border movements.²⁰ This level of community scrutiny is another disincentive for budding criminals.

13.17 Although at the moment, criminal activity such as drug and gun running and people trafficking may not be sufficiently profitable to attract large-scale criminal activity, the potential exists. Thus, one of the major aims in border security is to ensure that the gains from breaching border security do not outweigh the costs. The committee now examines the range of measures that Australia takes to secure its borders in the Torres Strait.

Securing Australia's border in the Torres Strait

13.18 Recording or registering people entering and leaving Australia is an important element of effective border security in the Torres Strait, especially in light of the free

18 *Committee Hansard*, 18 December 2009, p. 58.

19 *Committee Hansard*, 17 December 2009, p. 39.

20 John Kerlin, *Committee Hansard*, 17 December 2009, pp. 40, 43.

movement of traditional inhabitants. Equally important is knowing, and being able to verify, the identity of people entering, passing through and staying in the region. On a number of occasions, the committee has noted the shortcomings in the screening and recording processes of PNG nationals visiting the Torres Strait.

Data and record keeping

13.19 DIAC acknowledged that accurate reporting, which provides a clear picture of people movements and goings-on, is needed to address the complex issues of border management in the Torres Strait. It conceded that past data collection of such activity may not have been as robust as it could have been. According to the department, however, it had recently made substantial progress in improving the quality of the data collected. Mr Allen informed the committee that the new system would:

...make it possible to identify more accurately in future the number of individuals making traditional visits and the reason for these visits...Better data, we hope, will help to dispel some of the misconceptions that exist in regard to the reasons for travel and the number of overstays in the region.²¹

13.20 The committee recognises the need for improved data collection on people movement in the Torres Strait and supports DIAC's endeavours to address this problem. It is too early to determine whether the new system is going to be sufficiently sound to meet the challenges posed by the movement of traditional inhabitants through the straits. With this in mind, the committee is firmly of the view that DIAC should evaluate regularly its improved method of obtaining statistics on people movement in the Torres Strait. Furthermore, the committee believes that, as part of this evaluation, DIAC should endeavour to reconcile its statistics with local perceptions of illegal arrivals and overstayers to determine whether there are anomalies and, if so, to use their data to explain the discrepancies.

Identification system

13.21 In chapter 7, the committee touched briefly on the lack of formal travel documentation required for traditional visitors and the difficulties that this creates for law enforcement agencies in the Torres Strait. For example, traditional inhabitants often use a list with names but no other detail as the primary document for allowing cross-border movement.²² This informal and inexact method of checking who is entering and staying in Australia also has implications for border security.

13.22 A number of border protection agencies commented on the importance of improving the system so that they would be able to identify effectively who is a genuine traditional inhabitant.²³ For example, Ms Marion Grant, Customs, advised the committee that a more rigorous identification of people moving between Australia and

21 Mr Stephen Allen, *Committee Hansard*, 17 December 2009, p. 14.

22 Customs, *Submission 14*, p. 8.

23 Customs, *Submission 14*, p. 8.

PNG would make the work of Customs and Border Protection easier.²⁴ The AFP also called for a more reliable identification system to assist them in their work. In its view, the current Treaty visitor pass system is 'easily manipulated'.²⁵ Assistant Commissioner Zuccato explained:

...it would be of extreme benefit to us for there to be some form of document of identity, including a photograph, fingerprints or whatever, so that we are aware of who is coming into and out of Australia.²⁶

13.23 Both the AFP and the PNG Transnational Crime Unit (TCU) have recommended strongly that photo identification and biographical details be required for traditional visitors when travelling across the border.²⁷ According to the AFP:

This issue is an ongoing concern to the AFP and other law enforcement agencies as 'traditional inhabitants' in the treaty zone have limited access to adequate identification documentation and the current process may prove attractive to those with criminal intent.²⁸

13.24 The 2009 Transnational Crime Conference (TNCC), involving delegates from Customs, AFP, Queensland Police, Royal Papua New Guinea Constabulary and PNG Customs, unanimously endorsed the need for better methods of identification.²⁹

13.25 Mr Michael Pezzullo, Chief Operating Officer, Customs, informed a 2009 Defence Conference that Australia was 'increasingly using biometrics'. He explained:

The facial recognition technology used in Smartgate has enabled the immigration clearance process to be automated for travellers who represent a low risk from an immigration perspective, producing greater efficiency and an improved traveller experience.³⁰

13.26 In this regard, Police Commissioner Atkinson, commented on the potential capability that technology—biometrics and facial-recognition—may offer in the future.³¹

13.27 While there is overwhelming support for improving the means of identifying travellers in the Torres Strait, the process of introducing such a system is still in the

24 *Committee Hansard*, 17 December 2009, p. 43.

25 AFP, *Submission 25*, p. 2.

26 *Committee Hansard*, 18 December 2009, pp. 55–6.

27 AFP, *Submission 25*, p. 2.

28 Australian Federal Police, answer to question taken on notice, 18 December 2009.

29 Australian Federal Police, answer to question taken on notice, 18 December 2009.

30 Michael Pezzullo, 'The role of the Australian Customs and Border Protection Service in securing Australia's borders: working with partners across traditional boundaries on border risks'. Australian Financial Review Defence Conference 2009, 23 September 2009, p. 5.

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

early stages. As a standing member of the Interdepartmental Committee on the Torres Strait Treaty, the AFP informed the committee that, with its full support, Customs had raised the matter of photo identification. According to Ms Kelly, Customs has also had discussions with DIAC, the AFP and DFAT on photographic identification and that the matter was under active discussion.³² She acknowledged, however, that there were difficulties implementing an improved system because of issues around changes to the Treaty. She said:

People understand some of the difficulties associated with that. I think that is the response we have received. It has been noted...Not too hard. It is just...that negotiations around any change to the treaty will take some time.³³

13.28 Customs wanted to make clear that its comments were made in the context of achieving a better system to identify travellers for their risk assessment purposes.³⁴ The Queensland Government also suggested that 'a formal identification method for PNG nationals traversing Australian waters' was an issue that required 'further consideration in the context of treaty governance arrangements'.³⁵ In this regard, Police Commissioner Atkinson understood that changes to the identification system would be a federal government responsibility because it involved people coming from one country to another.³⁶ Ms Grant noted further that the matter of an improved identification system would be a DFAT responsibility.³⁷

13.29 Mr Young informed the committee, however, that this matter was not really something that he thought DFAT could comment on. In his view, it would be the agencies that have to implement and manage the system that could provide 'a guide as to how practical it is to do such a thing'.³⁸ He explained that DFAT would not be implementing it, but as the lead agency on the Treaty, it would chair any meeting that decided to introduce such an identification system.³⁹ Although he acknowledged that there would be widespread acceptance of such a system among the Treaty communities, he identified some of the practical implementation problems:

It is across a border and into another country. It is also people who largely do not have identity papers. They have different spellings of names on each occasion they visit Australia. There are a whole range of issues that the agencies that have to implement this have to look at first. I think that broadly, in principle, the communities would be happy to do it, but whether

32 *Committee Hansard*, 17 December 2009, p. 44.

33 *Committee Hansard*, 17 December 2009, p. 44.

34 Marion Grant, *Committee Hansard*, 17 December 2009, p. 43.

35 Queensland Government, *Submission 20*, p. 7.

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

37 *Committee Hansard*, 17 December 2009, p. 43.

38 *Committee Hansard*, 18 June 2010, p. 15.

39 *Committee Hansard*, 18 June 2010, p. 15.

it is actually possible, again, is something for other agencies to decide... We are open to the discussion. It is an ongoing discussion. It has been raised at meetings over years.⁴⁰

Committee view

13.30 The committee understands that a number of key agencies have called for improved methods of identification with regard to the free movement of traditional inhabitants across the Torres Strait border and that Australia is increasingly using biometrics at other arrival ports. It understands that the spirit of the Treaty requires that any measures to improve the identification process should not impose unfair restrictions on traditional inhabitants seeking to visit the region to undertake traditional activities. The committee believes, however, that modern technology offers an opportunity to introduce better methods of monitoring and identifying people travelling in the Torres Strait region and its use should be explored.

13.31 Thus, the committee notes that while most government border protection agencies support strongly an improved system of identification, they, including agencies from PNG, have not come together to solve the practical difficulties of implementing such a system. Clearly, a number of Australian agencies are looking to DFAT to provide the leadership and drive necessary to move the proposal beyond the discussion stage.

Recommendation 18

13.32 The committee recommends that DFAT assume the leadership role in exploring ways with relevant border control agencies to make better use of modern technologies to identify travellers visiting the Torres Strait. The aim would be to implement as soon as practicable an improved means of identification for people crossing the border in the Torres Strait that would be in keeping with the spirit of the Treaty.

Intelligence gathering

13.33 In the chapters on law and order and biosecurity, the committee highlighted the critical role of local communities in reporting inappropriate or unauthorised activity such as poaching, overstaying a visit, disorderliness and petty crime. This important function as intelligence gatherers may also have a critical role in exposing organised illegal activity that may be happening in their region.

Local knowledge—Torres Strait

13.34 To some extent, border protection agencies in the region are aware of the contribution that local people can make to their understanding of unusual goings-on in the region and look to them as an important source of vital information on irregular or suspicious activities. For example, Customs runs a community participation program

40 *Committee Hansard*, 18 June 2010, p. 15.

where officers visit the islands as often as they can, talk to communities and promote the work of the agency. Mr Kerlin noted that they endeavour to visit all the islands as often as they can—once or twice a year. With regard to Saibai, where Customs has an officer, a patrol tries to visit the island at least once a month for two to three days. Mr Kerlin explained that is how the agency develops the information flow that leads to valuable intelligence.⁴¹

13.35 The committee has noted that as respected members of their communities, reservists in C Company, 51st Battalion, Far North Queensland Regiment, make a valuable contribution to the intelligence network that operates in the Torres Strait. They report unusual activity in their localities and help out researchers with their tasks. In a more structured way, they also form an important part of Operation Resolute, which is the ADF's contribution to border protection. The Department of Defence (Defence) informed the committee that the Regiment 'is allocated specific periods to conduct Operation Resolute patrols and is required to achieve 80 patrol days per financial year (1 patrol day = 1 patrol of 6 personnel in the field for 24 hours)'.⁴² They undertake a 'broad-ranging, long-range surveillance role', but as reserve units are not permanently formed or operating. In 2009, this regiment conducted 115 days of patrols in the Torres Strait region under Operation Resolute which represented 'a tempo and focus at the upper limit of the unit's capacity to both mount and sustain'.⁴³

13.36 The AFP informed the committee that one of its staff on Thursday Island is a Elder of the Kaurareg Clan in the Torres Strait, is proficient in the Creol, Pidgin and PNG Moto languages and holds a Master 5 certificate in maritime vessel operation. Because of his long and close association with local communities, he also has a role in collecting intelligence on behalf of the AFP.⁴⁴

13.37 While there are examples of local people contributing to intelligence gathering on the ground in the Torres Strait, Mr See Kee, TSRA, informed the committee that people out in the communities want to engage more with agencies doing border protection:

...because when you think about it the biggest asset that any agency has, especially with border protection, is the people. They are the ones who are the eyes and ears. They are the ones who are actually going to stop people or let you know when things are happening.⁴⁵

13.38 He stated further that, in his mind, engagement by agencies involved in border enforcement should be 'almost the highest priority and where the majority of

41 *Committee Hansard*, 17 December 2009, p. 43.

42 Department of Defence, answer to question on notice no. 3, 18 December 2009.

43 *Committee Hansard*, 18 December 2009, p. 48.

44 Australian Federal Police, answer to question on notice taken on 18 December 2009.

45 *Committee Hansard*, 24 March 2010, p. 14.

investment should be placed to get that relationship happening because, without the relationship, nothing happens'.⁴⁶ This observation cuts across all aspects of border security, including immigration and biosecurity, and highlights the central role that local people have in border security.

Recommendation 19

13.39 The committee recommends that DFAT jointly with DIAC, Customs and Border Protection, the AFP and Queensland Police review the ways in which government agencies currently work with local communities as partners to promote border security. The intention would be to consult with local communities to gauge their views on how their role in border security could be improved and to use this process to strengthen the intelligence network on the ground in the Torres Strait.

13.40 While local knowledge and information sharing is critical to assisting border agencies in their task of securing Australia's border in the Torres Strait, higher level intelligence is also required.



A member of C Company, 51st Battalion, Far North Queensland Regiment, showing the equipment and rations carried by a soldier while on patrol in the region

National intelligence network

13.41 Customs and Border Protection is Australia's lead border agency and is responsible for protecting Australia's national interests against security threats in Australia's offshore maritime domain. It has a vital role in 'preventing the illegal movement of people and harmful goods across Australia's borders'. It is also responsible for coordinated land patrols to protect Australia's maritime boundaries.⁴⁷ Customs and Border Protection brings together the expertise and resources of a great number of other departments and agencies, including the ADF, AFMA, AQIS, the Australian Maritime Safety Authority (AMSA) and the AFP.

13.42 Mrs Grant noted that Customs places 'a premium on the use of risk based interventions that are driven by intelligence and targeting systems'. It uses this intelligence-led, risk-assessed activity to target its assets 'to the highest risks'.⁴⁸ According to Mrs Grant:

...the maritime and aerial surveillance of our maritime domain and on-ground information collection are critical to ensuring that we know about risks before they reach our borders and can direct our resources to intervene where high risks are identified.⁴⁹

13.43 For example, Customs referred to the Torres Strait Combined Intelligence Group, an intelligence sharing and target development grouping of Customs, QPS and AFP.⁵⁰ This group looks at 'collective intelligence assessments of criminal threats in the region' and develops operational responses to them.⁵¹ While based on Thursday Island, the group is managed from Cairns by senior officers from the agencies. Three intelligence analysts with extensive experience with the Torres Strait use their specialist knowledge to develop analytical material that 'informs ongoing operational activity'.⁵²

13.44 The Australian Maritime Information System (AMIS) is also part of the national intelligence network. It is located within the Border Protection Command Centre in Canberra. Mrs Grant explained that many of the ships moving through the strait are commercial vessels emitting a signal in accordance with the IMO requirement. She said:

47 Australian Customs and Border Protection Service, *Annual Report 2008–2009*, p. 58; Attorney-General's Portfolio, *Portfolio Budget Statements 2009–10*, pp. 111–112; Attorney-General's Portfolio, *Portfolio Budget Statements 2010–11*, pp. 115–116.

48 *Committee Hansard*, 17 December 2009, p. 36.

49 *Committee Hansard*, 17 December 2009, p. 31.

50 Australian Customs and Border Protection Service, *Submission 14*, pp. 8–9.

51 *Committee Hansard*, 18 December 2009, p. 55.

52 Australian Customs and Border Protection Service, *Submission 14*, pp. 3 and 8.

We can plot those vessels. We can look up our databases to identify whether it is a known vessel of low risk or of no interest to us or whether we need to do more analysis around that vessel.⁵³

Regional intelligence network

13.45 As noted on a number of occasions, the Torres Strait is a joint jurisdictional region and requires Australia and PNG to cooperate for effective management. This observation also applies to combating illegal activity in the strait.

13.46 Customs informed the committee that it is the lead agency in the joint cross-border patrols conducted three times a year. The patrols of between 8–10 days include representatives of the AFP, QPS and PNG Police and Customs.⁵⁴ Mr Kerlin explained that these patrols bring the three law enforcement agencies from the Australian side together with the two from PNG—PNG customs and PNG police. According to Mr Kerlin, the patrols enable the Australian agencies to see the communities on the PNG side and to gather information, which then 'turns into usable intelligence to drive the other work that we do'.⁵⁵ They also provide PNG law enforcement agencies with the opportunity to visit some of the communities they do not normally visit.

13.47 The patrols start with an intelligence briefing and sharing of information. During the visit, each agency has the opportunity to talk to the community about its role and expectations in moving about the region. Mr Kerlin stated that as time goes on, 'we start to move towards talking to particular individuals', developing contacts and relationships within those communities. He informed the committee about a recent initiative that came out of the Combined Intelligence Group to develop a brochure that could be left behind in the villages. He stated:

We are going to try to get that translated into Tok Pisin so that it is comfortable for people to read and understand, and we will distribute that amongst those communities as well...We are getting the words together from our point of view, and we will send those words up to the two PNG agencies to get their input. Once we have all the words agreed and we have it in a format that is useful, we will send it back for conversion into Tok Pisin, and then we will get it published. It is something that we hope to have up and running by mid-year.⁵⁶

13.48 The committee fully supports the cross-border patrols and the efforts being made by border enforcement agencies to meet and converse with the local communities and with Treaty villages.

53 *Committee Hansard*, 17 September 2009, p. 35.

54 Australian Customs and Border Protection Service, *Submission 14*, p. 6.

55 *Committee Hansard*, 17 December 2009, p. 47.

56 *Committee Hansard*, 17 December 2009, p. 47.

13.49 Assistant Commissioner Zuccato informed the committee further that while there was 'certainly a risk, in terms of our knowledge of the region we have a very good appreciation of what the threat picture looks like', for example, through the work of the Pacific Transnational Crime Network (PTCN).⁵⁷ He indicated that the AFP tries to address the risk of criminal activity through its presence in Indonesia and PNG:⁵⁸

To break it down, our concern with PNG as a very near neighbour is to ensure that we maintain very close collaboration with PNG, which we believe we have, to share as much information as we possibly can and to work collegiately and collaboratively on criminal investigations, while at the same time endeavouring to assist them in building their capability and capacity to police PNG.⁵⁹

13.50 The AFP has a Senior Liaison Officer in Port Moresby.⁶⁰ According to the Assistant Commissioner, the AFP also has officers in Darwin, Cairns and Townsville who respond to issues in the Torres Strait and 'work collaboratively with the Royal Papua New Guinea Constabulary on criminal enterprises and criminal investigations'.⁶¹

Surveillance, detection and interception

13.51 A range of boats and aircraft are needed to detect, deter and apprehend people who violate Australia's northern borders. In the Torres Strait, 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 (Mabuiag, Saibai, Darnley and Coconut) and are maintained by liaison officers. An officer is based at each of those islands.⁶² According to Mr Kerlin, officers are flown in from Thursday Island to join up with those officers to patrol around the islands.⁶³ A recent innovation in establishing a unit on Saibai, which can be used by other agencies, has been well received (see paragraphs 8.50–8.51). Mr Kerlin explained:

We put the facility up on Saibai so that we could spend more time up there operationally. But Badu has been an island of specific interest during the course of this year. It has the largest population after Thursday Island so for that reason it attracts a bit of attention.⁶⁴

57 *Committee Hansard*, 18 December 2009, p. 57.

58 *Committee Hansard*, 18 December 2009, pp. 56–7.

59 *Committee Hansard*, 18 December 2009, p. 56.

60 AFP, Additional information provided to the committee, 1 April 2010.

61 *Committee Hansard*, 18 December 2009, p. 55.

62 Australian Customs and Border Protection Service, *Submission 14*, p. 3 and Mr Kerlin, *Committee Hansard*, 17 December 2009, p. 40.

63 *Committee Hansard*, 17 December 2009, p. 40.

64 *Committee Hansard* 17 December 2009, p. 34.

13.52 In addition, the agency operates two bay class vessels that provide 'a persistent patrol and response capability in or near the Torres Strait'. They conduct irregular patrols to keep operations 'unpredictable'.⁶⁵ Mrs Grant explained that the vessels were approaching the end of their existing lives.⁶⁶ The 2010 budget announced that the government had approved a significant investment to replace these vessels 'with an enhanced capability' that would play a critical role in border security. It would:

...address more than one security challenge by providing surveillance and response capabilities across northern Australia to counter illegal people smuggling, illegal foreign fishing, trafficking of illicit goods as well as search and rescue and counter-terrorism activities.⁶⁷

13.53 The agency is also looking to replace a number of the smaller 6-metre vessels with newer vessels in the next six to 12 months.⁶⁸ Referring to the agency's ability to take effective action, Ms Kelly said that the agency had a capacity to respond at any time if something were detected in the surveillance activity.⁶⁹



Customs' Bay Class vessel—CORIO BAY

65 Mrs Grant, *Committee Hansard*, 17 December 2009, pp. 40–41.

66 *Committee Hansard*, 17 December 2009, p. 36.

67 Attorney-General's Portfolio, *Portfolio Budget Statement, 2010–11*, p. 116.

68 *Committee Hansard*, 17 December 2009, p. 37.

69 *Committee Hansard*, 17 December 2009, p. 42.



Committee members leaving CORIO BAY after inspecting the vessel

Border Protection Command

13.54 Situated in Customs and Border Protection, Border Protection Command leads and coordinates Australia's airline surveillance and maritime response all around Australia, including the deployment of aerial and surface assets in the Torres Strait region.⁷⁰ This 'standing multi-agency authority operates 'as a single maritime surveillance, response and interception agency'. It manages the security and integrity of Australia's borders and has command and operational control over land, air and sea surveillance assets assigned to it.⁷¹ Its primary task is to ensure that 'any threat to Australia's offshore maritime areas and coastline is quickly detected and defeated'. It combines the resources and expertise of Customs and Border Protection and Defence and works with officers from AFMA, AQIS, and other Australian, state and territory government agencies.⁷²

70 *Committee Hansard*, 17 December 2009, p. 31.

71 Attorney-General's Portfolio, *Portfolio Budget Statements 2009–10*, p. 131; Attorney-General's Portfolio, *Portfolio Budget Statements 2010–11*, p. 134; Customs website, 'About customs and border protection', 'Australian Customs Service, Protecting our borders', <http://www.customs.gov.au/site/page4222.asp> (accessed 27 May 2010).

72 Michael Pezzullo, 'The role of the Australian Customs and Border Protection Service in securing Australia's borders: working with partners across traditional boundaries on border risks', Australian Financial Review Defence Conference 2009, 23 September 2009, p. 9.

13.55 The head of Border Protection Command is an ADF Rear Admiral who has command of assets assigned to it by 'Defence, Customs, AFP, fisheries and a range of other assets'. To respond to a border protection contingency, the Rear Admiral can 'pick and choose which asset he uses'. For example:

If he has intelligence relating to activity in a particular area—say, the Torres Strait—he might use an Armidale class patrol boat that is assigned to him or he might use 51FNQR [51 Far North Queensland Regiment], but equally he might use a Customs vessel.⁷³

13.56 Mr Lachlan Colquhoun, Department of Defence, explained that border protection was construed in this fashion to ensure 'adequate synchronisation between all the different surveillance and response options' available in the north. He noted further that additional assets could be assigned if a particular threat arose.⁷⁴

13.57 In the TSPZ, Border Protection Command conducts daily aerial surveillance and maintains a 24-hour, seven-days-a-week capability to respond to border incursions. In the region, it operates two surveillance helicopters, which are based on Horn Island in the Torres Strait. It also uses a DASH 8 or Reims F406 fixed-wing surveillance aircraft, which flies out of Weipa and makes daily flights across the Torres Strait and as noted earlier the two Customs and Border Protection bay class vessels patrol in or near the Torres Strait.⁷⁵ Mrs Grant explained that, 'Our civil maritime surveillance and response program is designed for early detection of arrivals to Australia in any location'.

13.58 According to Mrs Grant, in the 2009 budget, the agency was funded to reactivate two Reims aircraft to focus particularly on additional flying hours against irregular maritime arrivals.⁷⁶ She noted that contracts for the aircraft and the helicopters had recently been renewed and there was a new fleet of assets.⁷⁷

13.59 Defence contributes to Border Protection Command through Operation Resolute. At any one time, there are seven Armidale class patrol boats assigned to this operation which covers not only the Torres Strait but the 'whole of Northern Australia'. The boats are deployed depending upon the intelligence at the time. The committee has mentioned the work of C Company, Far North Queensland Regiment, which is made up mainly of reservists who undertake surveillance and reconnaissance activities in the region.⁷⁸

73 Mr Lachlan Colquhoun, *Committee Hansard*, 18 December 2009, pp. 49–50.

74 *Committee Hansard*, 18 December 2009, p. 50.

75 Australian Customs and Border Protection Service, *Submission 14*, p. 4.

76 *Committee Hansard*, 17 December 2009, p. 36.

77 *Committee Hansard*, 17 December 2009, pp. 32, 36 and 41.

78 *Committee Hansard*, 18 December 2009, pp. 47–8.

Success of Australia's surveillance and apprehension regime in Torres Strait

13.60 The detection and apprehension of illegal fishers in the region provides an indication of the success that the existing regime is having in the Torres Strait. In its May 2006 Budget, the government established a new \$388.9 million plan 'to combat illegal fishing in northern Australian waters', which brought the total commitment to 'well over half a billion dollars'. Since then, there has been a noticeable decline in the number of incidents.

13.61 Customs 2008–09 Annual Report showed that the number of apprehensions continued a significant downward trend, indicating that the 'comprehensive maritime operations were having a significant deterrent effect'.⁷⁹ As noted in an earlier chapter, the report maintained that during 2008–09:

The deterrent effect of enforcement efforts over the last two years has seen a reduction in illegal fishing activity in Australia's northern waters to the point where large concentrations of vessels sit just beyond the Australian Exclusive Economic Zone boundary, undertaking frequent shallow incursions into Australian waters.⁸⁰

13.62 Mrs Grant also informed the committee that the program of on-water enforcement had seen raids into Australian waters diminish greatly, with the foreign fishing vessels staying out on the edge of the exclusive economic zone (EEZ).⁸¹ In its 2010 Budget, the government continued funding to combat illegal fishing in Australia's northern waters by providing \$59.1 million over four years to maintain 'a strong deterrence to illegal foreign fishing through surveillance and response to incursions'.⁸²

Committee view

13.63 While recognising the effectiveness of current efforts to combat illegal fishing in the Torres Strait, the committee notes that Customs and Border Protection also referred to foreign fishing vessels waiting just outside Australia's EEZ to take the opportunity for shallow incursions. Clearly, any relaxation of Australia's efforts could once again entice illegal fishers back into the strait.

79 Australian Customs and Border Protection Service, *Annual Report 2008–2009*, p. 63.

80 Australian Customs and Border Protection Service, *Annual Report 2008–2009*, p. 62.

81 *Committee Hansard*, 17 December 2009, p. 46. ANAO's performance audit, *Illegal Foreign Fishing in Australia's Northern Waters*, also commented on the success that 'additional funding on increased detection, apprehension and destruction of FFVs' [foreign fishing vessels] had in producing a substantial reduction in FFV apprehensions in northern waters. Australian National Audit Office, *Illegal Foreign Fishing in Australia's Northern Waters*, Audit Report No. 23, 2009–2010, Performance Audit, p. 15. It stated that in northern waters there had been 367 apprehension in 2005–06; 216 in 2006–07; 156 in 2007–08 and 27 in 2008–09.

82 Attorney-General's Department, *Portfolio Budget Statement, 2010*, p. 116.

13.64 One of the main reasons for the absence of organised crime in the Torres Strait may be due in large part to the current close monitoring that takes place across the strait and the presence of numerous government agencies in the region, including immigration, quarantine, fisheries, customs, foreign affairs, defence and police forces— not to mention local communities keen to keep their localities safe and free from crime. This high degree of surveillance removes the opportunity and incentive for criminals to operate in the region. The committee notes, however, that any relaxation in enforcement would once again leave the region exposed to the threat of criminal activity. In this regard, the committee recognises the need for the Australian Government to continue to support and fund adequately efforts to combat illegal fishing and other unauthorised incursions in the Torres Strait.

Recommendation 20

13.65 The committee recommends that the Australian Government continue to support and fund adequately the effort to combat illegal fishing in the Torres Strait.

Australia–PNG collaboration

13.66 The committee has noted on a number of occasions the importance of Australia and PNG cooperating and coordinating their activities in the vicinity of and in the Torres Strait. In the context of surveillance and interception, it should be noted that according to Defence, while the Australian Navy does basic skills transfer with the PNG Defence Force (PNGDF), it does not engage in joint patrols. Mr Colquhoun explained further that PNG deploys their patrol boats primarily to protect their fisheries, especially its tuna industry, north of PNG. He suggested that PNG's focus would not be on unauthorised people entering the Torres Strait to undertake traditional activities in the region.⁸³

Uncharted waters

13.67 In its submission, Customs and Border Protection stated that stretches of water within the Torres Strait remain either uncharted or only partially surveyed. Mrs Grant explained that the significant areas of uncharted water adjacent to land in the Torres Strait affects Australia's ability to apprehend illegal fishers. She explained that often small vessels operating or suspected of operating illegally do not stay in charted waters but go among the smaller islands for which charts do not exist and where Australia's marine surveillance assets cannot follow. According to Customs and Border Protection, safety requirements prevent their water-borne assets from entering into or pursuing other craft in waters generally used by vessels of interest. Mrs Grant noted that it was standard operating procedure not to sail into uncharted areas, which

83 *Committee Hansard*, 18 December 2009, p. 51.

allows 'somebody to perhaps evade our efforts to disrupt their activities'.⁸⁴ She explained that:

The shallow waters are a big issue for us up in that area. The tenders can go into waters that the Bay Class vessels cannot, in any event, but, if they are completely unknown waters, the CO has no discretion to take a vessel into such waters.⁸⁵

13.68 Even though the program of on-water enforcement has brought about a significant reduction in illegal foreign fishing, Mrs Grant noted that if the circumstances were to change, then the uncharted waters would become more of a priority issue again.⁸⁶ Mr Kris, TSRA, noted the difficulty that Customs had moving around the waters near Boigu where, in the past, 'we have seen a few foreign fishing vessels getting through that particular area'. He understood that it was 'hard for Customs to get in there because of the uncharted waters'. Mr Kris observed:

Again, through the service delivery planning that we were doing, we are seeing Customs and other agencies coming on board to actually help push the issue of getting the whole of that particular area charted so there is protection of our region.⁸⁷

13.69 According to Mr See Kee, the matter of uncharted waters had been brought to TSRA's attention from time to time, 'often in passing by some of the enforcement agencies at forums like the JAC or others'.⁸⁸ He stated, however:

...I would have thought it would have been a high priority not just for those agencies which rely on it but also to raise that not just with the TSRA but also with the other arms of government that will have some level of influence in actually pushing that up the priority list and having the charting done.⁸⁹

13.70 In his view, the TSRA had operated in good faith and assumed that if charting these areas was a priority, it was being addressed, 'so we are surprised that a lot of the area is still uncharted as well'.⁹⁰

13.71 Mrs Grant informed the committee that the Department of Defence was provided with additional funding to do more charting of the waters in the Torres Strait. To her knowledge, Defence had a significant program of work to try to

84 *Committee Hansard*, 17 December 2009, p. 39.

85 *Committee Hansard*, 17 December 2009, p. 46.

86 *Committee Hansard*, 17 December 2009, p. 46.

87 *Committee Hansard*, 24 March 2010, p. 15.

88 *Committee Hansard*, 24 March 2010, p. 15.

89 *Committee Hansard*, 24 March 2010, p. 15.

90 *Committee Hansard*, 24 March 2010, p. 15.

continue charting as much of the waters as is possible.⁹¹ In this regard, the Department of Defence informed the committee that Navy's National Hydrographic Surveying and Charting Program had identified a number of outstanding areas in the Torres Strait, including the southern coast of PNG. It explained that these areas 'are planned to be fully completed in the next three years using a continuation of Navy hydrographic surveys, augmented by commercial contract surveys'. Defence stated that 'the Australian Hydrographic Service had submitted a request for further funding of \$9.65 million, required to complete those areas along the southern coast of PNG', earmarked for completion using commercial contract surveys in 2010.⁹²

Committee view

13.72 The committee understands that there are still large tracts of water in the Torres Strait that remain uncharted. It is also aware that some work is being done to chart more areas. Even so, the committee is of the view that the charting of the Torres Strait should be a high priority and recommends that the Australian Government increase the amount of funding needed to expedite the charting of the waters of the Torres Strait, especially between Saibai and Boigu and the tract of water along their northern borders.

Recommendation 21

13.73 The committee recommends that the Australian Government provide the funding needed to expedite the charting of uncharted waters in the Torres Strait, with priority given to the waters between Saibai and Boigu and the area north of these islands.

13.74 The committee recommends further that the Department of Defence provide the committee with periodic updates on the progress being made to chart the waters of the Torres Strait.

Cooperation between enforcement agencies

13.75 To be effective in carrying out their respective responsibilities, government agencies in the region need to cooperate. The committee has cited numerous situations where agencies support each other. For example, MMOs and AQIS officers help each other in processing PNG visitors at designated entry points, and agencies such as DFAT, DIAC, Customs and QPS participate in the Treaty awareness visits.

13.76 When it comes to border control measures, Customs and Border Protection rely on the law enforcement agencies for assistance. Mr Kerlin informed the committee that his agency works closely with the two police forces on a continuous basis.⁹³ He noted that Customs and Border Protection had been involved in a joint

91 *Committee Hansard*, 17 December 2009, p. 38.

92 Department of Defence, answer to question on notice no. 5, taken on 18 December 2009.

93 *Committee Hansard*, 17 December 2009, p. 35.

exercise to combat drug trafficking with the QPS and the AFP, called 'Weed It Out', an Australian Government-funded exercise run by Queensland Police. According to Mr Kerlin, a major exercise on Badu Island was undertaken in response to information received in early 2009 that some people were moving cannabis to the island. This action led to some 30 charges being laid for various drug-related offences which was part of a well-established activity.⁹⁴ Similarly, Commissioner Atkinson indicated that the police had had some successes with containing traffic in the drug. He also drew attention to the 'Weed It Out' program, which, in his view, was a good one and working well—with both 'a preventative and a reactive focus'.⁹⁵ The Police Commissioner acknowledged the responsibility of QPS to support federal law enforcement.

13.77 Assistant Commissioner Zuccato reinforced the view that the various Australian law and border enforcement agencies work closely together in the region.⁹⁶

13.78 The committee understands that organised crime in the Torres Strait is opportunistic and that the presence of government officials coupled with a comprehensive surveillance regime provides a significant deterrence. The efforts to combat illegal fishing demonstrate this success.⁹⁷ In the chapter on law and order, however, the committee noted that local communities have called for a greater presence by law enforcement agencies in the strait, particularly on the outer islands. In this regard, the committee understands that there are two Federal Police officers based on Thursday Island who, as noted earlier, travel to the outlying islands as part of joint patrols with Customs and Border Protection and other agencies.⁹⁸ The committee has also noted the comment by the Queensland Police Commissioner that although most of the issues in the region are similar to those confronting the police in communities throughout Australia, border security 'is particularly unique' to the Torres Strait environment. Furthermore, when pressed on the matter of the presence of Federal Police in the region, he indicated that there was 'room for more'.⁹⁹

Recommendation 22

13.79 The committee recommends that, in consultation with law enforcement and border security agencies working in the Torres Strait, the AFP review its

94 *Committee Hansard*, 17 December 2009, pp. 34–5.

95 *Committee Hansard*, 25 March 2010, p. 8.

96 *Committee Hansard*, 18 December 2009, pp. 56–7.

97 See for example statement attributable to Rear-Admiral Allan du Toit, in Helmoed Römer Heitman, 'Joining to Protect: Australia's Border Protection Command', *Naval Forces*, vol. 30, no. 6, 2009, p. 16.

98 *Committee Hansard*, 18 December 2009, p. 56 and Australian Federal Police, additional information to evidence given on 18 December 2009.

99 *Committee Hansard*, 25 March 2010, pp. 3 and 14.

presence in the region and consider whether it adequately meets the level of risk and community expectations.

13.80 To this stage, the committee has focused on organised crime in the Torres Strait as a threat to border security. The committee now considers socio-economic factors that may also affect Australia's security in the region.

Socio-economic factors in Western Province

13.81 The committee has already discussed the poor living standards of communities in the South Fly District and their lack of access to basic services. Indeed, one witness described the region 'as among the most marginalised in PNG'.¹⁰⁰ Importantly, according to three researchers who have worked on both sides of the border, such conditions in the South Fly District could have implications for border security in the Torres Strait.

13.82 Mr Murphy informed the committee that 'Australia has a growing and increasingly dissatisfied population right alongside the border', that 'is likely to lead to further insecurity threats to Australia itself'.¹⁰¹ Dr Hitchcock also drew attention to areas of growing populations in Western Province, citing Daru which had a population of 13,000 at the 2000 census but could be expected to be much higher now. He mentioned the changing demographics in the context of resource use in the Torres Strait and was of the view that the population trend was of concern. He said that it:

...feeds into land disputes and things like access to potable water and resources for both subsistence—that is to eat on a day-to-day basis—and commercial.¹⁰²

13.83 Dr Lawrence acknowledged that building up Western Province was not Australia's responsibility. He noted, however:

...the security of the Australian side is definitely based on the stability of the western province and that, I think, is a concern of the three of us. We have worked there, we have lived there, we know the people and we are worried about their future.¹⁰³

13.84 An additional problem associated with concerns about rivalry over land and resources is the uncertainty generated by changes in climate.

100 See comments by Dr Lawrence and Dr Hitchcock, *Committee Hansard*, 18 June 2010, pp. 51–52.

101 *Committee Hansard*, 18 June 2010, p. 49.

102 *Committee Hansard*, 18 June 2010, p. 48.

103 *Committee Hansard*, 18 June 2010, p. 47.

Climate change and border control

13.85 In his first speech on Australia's national security, the former Prime Minister, Mr Kevin Rudd, stated that 'Over the long term, climate change represents a most fundamental national security challenge for the long term future'.¹⁰⁴ He argued that unless properly dealt with by effective policy action, this emerging problem will have long-term security impacts—locally, regionally or globally. He also suggested that, among other things, significant climate change would bring about unregulated population movements and declining food production.¹⁰⁵ He indicated that this area of emerging consequences would :

...require the formal incorporation of climate change within Australia's national security policy and analysis process.¹⁰⁶

13.86 As noted in this report, changes in climate in the Torres Strait have implications for the conservation of vulnerable marine species and for biosecurity. Some witnesses have suggested that long-term changes in climate may also result in population movements and diminishing access to food, water and land in the region. Dr Sheppard, CSIRO, noted:

The short-term impacts on sea level rise are likely in the northern islands, which are less than one metre above sea level and already subject to high tide inundation. Longer term, indirect impacts on the region could include increased competition and demand for services and natural resources such as fisheries.¹⁰⁷

13.87 The TSRA expressed serious concerns about changes to rainfall patterns, hotter weather, the spread of diseases, and damage to ecosystems. In its view, these events may affect Torres Strait Island communities, 'already vulnerable due to socio-economic factors and remoteness', and 'whose culture, subsistence and livelihoods involve traditional and commercial fishing, hunting and gardening'.¹⁰⁸ It noted the vulnerability of low-lying islands to sea level rise and explained that 'even small increases in sea level due to climate change are likely to have a major impact on these communities, with increasing frequency and extent of inundation'. The authority stated further:

104 Address by the Prime Minister of Australia, The Hon Kevin Rudd MP, 'The First National Security Statement to the Parliament', 4 December 2008, <http://www.pm.gov.au/node/5424> now located at <http://pmrudd.archive.dpms.gov.au/node/5424>

105 Address by the Prime Minister of Australia, The Hon Kevin Rudd MP, 'The First National Security Statement to the Parliament', 4 December 2008.

106 Address by the Prime Minister of Australia, The Hon Kevin Rudd MP, 'The First National Security Statement to the Parliament', 4 December 2008.

107 *Committee Hansard*, 18 December 2009, pp. 33–34.

108 TSRA, *Submission 18*, p. 26.

Under worst case sea level rise scenarios it is likely that eventually relocation would be required from several communities involving considerable cost culturally, spiritually and economically.¹⁰⁹

13.88 The TSRA identified a number of specific concerns that could have a direct bearing on border control and, more generally, national security, especially if water and food scarcity placed increased demands on Torres Strait resources.¹¹⁰

13.89 Villages on the PNG side of the border may also come under similar pressures, which, given their proximity to Australia, would create a significant border security issue. In its submission, the TSRA referred to the problems caused by changes in climate facing neighbouring coastal communities in PNG's Western Province and Irian Jaya in Indonesia. They included increased tidal inundation and flooding effects on coastal communities, potential impacts to marine ecosystems, and significant potential for future food and water security issues in the region. It stated further:

With no developed hinterland for these people to retreat to in their own country, there are at present incalculable consequences for future food and water security in the Torres Strait, should 'environmental refugees' from PNG and other neighbouring countries start to arrive on Australia's shores.¹¹¹

13.90 Similar concerns were raised by local leaders during the committee's visit to Saibai and Boigu. For example, they mentioned that PNG nationals with their gardens under water would have good reason to move into the strait. Appearing on television, Mr John Kris, TSRA, expressed fears about people coming across from the PNG coast because of sea level rises.¹¹²

13.91 The committee has discussed the possible adverse effects of changes in climate that affect a range of matters—health, conservation, biosecurity and national security. Evidence considered so far has highlighted the current shortcomings in the scientific understanding of climate change in the Torres Strait, including the adjacent areas of PNG. It recognised the need for all researchers looking at environmental matters in the region to work collaboratively in order to build a far more complete and comprehensive picture of what is happening and likely to happen in the Torres Strait. The committee considers developments in this area in greater detail in the following chapter.

109 TSRA, *Submission 18*, p. 26.

110 TSRA, *Submission 18*, pp. 25–26.

111 TSRA, *Submission 18*, p. 26.

112 ABC, 'Lateline', transcript, 'Torres Strait islands at risk from climate change, 7 December 2009, <http://www.abc.net.au/lateline/content/2008/s276521.htm> (accessed 21 December 2009).

Committee view

13.92 The committee notes that socio-economic developments in the South Fly District and climate changes in the region could have a major effect on security in the Torres Strait. Both factors have the potential to generate social and economic conditions that could lead to increased competition for land, food and water. Communities in, and in the vicinity of, the Torres Strait, faced with the prospect of increased competition for essential but scarce resources or having to re-locate, would pose a significant challenge for the Australian Government. No matter how remote such prospects may be, the committee is firmly of the view that socio-economic and climate change factors should now be major considerations in Australia's national security assessments for the region.

Conclusion

13.93 Although the committee has noted that some unauthorised visitors from PNG arrive and remain on islands in the Torres Strait, particularly those in the outer areas, any larger-scale unauthorised or illegal activity is likely to be detected by the close monitoring of vessels that travel through the strait. The effective response by Border Protection Command to reports of suspicious activity in the area further enhances Australia's border security in the region. While the current surveillance and interception regime is an effective deterrent, the committee is of the view that efforts in this area must continue. It also notes that some aspects of border security could be strengthened by improving the identification system for PNG visitors and completing the charting of the waters of the strait. Climate change and the challenges it presents to the region are a further concern to border security in the form of 'environmental refugees' from PNG to the Torres Strait.

Chapter 14

Climate change

14.1 Throughout this report, the committee has referred to current and potential adverse effects of changes in climate on the ecosystems in the Torres Strait. The committee discussed the possible detrimental effects on the life cycle of protected or vulnerable species and the likelihood of increased risks of noxious weeds, pests and diseases spreading into the region. It also considered the implications for national security, should food or water shortages create tensions between people or communities who are forced to re-settle because their local environment can no longer sustain them. The effects of changes in climate in the Torres Strait therefore are not confined to a specific island, animal or plant species, or community. Moreover, the knock-on effects for conservation, biosecurity and national security are little understood.

14.2 In this chapter, the committee consolidates its consideration of the effects of climate changes in the Torres Strait, starting with the more immediate concern of events already occurring due to sea water inundations and coastal erosion. It then pieces together all the numerous aspects of climate change covered in the report to reach a more comprehensive understanding of the significance of these changes and the steps being taken to address the possible short and long-term implications for the region.

Immediate problems

14.3 At present, coastal erosion and inundation are affecting settlements, wildlife habitats, land use, beaches, harbour and coastal works, business, ecosystems and important cultural sites in the Torres Strait Islands. The worst affected communities include Boigu and Saibai, the two most northern islands just across from the PNG border. The central coral cay islands of Warraber, Masig, Poruma and Iama are also subject to significant erosion and inundation.

Recent events

14.4 Local people informed the committee during its visit to Saibai and Boigu about recent sea water inundations and the subsequent major flooding. Ms Morris advised the committee that the highest astronomical tides that occurred in January 2009 and 2010 were related to cyclonic or low activities in the gulf. She explained further:

...the high tides always come with those monsoonal activities, be it a cyclone or just a large low. We know that the sea level was 52 centimetres higher than the predicted highest astronomical tide level and we suspect that this year, when all the data is completed, we will be looking at similar spike periods. So it is not the four centimetre sea level rise that you hear people talk about; it is these spikes that come through that have the bigger

impacts. That changes a whole lot of systems, including the ecological systems and some of the breeding systems of some of the species.¹

14.5 As noted in earlier chapters, rising sea levels and more extreme weather events have the potential to affect every aspect of life in the Torres Strait—eco-systems and the wildlife they support; food and water supplies; the health and well-being of local people; land use; and patterns of human settlement. During the committee's visit to Boigu, Councillor Donald Banu spoke of the changes taking place on his island. For example, he noted that the birds that used to be in the swamps now walk the streets. He recalled a time when their fathers knew when to plant crops but changes in climate were now outside their understanding of normal fluctuations. The committee also saw evidence of coastal erosion on Saibai and Boigu and heard first-hand accounts of the severe effects of the January 2009 and 2010 inundations. It was told that Saibai once had a beach but this foreshore was now lost.



Shoreline erosion on low lying islands in the Torres Strait

1 *Committee Hansard*, 25 March 2010, p. 33.



(Photos courtesy of the Torres Strait Regional Authority)

The damage caused on Saibai by recent sea water inundations and major flooding

14.6 Whether the sea water inundation is caused by climate change or unusual weather events, Ms Morris argued that it is occurring and causing problems on Masig, Yam, Saibai and Boigu and nearly all the low-lying islands in the Torres Strait. Scientists are seeing fundamental change, such as sand accretion, in these islands, and the mud islands of Saibai and Boigu, in particular, are 'in a lot of trouble'.²

14.7 Because the land and seascape is central to the cultural and social life of Torres Strait Islanders, changes in climate may also affect profoundly the cultural heritage of the people. A 2008 Native Title Report found that the threats to culture from climate change were 'already being felt' and gave the examples of king tides damaging graveyard sites and the disruption to nesting behaviour of turtles. It surmised that if predictions were accurate, some islands may 'disappear completely' and others 'lose large tracts of land', with the possibility of Islanders being disposed of their lands and forced to relocate. It quoted an Islander from Saibai who said 'But we will lose our identity as Saibai people if we scatter. If we separate, there will be no more Saibai'.³ During its visit to Saibai and Boigu, the committee heard similar views about the importance of preserving the island culture and the strong resistance to any suggestion regarding relocation.

14.8 Islanders are looking at practical measures to deal with the immediate problems of sea inundation. For example, the people of Masig have stated clearly their wish 'to continue live on Masig into the future'. They are prepared to participate in a process of adaptation to environmental change by, among other things, gradually moving the focus of the island village towards higher parts of the island' and building new houses and infrastructure away from hazardous locations unless absolutely essential.⁴

14.9 To manage the uncertainty about climate change and its effects on island environments, in 2006 the TSRA established the Torres Strait Coastal Management Committee (TSCMC). Its initial brief was concerned with coastal erosion issues; but has broadened its scope to include tidal and storm surge inundation and projected climate change impacts on island communities. The TSCMC includes representatives from communities currently most affected by coastal erosion and tidal inundation—Saibai, Boigu, Poruma, Masig, Iama and Warraber. It also includes representatives from local, state and Australian governments and from research institutions.⁵

2 *Committee Hansard*, 25 March 2010, pp. 33–34.

3 Australian Human Rights Commission, *Native Title Report 2008*, Case Study 1 'Climate change and the human rights of Torres Strait Islanders', p. 245, http://www.humanrights.gov.au/social_justice/nt_report/ntreport08/pdf/casestudy1.pdf (accessed 8 January 2010).

4 Australian Human Rights Commission, *Native Title Report 2008*, Case Study 1 'Climate change and the human rights of Torres Strait Islanders', p. 249, http://www.humanrights.gov.au/social_justice/nt_report/ntreport08/pdf/casestudy1.pdf (accessed 8 January 2010).

5 TSRA, *Submission 18*, p. 26.

14.10 TSRA stated that on its behalf, the TSCMC in 2008 'facilitated research on coastal erosion', completed by the Queensland Environmental Protection Agency (EPA, now Department of Environment and Resource Management) and James Cook University (JCU). According to TSRA, this research highlighted the need for 'a suite of immediate works to mitigate coastal erosion and inundation hazards' and also identified critical knowledge gaps. In the view of TSRA, more detailed work is presently underway 'to assess and map inundation hazards to each community, involving updating of island datum's, high resolution terrain mapping and probabilistic hydrodynamic modelling'.⁶ According to Ms Morris, the researchers from JCU:

...were looking at what was happening: how frequently the inundations were occurring, what was happening to the sand, where it was going and why it was going there...They then looked specifically at eight islands that were in what they called the highest risk category...They looked not only at what was happening with sea level rise, erosion and accretion but also at potential mitigation components and opportunities for mitigation.⁷

14.11 In her view, scientists can provide very good advice on where and how things should be built and why some of the abatement processes are failing—the tyre walls, the rock walls and those sorts of things. She explained that they 'are working with the islands to give them information on the engineering and basic knowledge and predictive capacity around that'.⁸ Ms Morris continued:

There are many things that you can do. You can relook at your desalination plant. You can look at your sewerage plants. You can structure them differently. You can structure the housing differently. You can maintain some of the infrastructure.⁹

14.12 Ms Morris also referred to work being done on the way the communities respond to the changes and how fear is managed in the communities—'how they articulate that fear in relation to their heritage, what that means and how they think they are going to go'.¹⁰

14.13 The damage caused by sea water inundation in the Torres Strait has also been the subject of recent government studies. For example, the Australian Government through the Department of Climate Change released a number of studies on climate change that registered concerns already raised by Torres Strait Islanders. One report on the climate change risks to Australia's coast found:

Many communities are subject to significant coastal hazard issues with erosion and inundation directly threatening housing, infrastructure including roads, water supply systems, power stations, community

6 TSRA, *Submission 18*, pp. 26–27.

7 *Committee Hansard*, 25 March 2010, pp. 38–39.

8 *Committee Hansard*, 25 March 2010, p. 34

9 *Committee Hansard*, 25 March 2010, p. 39.

10 *Committee Hansard*, 25 March 2010, p. 34

facilities, cultural sites including cemeteries, traditional gardens and ecosystems.¹¹

14.14 The report noted that continuing inundation events for communities on the low-lying islands in the Torres Strait would 'require the development of short-term coastal protection and may require long-term relocation plans for approximately 2000 Torres Strait islander peoples'.¹² A scoping study, released in May 2010, noted that the 'majority of Saibai inhabitants wish to see the construction of a sea wall to protect the village'. It noted that this undertaking would be expensive and that, to date, funding had not been forthcoming, other than for basic repairs to the existing wall.¹³

Practical steps to address immediate problems

14.15 Regarding the lack of action in the construction of the sea wall, the TSRA informed the committee that it had submitted a proposal for funding the 2008 research recommendations to the Australian Government. The proposal was to implement coastal protection works for Saibai and Boigu, Iama and Poruma, Masig and Warraber and included seawall construction, bund building, sand re-location and elevation of essential infrastructure. According to the TSRA, the measures were intended 'to complement the house raising activities being implemented in some communities'.¹⁴ It explained:

The joint strategy of immediate works and comprehensive community based adaption planning is designed to alleviate current inundation and erosion issues whilst at the same [time] buying sufficient time to develop longer term adaption plans addressing sea level rise together with other potential climate change issues (including health, ecosystem, food, water border security etc). It is envisaged that the process of developing these plans will involve detailed consideration of adaptation options (such as seawalls, house raising, levees, filling, relocation, emergency planning) including social, cultural, economic, and environmental assessment over various time horizons.¹⁵

14.16 The TSRA estimated that the implementation of the proposed coastal works and the assessment of island adaptation needs would cost \$22 million. A

11 Commonwealth of Australia, *Climate Change Risks to Australia's Coast a First Pass National Assessment*, Department of Climate Change, 2009, p. 126.

12 Commonwealth of Australia, *Climate Change Risks to Australia's Coast a First Pass National Assessment*, Department of Climate Change, 2009, p. 127.

13 Green D, S Jackson and J Morrison, *Risks from Climate Change to Indigenous Communities in the Tropical North of Australia*, Department of Climate Change and Energy Efficiency, 2009, (released 5 May 2010), Canberra, p. 122.

14 *Submission 18*, p. 27.

15 *Submission 18*, p. 27.

comprehensive climate change adaptation strategy was being prepared by the LSMU at the TSRA.¹⁶

14.17 The committee sought information from representatives of the Queensland Government on its response to the problems caused by water inundation. Mr David Robinson informed the committee that while his Department of Environment and Resource Management provided advice and assistance to all councils in Queensland and the TSRA, the protection of property and related issues was primarily a matter for the local authorities. He said the department was working closely with TSRA which was undertaking a storm tides study. At the time, the study had not been completed but was expected 'to assist in the planning process'.¹⁷ He stated that the department did not have 'a funding program for that'.¹⁸ Mr Paul Toolis, Queensland Department of Infrastructure and Planning, explained:

...whilst it is fairly obvious there is an impact on climate change in the Torres Strait, there is quite a need for work to establish what that is, and that is the work that is going on at this time. The Department of Infrastructure and Planning has infrastructure programs going in the Torres Strait. At the moment, they are essentially targeted at environmental health infrastructure—that is, sewerage schemes, water supplies and waste management regimes. The Torres Strait Island Regional Council and the Torres Strait Regional Authority have certainly written to the Queensland government and advised them of this issue. At this stage, I understand that the process is to get a full understanding of what that really means. To my knowledge, at this stage there is no significant program to do remedial works.¹⁹

14.18 When asked about the immediate problems caused by the high tides that inundate these communities, Mr Toolis responded that he was unaware of any state government program that addressed such issues. He understood that there was an Australian government department assisting in this process and also that the TSRA had had consultations with a Commonwealth government agency.²⁰

14.19 Dr John Higgins, Commonwealth Department of Climate Change, informed the committee that he was aware of some concern on the Torres Strait Islands about the impacts of climate change. He explained that his department's role was 'in generating information that can be used to help make decisions about infrastructure'. He indicated that the construction of a sea wall would be 'handled within the portfolio

16 *Submission 18*, p. 27.

17 *Committee Hansard*, 25 March 2010, p. 30.

18 *Committee Hansard*, 25 March 2010, p. 30.

19 *Committee Hansard*, 25 March 2010, p. 30.

20 *Committee Hansard*, 25 March 2010, p. 31.

for Families, Housing, Community Services and Indigenous Affairs, who are responsible for those infrastructure projects in the Torres Strait'.²¹

Recommendation 23

14.20 The committee recommends that the Australian Government:

- **place a high priority on implementing practical measures that need to be taken in the short term to assist local communities in the Torres Strait better deal with and, where possible, mitigate the problems caused by higher sea levels and extreme weather events; and**
- **review the need for an education and training program designed specifically to assist those communities in the region most at risk from the damaging effects of changes in climate. The intention would be to determine how best to assist people to remain productive members of their community in a changing environment.**

Long-term issues

14.21 The TSRA's funding proposal also identified the need for a comprehensive climate change adaption program for the region, which would cover the ecology, economy, human health and social infrastructure of all the islands. The proposal detailed 'an approach to investigate, monitor and plan for adaptation to current coastal hazards as well as the potential effects of climate change'. It was intended that this program would 'build on the work by the EPA and JCU, incorporating strategies agreed to by the communities of Boigu, Saibai, Masig, Poruma, Warraber and Iama, but also address coastal management and climate change issues affecting other Torres Strait Island communities'.²²

Research on climate change

14.22 In 2009, the TSRA listed a number of studies then being undertaken in the Torres Strait, including:

- a rapid assessment shoreline erosion project, examining causes of coastal erosion in the Torres Strait—undertaken by the EPA;
- a sustainable land use planning project, educating communities on the impacts of development on the natural environment in the Torres Strait;
- a MTSRF project 'Climate change impacts in the Torres Strait: Building resilience and planning adaptation strategies', which aimed to integrate scientific and traditional knowledge for a regional workshop on adaptation; and

21 *Committee Hansard*, 18 June 2010, pp. 38–9.

22 TSRA, *Submission 18*, p. 27.

- a research project by JCU and University of Wollongong titled 'Understanding sea-level change in Torres Strait', which was to survey, sample and date material from reef flat corals to examine sea level changes over time.²³

14.23 The committee has also referred to the research that scientists with the CSIRO were undertaking on climate change in the Torres Strait, notably its effects on the life cycle and behaviour of mosquitoes.

14.24 Despite the number of research projects, considerable uncertainty still surrounds the issue of climate change and its consequences. Dr Butler, CSIRO, referred to the huge variations in the climate models and the enormous difficulties involved in trying to bring global-scale modelling down to a local scale. He informed the committee that the 'science of that is relatively young':

What we would say is that one way to tackle the uncertainty is to apply technical scenario planning where you look at all of the possible outcomes of future climate change plus the other things that go on anyway in terms of population growth and global economic forces and political processes and so on to try to tease out...what the future trajectories for the Torres Strait might be.²⁴

14.25 Dr Sheppard informed the committee that the research around the regionalisation of the climate, future climate mapping and modelling was about to start.²⁵ According to him, CSIRO would model the potential range of direct and indirect climate change impacts on the region's ecosystems, communities and economy. This undertaking would allow predictions of possible future scenarios for the Torres Strait's vulnerable communities and appropriate adaptation options. He could not provide a definite time for the completion of the early phase of this work. He noted that it 'really depends on how quickly we can have access to the regional climate modelling data' but surmised that it would be a five- to 10-year time frame.²⁶

14.26 Dr Sheppard noted that the research undertaken by CSIRO in the three separate areas of fisheries, biosecurity and climate change was located in quite different parts of the organisation. Scientists recognised, however, that the climate change components associated with each of them come together as being relevant. According to Dr Sheppard, CSIRO is looking to link the various areas of research that involves climate change. He stated further:

...research is most likely going to be coordinated through the CSIRO's Climate Adaptation National Research Flagship...The only aspect of the

23 House of Representatives Standing Committee on Climate Change, Environment and the Arts, *Managing our coastal zone in a changing climate*, 2009, paragraph 3.168, p. 108.

24 *Committee Hansard*, 18 December 2009, p. 41.

25 *Committee Hansard*, 18 December 2009, p. 34.

26 *Committee Hansard*, 18 December 2009, p. 38.

research that I highlighted that is not currently directly in the flagship is, I believe, the fisheries research.²⁷

14.27 For example, he informed the committee that the research into biosecurity associated with the risk from mosquitoes as vectors of human diseases was part of a much larger area of activity in the climate adaptation flagship. He explained:

The flagship funds these clusters that actually bring in collaboration with universities. It is part of a collaboration between CSIRO, the University of Queensland and the ANU around the general impacts of climate change on human health.²⁸

14.28 Dr Butler also spoke of the direction being taken by CSIRO in its research on climate change in the Torres Strait. He noted that a lot of the work was very focused, for example on bêche-de-mer, a species of bêche-de-mer or a species of mosquito. He explained that the research that CSIRO was trying to start in the Torres Strait was 'really about pulling all of those different strands together'. The intention would be to piece together 'a broader picture of what might happen and translate that or enunciate that in terms of human livelihoods, wellbeing and health and the economy as a whole up there'.²⁹

14.29 According to Dr Butler the research would include assessments of inundation, storm surges and the range of things that are thought likely to be a consequence of climate change. He stressed the importance of recognising that 'those are the sorts of short-term, tactical... "in your face"... effects of climate change'. He added:

But there are likely to be more indirect effects. For example, simply the price of fuel is going to be a major driver of how the economy of the region operates. That may be driven to some extent by climate change issues as well. So I think we would like to broaden up the question to the indirect issues as well as those very short-term direct problems that you have just mentioned.³⁰

14.30 Importantly, he noted that much of what happens to the Torres Strait may be influenced by what happens in PNG, particularly along the southern coast, 'whether those are climate impacts and the knock-on effects of them or broader political and economic issues'.³¹

14.31 Pressed on the question of a time frame for the study, Dr Butler also explained that 'ideally, in a perfect world, we would like to get it done within the next three, four or five years depending on availability of resources'. He added, however, that the

27 *Committee Hansard*, 18 December 2009, p. 34.

28 *Committee Hansard*, 18 December 2009, p. 38.

29 *Committee Hansard*, 18 December 2009, pp. 41–42.

30 *Committee Hansard*, 18 December 2009, p. 42.

31 *Committee Hansard*, 18 December 2009, p. 41.

long-term goal of turning that research 'into a sort of broader futures analysis of the Torres Strait will require, probably, some more resourcing'.³² According to Dr Butler, some of the funding was already allocated and some not.³³ He explained that funding for the MTSRF was coming up for renewal and 'if that all comes to fruition then hopefully those funds will be available, but if it does not then it is not quite so clear how this will go'.³⁴ The committee noted previously that the Australian Government has produced a new funding proposal but that details on future research were not available (see paragraphs 10.49–10.51).

Recent announcement

14.32 In May 2010, the then Minister for Climate Change announced \$400,000 for new research into the impacts of climate on Torres Strait communities and possible adaptation strategies. Dr Higgins explained:

The role of the Department of Climate Change and Energy Efficiency lies in generating a better information base for decision making. That information can then be taken into account in broader decisions about infrastructure needs, for example, and integrated with decisions about other things that infrastructure has to deal with.³⁵

14.33 The committee would hope that any future funding of research into climate change in the Torres Strait would come under, and feed into, the work being done by CSIRO's climate adaptation flagship.

Committee view

14.34 Numerous reports or assessments have been published in recent times that highlight the threat that changes in climate present for communities in the Torres Strait. They are united in drawing on current events and trends to conclude that the risks are serious and real although the extent is uncertain. This body of work exposes the lack of data on which to base firm predictions for the Torres Strait and underscores the need for more research. For example, even the recent scoping study on the risks from climate change to Indigenous communities in Northern Australia recommended an in-depth collaborative study.³⁶

14.35 While the committee recognises that more research is needed, it is concerned that currently there is no concerted, well-coordinated research plan that would focus predominantly on the Torres Strait. It notes that CSIRO has commenced work on

32 *Committee Hansard*, 18 December 2009, p. 42.

33 *Committee Hansard*, 18 December 2009, p. 42.

34 *Committee Hansard*, 18 December 2009, pp. 42–43.

35 *Committee Hansard*, 18 June 2010, p. 39.

36 Green D, S Jackson and J Morrison, *Risks from Climate Change to Indigenous Communities in the Tropical North of Australia*, Department of Climate Change and Energy Efficiency, 2009, (released 5 May 2010), Canberra, pp.143–144.

'detailed modelling to downscale a range of regional climate change projections and predict direct impacts and changes on marine ecosystems, island infrastructure and communities' in the Torres Strait.³⁷ It notes further the reference made by CSIRO researchers to its 'climate adaptation flagship'. The committee believes that this project, which intends to draw together all facets of research that touch on climate change in the Torres Strait, is well over due. It welcomes this initiative and fully supports CSIRO's 'climate adaptation flagship' but notes the uncertainty surrounding its long-term funding.

Recommendation 24

14.36 The committee recommends that the Australian Government lend its full support to CSIRO's 'climate adaptation flagship' and ensure that adequate funding is made available to the institution to continue this initiative.

Recommendation 25

14.37 In conjunction and closely connected with this initiative, the committee recommends that the Australian Government fund a study into socio-economic developments in the region, including in the South Fly District, and their implications for water and food security and populations movements in the area.

14.38 Consistent with recommendations in chapter 9, the committee would expect that consultation with the local communities about the flagship and the close involvement of local people in all aspects of associated research projects would be required.

14.39 The committee again notes that the Torres Strait region is a shared jurisdiction and, furthermore, that the effects of climate change on the PNG side of the border cannot be treated as distinct and separate from developments on the Australian side. The committee believes that the collaborative approach being taken by CSIRO should also encompass research on the PNG side.

Recommendation 26

14.40 The committee recommends that the Australian Government assist PNG to undertake complementary studies of climate change in Western Province by providing funding for research, opening up research opportunities for PNG researchers to work alongside Australian researchers in this area and for Australian researchers to work in PNG. For example, the Australian Government should consider offering scholarships or traineeships for PNG students to participate in CSIRO's climate adaptation flagship.

Recommendation 27

14.41 The committee recommends that ACIAR consider including climate change and the implications for coastal villages in PNG's southern region in its

37 *Committee Hansard*, 18 December 2009, pp. 33–34.

research priorities for PNG (traditional fishing, the conservation of species, including the dugong and turtle, and emergence and/or spread of exotic pests).

14.42 Before concluding this chapter, the committee wishes to refer to evidence received regarding climate change in the Torres Strait and the Environmental Management Committee (EMC) and the Joint Advisory Council (JAC).

14.43 In December 2009, DEWHA informed the committee that there had been minor discussion on climate change issues at the recent EMC meeting at the start of November. The department indicated that the issue had also been brought to EMC's notice earlier in the year by the traditional inhabitants. According to the department, the EMC determined that it was not the right forum for the resolution of those issues, given that climate change departments were not represented on the committee. Under the Treaty, the matter was referred to the JAC, which determined that it also was not the correct forum to address issues directly. It did, however, undertake to have climate change staff from both Australian and PNG government departments address the committee the following year and discuss the issues and share information with the traditional inhabitants.³⁸

Committee view

14.44 Given the importance that local inhabitants attach to the effects of climate change in their communities, the committee was surprised to learn that this matter was not a key item for discussion at the EMC and the JAC. The committee believes that the effects of climate change should be a matter that both committees consider, especially in light of the concerns of local leaders.

Recommendation 28

14.45 The committee recommends that the Australian Minister for Foreign Affairs consult with his PNG counterpart about removing immediately any possible impediment to the Environment Management Committee and the JAC considering climate change in the Torres Strait.

38 *Committee Hansard*, 17 December 2009, p. 70.

Part IV

Consultation and cooperation in the region

The Torres Strait Treaty not only creates an international border between Australia and PNG but is also instrumental in protecting the traditional way of life of local inhabitants. It provides the framework within which the Australian, PNG, state and provincial governments together with the local people work as partners to protect and preserve the Torres Strait environment and the livelihood of traditional inhabitants. In agreeing to the Treaty, Australia and PNG also recognised the value of commercial fishing in the region and the importance of promoting the 'conservation, management and optimum utilisation of Protected Zone commercial fisheries'.

The effectiveness of the Treaty rests on the support, good will and cooperation of all involved in its implementation. It relies, therefore, on a high level of collaboration between the various levels of government. The final part of this report examines the complex relationships between federal, state and international government agencies. It recognises the importance of local support for the Treaty and the arrangements for implementing its provisions and managing community expectations

Chapter 15

Sustainable development and commercial enterprise

15.1 The marine resources of the Torres Strait are a vital part of both the subsistence and commercial life of Torres Strait Islanders and neighbouring PNG villages. Outside the government sector, fishing is the biggest industry in the Torres Strait. According to Mr See Kee, fishing offers 'the most potential immediately'.¹

15.2 Although the Treaty places a heavy emphasis on conserving and protecting the environment so that traditional inhabitants can carry on their customary way of life, it also recognises the importance of economic development. In this chapter, the committee complements its consideration of traditional fishing in the Torres Strait by turning its focus to the commercial opportunities for the region's fisheries industry. It starts by outlining the potential for commercial fishing in the Torres Strait and some of the arrangements under which commercial fishers operate in the region.

Potential for commercial fisheries in Torres Strait

15.3 A number of fisheries make up the industry in the Torres Strait—bêche-de-mer, the Torres Strait crab, finfish, pearl shell, prawn, trochus and tropical rock lobster (TRL). The most valuable commercial fisheries in the Torres Strait are prawn, TRL, Spanish mackerel and finfish. The TSRA told the committee that TRL is the second most valuable fishery and one that is important to Torres Strait Islanders because of the high value of the catch and the relatively low operational costs compared to the other fisheries.²

15.4 Mr Roland Pittar, DAFF, informed the committee that the value of the TRL fishery in 2007–08 was about \$9.4 million and the Torres Strait prawn fishery \$10.4 million. Professor Hurry advised that the focus to date in TRL fishery in the Torres Strait was on taking and selling lobster tails. He noted:

There is far more money in live lobster in the world market than there is in lobster tails. So, in that sense, you could increase the return from the rock lobster fishery.³

15.5 With regard to the prawn fishery, Professor Hurry explained that this commercial fishery depended on the economics of fishing in the strait and the cost of operating there in any given year. He informed the committee:

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

2 *Submission 18*, p. 23. See also *Committee Hansard*, 17 December 2009, p. 67.

3 *Committee Hansard*, 17 December 2009, p. 60. Mr Arlidge told the committee that the TRL industry was worth \$12 million to \$20 million for the entire Torres Strait including the Papua New Guinea side. *Committee Hansard*, 25 March 2010, p. 43.

It is often driven by the Australian dollar. The Australian dollar is quite strong at the moment, so it is hard to trade some of our prawns on the market. This year you will see that the fishing effort in the prawn fishery in the Torres Strait is quite low. In any year, if they fished the number of days that we make available to them, the fishery would be pretty well fully fished—it would be fished at a sustainable level.⁴

15.6 The value of the finfish fishery stood at about \$1 million for 2007–08 which was made up of reef line fishery of around \$0.55 million, and the Spanish mackerel fishery at about \$0.68 million.⁵ Professor Hurry was of the view that 'there is real potential to catch and trade live coral trout and live reef fish out of the Torres Strait into the [valuable] world live reef fish market'.⁶ He suggested that while the reef line and Spanish mackerel fisheries have scope for development, it was up to the Torres Strait Islanders to determine how they develop that fishery.⁷

15.7 The hand collectables, that is, the more traditional fisheries such as the *bêche-de-mer*, trochus and commercial pearl fisheries, were not ascribed a gross value of production.⁸ In addition, the Islanders fish and collect crayfish for domestic consumption.⁹ The committee considered *bêche-de-mer* in its discussion on conservation of vulnerable species.

15.8 Mr Bedford, TSRA, also noted the many other economic opportunities associated with the fishing industry, for example boat building and maintenance. He suggested that these are 'potentially areas we are trying to concentrate on investing in the future'.¹⁰

15.9 The committee now looks at the provisions of the Treaty and arrangements for commercial fishing in the Torres Strait.

Promoting economic development under the Treaty

15.10 Part 5 of the Treaty is concerned with the Torres Strait Protected Zone (TSPZ) commercial fisheries. As noted in chapter 2, the Treaty established the TSPZ, which includes all the land, sea, airspace, seabed and subsoil within a large area delineated in the Treaty (see map, p. 8). This zone comprises most of the area within the Torres Strait: all the Australian islands north of the seabed line, through the central part of the strait, excluding the southern islands adjacent to Cape York Peninsula. The TSPZ is

4 *Committee Hansard*, 17 December 2009, p. 60.

5 *Committee Hansard*, 17 December 2009, p. 58.

6 *Committee Hansard*, 17 December 2009, p. 60.

7 *Committee Hansard*, 17 December 2009, p. 59.

8 *Committee Hansard*, 17 December 2009, p. 58.

9 *Committee Hansard*, 17 December 2009, p. 58.

10 *Committee Hansard*, 24 March 2010, p. 10.

intended to safeguard the interests of Indigenous communities in the region and for environmental protection.

15.11 The Treaty requires both Australia and PNG to cooperate in the conservation, management and optimum utilisation of commercial fisheries operating in the zone (Article 21). To this end, Australia and PNG are to consult and enter into arrangements for the effective implementation of the provisions of this part of the Treaty. It should be noted that commercial activity in the TSPZ is not to prejudice the purpose of the Treaty with regard to protecting the traditional way of life.

Catch-sharing arrangement

15.12 Under the Treaty, Australia and PNG may undertake, where appropriate, to negotiate subsidiary conservation and management arrangements for individual TSPZ commercial fisheries. As part of these arrangements, the countries jointly determine the allowable catch of a commercial fishery, or the 'optimum sustainable yield'.

15.13 The Treaty also provides for a complex catch-sharing arrangement between Australia and PNG of the allowable catch of fish. In areas under Australian jurisdiction, the proportion set down under the Treaty is 75 per cent for Australia and 25 per cent for PNG. In certain areas, Australia and PNG have an equal 50 per cent share. In areas under PNG jurisdiction, Australia has a 25 per cent share and PNG 75 per cent. With a number of exceptions, PNG has the sole entitlement to the allowable catch of the commercial barramundi fishery near its coast.¹¹ Professor Hurry drew on the TRL to explain the process of assessing the level and proportion of catch:

CSIRO do a stock assessment of the stocks both on our side and their side...and we allocate 25 per cent of what the TAC [total allowable catch] is to Papua New Guinea, and the rest of it is for our fishers and the Torres Strait islanders to fish on our side of the line.¹²

15.14 He used the prawn fishery to illustrate how an allocation is determined, explaining that prawn fishing is managed by allocating fishing nights:

On a scientific basis you work out the likely total allowable catch of prawns on the Torres Strait and then work out an average night's catch. So you determine a number of nights against what you think the allowable catch should be. Then you allocate that and you keep 25 per cent of the allocation for Papua New Guinea.¹³

15.15 Professor Hurry explained that each year, both countries have a 'fairly open discussion' on the allocation of resources and the management of them, including the formal arrangements for sharing the catch. He noted that if PNG decides not to use its full quota, Australia can seek to take up the unused portion. He explained that to date,

11 See Article 23 of the Treaty.

12 *Committee Hansard*, 17 December 2009, p. 55.

13 *Committee Hansard*, 17 December 2009, p. 55.

PNG has agreed to Australia having its 25 per cent share of the catch in the area under Australian jurisdiction, which is then allocated to Australian fishers.¹⁴

15.16 As an example, for the 2008–09 period, the PNG National Fisheries Authority informed DAFF that they would not use their Spanish mackerel entitlement and made it available to Australia. Such decisions are made annually.¹⁵ With regard to Australian commercial fishers taking up their entitlement to a percentage of the allowable catch on the PNG side, Professor Hurry noted that normally, Australian boats choose not to fish across the line.¹⁶

Issuing licences

15.17 Cooperation is central to a number of other provisions under Part 5 of the Treaty. The countries are to consult on, and cooperate in, how they issue and endorse licences permitting commercial fishing in the TSPZ. In doing so, the responsible authorities of both countries are to take account of the desirability of promoting economic development in the Torres Strait area and employment opportunities for the traditional inhabitants. Both countries are required to ensure that the traditional inhabitants are consulted from time to time on the licensing arrangements in respect of TSPZ commercial fisheries. The Treaty also requires both countries to share information, consult and cooperate with regard to inspection and enforcement measures governing commercial fishery in the TSPZ.

Monitoring fishing activity

15.18 Monitoring commercial fishing activity under the agreements reached by Australia and PNG is the responsibility of the respective governments. For example, the recent audit on finfishing in the Torres Strait explained that were PNG to take up their catch in the area of Australian jurisdiction, any PNG vessels would need to seek finfish fishing endorsement from the Queensland Department of Employment, Economic Development and Innovation (DEEDI). They would be bound by the same fishing requirements governing the holders of authorised Australian vessels, such as submitting log books with AFMA.

15.19 Professor Hurry noted that PNG nationals usually nominate which vessels are coming across to fish on what fisheries on Australia's side of the zone. For instance, if they were coming across to fish rock lobster, they would identify the vessels, the number of tenders with them and the period they would spend in Australian waters.¹⁷

14 *Committee Hansard*, 17 December 2009, pp. 54–55.

15 Australian Government *Performance Audit of Torres Strait Finfish Fishery Management*, Office of Evaluation and Audit (Indigenous Programs), Department of Finance and Deregulation, December 2009, p. 51.

16 *Committee Hansard*, 17 December 2009, pp. 54–55.

17 *Committee Hansard*, 17 December 2009, p. 54.

AFMA monitors the total catch to ensure that the PNG fishers remain within their allocated share of the catch.¹⁸

15.20 Interestingly, in November 2009, the Torres Strait Management Advisory Committee reported that for the first time in a number of years, PNG cross-endorsed vessels had accessed the Australian fishery for TRL. It noted concerns raised by community fisher groups about compliance and the monitoring of those vessels. The advisory committee indicated that during discussion on conditions required of cross-endorsed vessels, some ambiguous areas were identified that require further investigation.¹⁹ It noted further:

A pre-season information session with the skippers of PNG cross-endorsed vessels is being considered for 2010 as a way to ensure that all licence conditions are fully understood by those on the vessels before they enter the Australian jurisdiction.²⁰

15.21 This suggestion ties in with the comments made by stakeholders to a recent review of the PZJA who voiced concerns about PNG's involvement in information-sharing activities such as meetings. The paper stated:

...it is important to have PNG fully engaged and that proper communication processes be put in place with PNG to ensure attendance at meetings. The principal focus of consultative arrangements needs to take account of the Treaty provisions, but also needs to be on the ecological sustainability of the fisheries resources in the Torres Strait.²¹

15.22 This observation is consistent with a dominant theme in this report—the critical importance of having PNG actively engaged with Australia in implementing the provisions of the Treaty. The concerns raised by the community fisher groups about PNG vessels failing to comply with the terms of their Australian fishing licences may well be resolved by having appropriate communication processes in place.

15.23 Aside from the matter raised above about ensuring that PNG fishers are aware of the conditions of their licence and comply with those conditions, the committee is not aware of any major criticism of the provisions of the Treaty with regard to PNG and commercial fishing in the TSPZ. Some witnesses, however, were highly critical of

18 Australian Government *Performance Audit of Torres Strait Finfish Fishery Management*, Office of Evaluation and Audit (Indigenous Programs), Department of Finance and Deregulation, December 2009, paragraph 3.34, p. 51.

19 Torres Strait Management Advisory Committee, Meeting no. 11, Chair's Summary, 11–12 November 2009, p. 6.

20 Torres Strait Management Advisory Committee, Meeting no. 11, Chair's Summary, 11–12 November 2009, p. 6.

21 AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, pp. 41–42.

the domestic management of commercial fishery on the Australian side, in particular, the performance of the Torres Strait Protected Zone Joint Authority (PZJA).

Torres Strait Protected Zone Joint Authority

15.24 The *Torres Strait Fisheries Act 1984* (Cth) (TSFA) gives effect in Australian law to the fisheries elements of the Treaty. In administering the Act, regard is to be given to the rights and obligations conferred on Australia by the Torres Strait Treaty.²² Section 30 of Act establishes the PZJA. The Authority is the key decision-making and policy-setting body for managing commercial and traditional fisheries in the Australian portions of the TSPZ. Under this unique model, the PZJA manages the prawn, TRL, Spanish mackerel, reef line, sea cucumber, trochus, pearl shell, crab, barramundi and traditional fishing (including turtle and dugong) in the area of the Torres Strait under Australian jurisdiction.²³ Its main functions are to:

- keep under constant consideration the condition of fishery under its management;
- formulate policies and plans for the good management of the fishery; and
- for the purposes of the management of the fishery
 - (i) exercise the powers conferred on it and
 - (ii) co-operate and consult with other authorities in matters of common concern.²⁴

15.25 The PZJA is a small body comprising the Commonwealth Minister for Agriculture, Fisheries and Forestry, the Queensland Minister for Primary Industries, Fisheries and Rural and Regional Queensland, and the Chairperson of the TSRA. It is responsible for legislative policy formulation and compliance and the bilateral relationship on fisheries with PNG. The authority 'has a policy of enhancing the opportunities for Islander participation in all sectors of the fishing industry'.²⁵

15.26 The three members of the PZJA are supported by their respective government agencies—DAFF; the Queensland Primary Industries and Fisheries, AFMA and the

22 Section 8, *Torres Strait Fisheries Act 1984* (Cth). The Treaty has been incorporated into Australian law by the *Torres Strait Fisheries Act 1984* (Cth) and the *Torres Strait Fisheries Act 1984* (Qld) and into PNG law by the *Fisheries (Torres Strait Protected Zone) Act 1984* (PNG). *Submission 18*, p. 6.

23 Australian Government, *Fishery Status Reports 2008, Status of Fish stocks and Fisheries Managed by the Australian Government*, Bureau of Rural Sciences, Australian Bureau of Agricultural and Resource Economics, DAFF, p. 213.

24 Section 34, *Torres Strait Fisheries Act 1984* (Cth).

25 Torres Strait Protected Zone Joint Authority, *Annual report 2007–08*, p. 14. PZJA website, <http://www.pzja.gov.au/fisheries/default.htm> (accessed 11 March 2010) and Mr Paul Morris, *Committee Hansard*, 17 December 2009, p. 50.

TSRA. These four agencies are responsible for different aspects of fisheries management in the Torres Strait.²⁶

15.27 DAFF contributes to the development and implementation of policy for Torres Strait fisheries and provides the secretariat for the PZJA.²⁷

15.28 The Queensland Primary Industries and Fisheries also assists in developing PZJA fisheries policy. It acts as an agent for the PZJA, issues licences on behalf of the PZJA and has responsibility for the collection of the levies.²⁸ It also manages recreational fishing, including charter fishing.²⁹

15.29 AFMA provides the overarching fisheries management services to the PZJA. It conducts the day-to-day operational management of fisheries in the Torres Strait and maintains contact with fishermen on the islands.³⁰ It also develops the fisheries management plans for the fisheries, consults with communities on the plans, looks at the management of the turtle and dugong, helps the Islanders with leasing arrangements of the finfish fishery, manages the prawn fishery and organises the management advisory committees and the scientific work.³¹

15.30 In addition, AFMA coordinates the PZJA's foreign compliance activities in association with border protection agencies, provides advice to the PZJA on its management services and to the PZJA Chair through DAFF.³² It maintains a management office on Thursday Island.

15.31 The TSRA, which is also based on Thursday Island, is a strong advocate for maximising the opportunities for Torres Strait Islanders and Aboriginal people living in the strait to participate in the local fishing industry. It recognises that economic participation is important to removing Indigenous disadvantage in the region and further that commercial fishing provides a solid platform for achieving this objective. Mr Kris explained that, through the PZJA, the TSRA is looking at the fishing industry as a means to economic development.³³ The TSRA seeks to do its utmost to enable

26 PZJA website, http://www.pzja.gov.au/about_us/who.htm (accessed 18 October 2010).

27 See for example, Australian Government *Performance Audit of Torres Strait Finfish Fishery Management*, Office of Evaluation and Audit (Indigenous Programs), Department of Finance and Deregulation, December 2009, p. 18.

28 *Committee Hansard*, 17 December 2009, p. 57. See also PZJA website http://www.pzja.gov.au/about_us/who.htm (accessed 18 October 2010)

29 PZJA website http://www.pzja.gov.au/about_us/who.htm (accessed 18 October 2010) and Professor Hurry, *Committee Hansard*, 17 December 2009, p. 57.

30 Mr Paul Morris, *Committee Hansard*, 17 December 2009, p. 50.

31 Professor Hurry, *Committee Hansard*, 17 December 2009, p. 57.

32 Mr Paul Morris, *Committee Hansard*, 17 December 2009, p. 50.

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

Indigenous people to obtain employment and income from the fishery industry and ensure that the interests of traditional inhabitants are represented in the PZJA.³⁴

15.32 To this purpose, two dedicated officers within the TSRA coordinate and support the engagement of Torres Strait community fisher representatives in the PZJA consultative structure.³⁵ The TSRA Fisheries Coordinator arranges for up to six representatives from this group to attend 'all of the consultative forums on the PZJA business calendar'.³⁶ The TSRA Chair has 'a clear role supporting the two ministers in making policy decisions for the Torres Strait Fisheries'.

Criticism of PZJA

15.33 For a number of years, the management of fisheries in the Torres Strait has come under strong criticism.³⁷ In 2008, the PZJA agreed to a review of the agreement relating to the cost of managing fisheries in the Australian sector of the TSPZ. The PZJA also requested that relevant agencies look at the current agreement and provide options for consideration prior to completing the 2009–2010 PZJA budget. This request prompted a review of current governance arrangements which resulted in the publication of a 'high level discussion paper'. The paper identified major problems with the governance structure of the PZJA. In essence, it found that:

...the current administrative and governance arrangements are cumbersome, inefficient and cause considerable frustration and in some cases friction, particularly to those based on Thursday Island with day to day exposure to the various and sometimes difficult and complex fisheries management issues which arise from time to time.³⁸

15.34 The discussion paper noted that the four agencies sharing responsibility and accountability for different aspects of fisheries management are situated in three geographically different locations. It formed the view that the current governance arrangement did not assist the achievement of sound fisheries management outcomes.

34 See for example, TSRA *Submission 18*, p. 21.

35 TRSA website, 'Policy Coordination & Development', <http://www.tsra.gov.au/the-tsra/policy-coordination--development.aspx> and <http://www.tsra.gov.au/the-torres-strait/issues/marine--fisheries.aspx>, (accessed 18 February 2010). See also AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, p. 23.

36 *Submission 18*, p. 21. According to AN AFMA/QDI&F/TSRA, Discussion Paper, 'As far as fisheries management is concerned, the TRSA sees itself as an enabler and facilitator of communication and information, but makes it plain that its first obligation is to the aspirations of traditional inhabitants.' AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, p. 23.

37 Bill Arthur, *Torres Strait Islanders and fisheries: an analysis of economic development programs*, Australian Government, National Oceans Office, Centre for Aboriginal Economic Policy Research, Australian National University, June 2005, pp. 6–7.

38 AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, p. 27.

In particular, it drew attention to delays in decision making that 'are causing stakeholders to lose faith in the consultative structure and the ability of the PZJA to manage fisheries effectively'. In its view, the stakeholders 'are becoming unwilling to attend meetings as they see them as a waste of time if no decisions are being made or carried through'.³⁹

15.35 Evidence to this committee reinforced this assessment. The Queensland Government was of the view that a 'convoluted governance arrangement' under the PZJA was a major problem with fisheries management in the Torres Strait, which resulted 'in an excessive amount of time for even simple decisions to be made'.⁴⁰ It identified the need for clearer accountability; more streamlined decision-making; a single contact point for stakeholders; greater consistency between fisheries management in the Torres Strait and other fisheries; and more efficient operations.⁴¹ In its view, each of the fisheries should be managed under the auspices of a single existing body, preferably AFMA'.⁴² The Queensland Rock Lobster Association was scathing in its criticism of the PZJA, describing its bureaucracy as ponderous and stating further:

It is oversized, overcomplicated and absurdly expensive, and seems incapable of achieving any meaningful or useful outcomes. Its chief achievement seems to be the frequent employment of consultants at great expense to produce reports which are often valuable and insightful, but are rarely acted on because their conclusions are politically unpalatable and/or expose the dysfunctional nature of the system itself.⁴³

15.36 The association referred to 'duplication of functions, internal conflicts between agencies, inertia, evasion of responsibility, and inability to make decisions on key issues (sometimes over periods of many years)'.⁴⁴ The M. G. Kailis Group echoed these sentiments, citing 'the immense frustration felt by industry given the lack of progress in recent years'.⁴⁵

39 AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, p. 27.

40 *Submission 20*, p. 15 and Queensland Government, answer to question on notice taken 25 March 2010. The Queensland Government noted its reference to "the governance arrangements of the TSRA" should not be interpreted as a criticism of the TSRA. Rather, it is a factual statement that the collegiate decision-making process quite properly required by the TSRA is not consistent with a successful commercial operation'.

41 Queensland Government, answer to question on notice taken 25 March 2010. It noted that currently some 30 full time staff spread across 4 state and Commonwealth departments are engaged in the PZJA costing approximately \$6.5 million for a comparatively small fishery.

42 *Submission 20*, p. 15.

43 *Submission 7*, p. [3].

44 *Submission 7*, p. [3].

45 *Submission 10*, p. 2.

PZJA—review of management and administration

15.37 When questioned about problems in the management of fisheries in the Torres Strait, Mr Malcolm Southwell, AFMA, explained that his agency was aware of stakeholder concerns about the complexity of arrangements. He noted AFMA's presence on Thursday Island and said, 'We hear it day to day'.⁴⁶ DAFF and AFMA informed the committee that agencies had undertaken a separate administrative review to look at ways to simplify and streamline the administration arrangements and improve the administrative efficiency of the PZJA itself.⁴⁷ The review applied to how all the fisheries were administered, and was with the agencies for consultation and comment and would then go to the PZJA in the near future.⁴⁸ Mr Pittar, DAFF, explained that the review was endeavouring to have 'clearer definition of which agencies do what'.⁴⁹ Mr Southwell added that a range of options was under consideration in terms of simplifying the administration. He stated further: 'certainly one of those is for AFMA to take a greater role. We have heard that from stakeholders, but it is but one of many options'.⁵⁰

Managing Islander and non-Islander interests and expectations

15.38 The discussion paper which prompted the review also identified 'the differing interpretations and cultural approaches taken to the management of fisheries resources in the Torres Strait' as a key issue. It found that these different approaches have made it difficult 'to establish and maintain a clearly defined governance and accountability framework for fisheries management'. It added:

There is a strong difference in philosophical approach between the Traditional Inhabitants (who wish to determine their own affairs based on the provisions of the Torres Strait Treaty, and who are supported in this endeavour by the Torres Strait Regional Authority) and the modern day approach to fisheries management taken by fisheries agencies such as AFMA and [Queensland Department of Primary Industries and Fisheries] QDPI&F operating under statutes enacted by their Parliaments.⁵¹

15.39 Evidence before this committee also highlighted problems due to cultural differences. The TSRA noted the complexities involved in managing fisheries in the Torres Strait and referred to the fact that the industry has traditional inhabitant (subsistence and community fishing) and non-indigenous (commercial fishing) dimensions. With regard to cultural difficulties, the Queensland Government

46 *Committee Hansard*, 18 June 2010, p. 37.

47 *Committee Hansard*, 18 June 2010, p. 37.

48 *Committee Hansard*, 18 June 2010, p. 37.

49 *Committee Hansard*, 18 June 2010, p. 37.

50 *Committee Hansard*, 18 June 2010, p. 37.

51 AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, p. 19.

identified the following as two major problems with the fisheries management in the Torres Strait.

- a distinct lack of trust on behalf of the Traditional Inhabitant sector regarding what the PZJA is endeavouring to deliver in the TSPZ—that is, sustainable allocation of resources in a manner in line with the Torres Strait and *Torres Strait Fisheries Act 1984*; and
- a stalemate over continued claims by Traditional Inhabitants to regain full ownership of TSPZ resources.⁵²

15.40 The committee also received evidence from those engaged in the TRL industry indicating that, in their view, they were being treated unfairly and their rights were being compromised under the PZJA.⁵³ Dr Raymond Moore, a long-time fisherman in the Torres Strait, suggested that there were three types of people operating in this fishery—Papua New Guineans, community fishermen and non-community fishermen. He explained what he believed was the thinking behind approaches taken toward non-Indigenous fishing operators in the Torres Strait:

The non-community fishermen are the only ones that we can use as a political football, so you are the ones we are going to penalise. We cannot touch Papua New Guinea and we cannot touch the community fishermen, so you are the ones who will be penalised.⁵⁴

15.41 In its submission, the M. G. Kailis Group stated that 'A key stumbling block has been the failure to separate and address issues relating to indigenous aspirations from the implementation of good quality management that maximizes the value of the fishery to both the local and broader Australian community'.⁵⁵

15.42 The issuing of licences and the requirement for non-Islander licence operators to be manned by someone who has a Torres Strait Master Fisherman's Licence is one of the most contentious matters.⁵⁶

Licensing arrangements

15.43 The PZJA issues two types of commercial fishing licence based on ethnicity—Islander and non-Islander. Under this arrangement, there is a traditional inhabitant boat licence (TIB) and a transferable vessel holder licence (TVH). Non-

52 Queensland Government, answer to question on notice taken 25 March 2010.

53 See for example, *Submission 7*, p. 3.

54 *Committee Hansard*, 24 March 2010, p. 46.

55 *Submission 10*, p. 2.

56 *Submission 6*, p. 2.

Islanders may engage only in commercial fishery while Islanders may be involved in both commercial and traditional or customary fishery.⁵⁷

Traditional inhabitant boat licence

15.44 A traditional inhabitant boat licence (TIB) is issued on application and available only to Torres Strait Islanders and to Aboriginal people from Northern Peninsula communities. Dr Moore explained that there was no cap on this fishery and any islander 'can get a licence to run a dinghy or a 20-metre boat if they want'.⁵⁸ Mr Brett Arlidge, Queensland Rock Lobster Association, noted that there are about 400 TIBs but 'only a small percentage of those are actually full-time commercial fishermen'.⁵⁹ Dr Moore indicated that 10–20 per cent would be pretty serious fishermen.⁶⁰

Transferable vessel holder licence

15.45 Non-Islanders can obtain a transferable vessel holder licence (TVH) but there are only a limited number available. When the PZJA was established, persons who could demonstrate that they had a prior history and commitment to fishing in the Torres Strait were able to obtain a transferable licence. Dr Moore explained that 'from one year after ratification of the treaty in 1985, no more licences were issued to non-islanders'.⁶¹ Because no new TVH licences have been allocated since the 1980s, operators wishing to gain access to the fisheries in the TSPJ must purchase an existing TVH licence. These licences apply to a specific fishery. A Torres Strait Master Fisherman's Licence is also required to operate a TVH-licensed boat.⁶²

Requirement for TVH operators to have a Master Fisherman's Licence

15.46 Dr Moore explained that Islanders are not required to have a Master Fisherman's Licence to run a dinghy or a boat, although they are available to them. In contrast, non-Islanders need to have a Master Fisherman's Licence to operate a boat but they are no longer issued to them. He explained that the reason given for this requirement was to 'make sure that Islanders had to be employed in operations'. He stated:

So suddenly this licence, which was meant to be about being in charge of a dinghy, became a political angle, if you like, for employing more Islanders. That would not be a bad concept if you could get people to work, but it is

57 TSRA *Submission 18*, pp. 21–3. PZJA website <http://www.pzja.gov.au/fisheries/default.htm> (accessed 11 September 2010).

58 *Committee Hansard*, 24 March 2010, p. 45.

59 *Committee Hansard*, 24 March 2010, p. 44.

60 *Committee Hansard*, 24 March 2010, p. 44.

61 *Committee Hansard*, 24 March 2010, p. 45.

62 *Submission 18*, p. 22.

extremely hard to find people who want employment. Nobody really wants to work out at sea. Everyone is quite happy working for Centrelink or wherever.⁶³

15.47 According to Dr Moore, the final decision with regard to the requirement for non-Islanders to have Master Fisherman's Licence in order to operate a boat rests with the PZJA.

Licence buyout

15.48 Another contentious area involves the buyback of fishing licences. According to the TSRA, Torres Strait Islanders have shown a strong interest in obtaining 100 per cent access to the TRL, Spanish mackerel and finfish fisheries.⁶⁴ It explained that amendments made to the TSFA in 2007 allowed the buy-back of fishing entitlements held by non-Indigenous commercial fishers in the TRL and finfish fisheries to be then transferred to the Indigenous sector. With government assistance, traditional inhabitants have achieved 100 percent ownership over the finfish industry.⁶⁵ DAFF paid \$10.6 million in 2007 to complete the total (100 percent) purchase of finfish entitlements.⁶⁶

15.49 The Queensland Government informed the committee that the main tension between the different groups was over the traditional inhabitants' aspiration to have 100 per cent ownership of the TRL resource.⁶⁷ In this regard, Mr Kris noted that the Australian Government helped initially to get 53 per cent buyback of the TRL.⁶⁸ Professor Hurry also noted that Torres Strait Islanders hold 53 per cent access with the remaining 47 per cent held by the commercial sector.⁶⁹

15.50 According to TSRA, the TIB sector felt that '70 per cent of the total Australian allocation was a more appropriate share for Indigenous fisheries'.⁷⁰ Mr Kris noted that they had bought out some of the licences to 'look at the increase of numbers of our fishermen going into that industry'. He explained that 'for us to create that employment market through that process of owning those quotas for that industry is a direct linkage to a lot of our communities on the outer islands'.⁷¹

63 *Committee Hansard*, 24 March 2010, p. 47.

64 *Submission 18*, p. 22.

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

66 *Submission 18*, pp. 22–23.

67 Queensland Government, answer to question on notice taken 25 March 2010.

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

69 *Committee Hansard*, 17 December 2009, p. 60.

70 *Submission 18*, p. 23.

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

15.51 The Queensland Government noted that the failure of the PZJA to provide a pathway to achieving the aspiration of 100 per cent ownership of the TRL by traditional inhabitants has created resentment and led traditional inhabitants to support 'the continuation of unnecessarily restrictive arrangements on the non-traditional operators'. It suggested that these arrangements 'are one of the reasons for the under-performance' of that industry.⁷²

Restrictions on the non-Islander TRL fisheries

15.52 Non-Islanders engaged in the TRL fishery cited a number of impositions on fishing, including an interim measure to impose a 30 per cent reduction in non-Islander licences and additional moon phase closures which remain in place.⁷³ The committee has also mentioned the requirement for non-Islanders to have a Master Fisherman's Licence, which they cannot obtain.

15.53 The Queensland Rock Lobster Association stated in its submission that 'since 2007 progress on the Torres TRL Management plan and consultative process has been blocked and held to ransom by TSRA for political purposes'.⁷⁴ Mr Arlidge referred to the anger and frustration felt by many commercial industry stakeholders and operators at the lack of progress in fishery management in recent years. He said:

Progress on the new management plan and quota system, which commenced in 2005, has been stalled completely since 2007. There is still no certainty for industry stakeholders. Many unnecessary and outdated impediments to modern efficient fishing operations are still with us, and they particularly target and affect the commercial TVH sector. The need for a cooperative, all-of-industry approach is clear, but at present constructive discussion and negotiation is still not happening. That is an issue for the industry.⁷⁵

15.54 He informed the committee that since 2007, his industry has maintained that the remaining input controls are no longer needed and should be removed. In his view, however:

...despite the fact that industry has put that case each year—season 2008, 2009, 2010—they have been reimposed each season. The commercial industry and the TVH operators really feel this is unfair and inequitable. I guess you could say that there has been a veto given to the TIB sector on the removal of them. Basically, some of our more upset members believe that whatever the TIB sector asks for will be provided. This is one of the burning issues that quite a few fishers are very unhappy about.⁷⁶

72 Queensland Government, answer to question taken on notice, 25 March 2010, p. 1.

73 *Submission 6*, p. 2.

74 *Submission 7*, p. 2.

75 *Committee Hansard*, 24 March 2010, p. 42.

76 *Committee Hansard*, 24 March 2010, p. 43.

15.55 He went on to argue that 'all these archaic input controls...actually [impede] development of the live fishery, which would deliver much more value to everyone—to the whole industry, from top to bottom'.⁷⁷

Business plan—addressing concerns of TRL fisheries

15.56 DAFF informed the committee that a process was underway to develop a TRL business plan that would attempt to deal with the competing aspirations of the two sectors. Mr Pittar, DAFF, was aware of the efficiency concerns of the TRL sector and the fact that they were not able 'to catch the amount of lobster that they would be entitled to due to some existing input constraints'.⁷⁸ He recognised that the measures were having an 'impact on the sector' and noted that when the PZJA decided on the arrangements for the 2010 season, it 'rolled over the existing input constraints'. The PZJA has made known that it wanted this to be the last year for the constraints and for next year's arrangements to take account of the findings from a business plan.⁷⁹ According to Mr Pittar, DAFF have had a consultant working on the business plan, which has been presented to the PZJA for information and consideration. The department was expecting decisions regarding the business plan 'to be made in the future'.⁸⁰

15.57 The intention in developing this plan was to have far more efficient and effective fishery management with modern arrangements. Mr Pittar informed the committee, however, that local traditional inhabitants 'have been uncomfortable with some of the move toward that and have issues'. In his words:

They want to ensure that their home reefs, for example, are protected in a way that they can go out and harvest tropical rock lobster as they might need to. Again, the process I am talking about is designed, we hope, to achieve that outcome, whereby the commercial sector can work more efficiently based on output controls and the sort of protection that traditional inhabitants want for being able to harvest tropical rock lobster on home reefs, as a case in point.⁸¹

15.58 Acknowledging the differences in views between the non-Indigenous sector and the Indigenous sector about how the industry should be managed, he stated that the business plan would try to deal with the competing aspirations of the two sectors. He stated further:

77 *Committee Hansard*, 24 March 2010, p. 43.

78 *Committee Hansard*, 18 June 2010, p. 36.

79 *Committee Hansard*, 18 June 2010, p. 36.

80 *Committee Hansard*, 18 June 2010, pp. 36–7. The restrictions involved the use of the number of tenders or the number of small boats that can be associated with a larger mother ship, which is around restrictions on closures associated with tides and phases of the moon.

81 *Committee Hansard*, 18 June 2010, p. 36.

Given the joint decision-making of the PZJA if there are differences of view, then the decision making, which aims to work on a consensus basis, needs to find a pathway through those differences of view and, as a consequence, not everyone is going to get exactly what they want. The idea of this business-planning process is to allow the aspirations of each of those sectors to be put forward so that hopefully some of the arrangements that are in place to achieve a particular objective which may not be as efficient as they might otherwise be can be looked at and addressed so that more efficient fisheries management arrangements can be in place whilst the interests of Indigenous people in the region are also protected.⁸²

Under-utilisation of resources

15.59 Another concern arising from the management of fisheries in the TSPZ is the current underutilization of many of the marine resources. Unlike some species such as bêche-der-mer, other fish stocks are plentiful in the Torres Strait. For example, in DEWHA's assessment, the prawn and TRL fisheries are 'generally operating at reasonably low levels of catch and are sustainable'.⁸³

15.60 This underutilization occurs despite efforts to encourage greater involvement of traditional inhabitants through the buy-back of licences. For example, the Queensland Government cited the finfish industry which, it stated, has experienced a 'significant decline in effort and catches'.⁸⁴ As noted earlier, traditional inhabitants now have 100 percent ownership of the finfish industry. The 2009 performance audit of the finfish fishery management found that 'economic development in the Torres Strait as a result of the buyback has not eventuated'. It found:

Islander participation in the Finfish Fishery has decreased since the buyback and it appears that no Islander fishers utilise the Finfish Fishery as their sole or main source of income.⁸⁵

15.61 One major impediment is the high cost involved in developing fisheries and the lack of resources to value-add. For example, the TSRA explained:

As the capacity does not yet exist in the Indigenous sector in the Torres Strait to take up these entitlements, finfish quotas for the 2008–2009 fishing season were sold as leases to the commercial fishing sector. The revenue raised from these leases is to be used to increase the capacity of Indigenous fishers in the Torres Strait, through training and business loan arrangements, to more profitably engage in the commercial sector.⁸⁶

82 *Committee Hansard*, 18 June 2010, p. 35.

83 Mr Stephen Oxley, *Committee Hansard*, 17 December 2009, p. 67.

84 Queensland Government, answer to question on notice taken 25 March 2010.

85 Australian Government *Performance Audit of Torres Strait Finfish Fishery Management*, Office of Evaluation and Audit (Indigenous Programs), Department of Finance and Deregulation, December 2009, p. 8.

86 *Submission 18*, pp. 22–23.

15.62 The Queensland Government noted that the experience with the finfish fishery is consistent with a concern for the TRL fisheries. It informed the committee that because traditional inhabitants fish from inshore reefs in small dinghies with no refrigeration, they have little ability to supply live product to the market and hence focus on delivering lobster tails. It noted that the highest returns derive from providing 'a stable supply of quality, live product'. It concluded:

To date, even with the assistance of the TSRA, the Traditional Inhabitant sector has been unable to establish any truly commercial fishing operations that utilise either live tanks or larger offshore vessels, a factor that will significantly inhibit their ability to guarantee increased levels of product supply in the future.⁸⁷

15.63 Professor Hurry commented on the available infrastructure on the islands which is not equipped to hold live lobsters, including 'boats required to travel around, pick the live lobsters up and bring them back to market'. He cited the TRL fishery on the east coast of Queensland where commercial operators 'land planes on beaches, fly live product out and put it on the market'. In his view:

If they [commercial operators] knew there was a regular supply of lobsters coming out of the Torres Strait and it was worthwhile sending boats around to pick live lobsters and live finfish up, I think you would find a different structure and arrangement and the value of the fishery probably increase and people would get more active in it.⁸⁸

15.64 He also referred to the five-year management plan for the rock lobster, which according to him, 'should begin to take us down that path'.⁸⁹

Conclusion

15.65 The committee notes the high level of dissatisfaction with the management of commercial fisheries in the Torres Strait by the PZJA. It understands that government agencies are attempting to resolve difficulties, especially with PZJA's governance structure and its decision making processes. The committee is concerned, however, that the problems are longstanding and have been evident for some time. It understands that a review has taken place and that agencies are in the process of considering a range of options to simplify the administration of the PZJA and also of finalising a five-year TRL business plan. In light of the depth of dissatisfaction with, and the force of the criticism levelled at, the performance of the PZJA, the question must arise whether the governance and consultative mechanisms used by the authority are deeply flawed. With this in mind, the committee believes that constant and close monitoring of the performance of the PZJA is required and if no improvement is

87 Queensland Government, answer to question on notice, 25 March 2010.

88 *Committee Hansard*, 17 December 2009, p. 60.

89 *Committee Hansard*, 17 December 2009, p. 60.

discernible, then serious consideration should be given to a more root-and-branch reform of the management arrangements for commercial fisheries in the Torres Strait.

Recommendation 29

15.66 The committee recommends that DAFF monitor developments within the PZJA during the coming twelve months. Further, at the end of that period, it consult with representatives from the Indigenous and non-Indigenous fishing sectors in the Torres Strait and with the Queensland Government to ascertain whether, in their view, the PZJA is making progress in remedying the problems identified in this report. The committee recommends that DAFF prepare a report for the minister for his/her consideration and for the report to be provided to the committee.

Chapter 16

Torres Strait Governance

16.1 There is a complex and multilevel involvement of governments in the Torres Strait, including two national governments as well as state, provincial and local bodies. Numerous departments and agencies within these bodies also assume responsibility for specific functions—health, immigration, community policing, conservation, quarantine, biosecurity, border security and economic development. This complicated arrangement calls on a high level of cooperation and coordination by those responsible for the administration of the Torres Strait.

16.2 There is no doubt that all levels of government involved in implementing the provisions of the Treaty are required to pay close attention to their role, how they carry out their responsibilities and their relationship with the numerous other agencies working in the region. In this chapter, the committee considers the degree of cooperation and coordination between all levels of government in the Torres Strait.

Whole-of-government and agency cooperation

16.3 Australia's Treaty Liaison Officer, Mr Young, described the interaction between the various government agencies in the Torres Strait as 'a high point of whole-of-government operations'. He told the committee that agencies work together 'extremely well', which increased efficiencies and made sure that people are aware of what is going on across government. He explained:

To some extent we have divided up the resource pie in the Torres and enabled agencies to do more than they normally would be able to self-resource. For those reasons, I would have no hesitation in declaring whole-of-government operations and cooperation in the Torres very successful.¹

16.4 According to Mr Young, 'one of the pillars and successes of the treaty is the input of the state and local representatives and traditional inhabitants, and that happens in a productive way on a day-to-day basis'. He cited as an example the close working relationship between DFAT and Queensland Health, which has a significant role in the cross-border health issues.² The Queensland Government shared the view that the Treaty and associated government mechanisms work well.³ Mr Wade Lewis, Queensland's Department of the Premier and Cabinet, stated:

The relationship of DFAT officers in Canberra, Brisbane and Thursday Island under the treaty are particularly good in my experience and

1 *Committee Hansard*, 18 December 2009, p. 5.

2 *Committee Hansard*, 18 December 2009, p. 5.

3 *Committee Hansard*, 25 March 2010, p. 2.

especially so in the context of all of our government's interactions on the range of treaty matters that we deal with.⁴

16.5 He noted that the inter-departmental committee (IDC), chaired and run by the Commonwealth to coordinate Australia's effort in carrying out its responsibilities under the Treaty, is 'a very collaborative and constructive process'. In his view, it prepares the Queensland Government 'very well' for meetings of the joint advisory council, the health issues committee and the environment committee. According to Mr Lewis, the meetings are 'very well run' and allow ample opportunity to 'provide input to the agenda papers' and present ideas from the government's point of view.⁵

16.6 Mr Lewis noted further that in the last year or so, the Queensland Government had set up its own interdepartmental committee to ensure that when it goes to those meetings, it brings a 'whole-of-government flavour to them'.⁶ The Premier's Department chairs this committee and represents Queensland in the Commonwealth-run IDC.⁷

16.7 In this report, the committee cited a number of areas where cooperation and collaboration between governments and government agencies appears to work well: for example, quarantine and biosecurity are areas where Commonwealth and Queensland state agencies work in partnership. The working relationship between DFAT and Queensland police is another area. Mr Young explained that he worked with the police on an ongoing basis and had a very good working relationship. He stated that it was certainly obvious to him that Queensland Police are very responsive when he contacts them about specific issues.⁸ Australian customs and quarantine agencies also function as a team at the designated entry points.

16.8 There were some areas in the report, however, where the committee identified the potential to strengthen the degree of cooperation between agencies. For example, the committee dealt at length with the governance arrangements and performance of the PZJA and has noted that efforts were underway to redress these problems.

16.9 It also noted an apparent lack of a clear whole-of-government approach to climate change in the Torres Strait. In contrast to the agencies working in quarantine and biosecurity, those dealing with climate change presented a rather muddled account of departmental or agency responsibilities and their programs. It would seem that because no department is yet to take the lead and because of confusion over the allocation of responsibilities, departments are yet to achieve coordination and integration in the government's climate change programs in the Torres Strait.

4 *Committee Hansard*, 25 March 2010, p. 3.

5 *Committee Hansard*, 25 March 2010, p. 4.

6 *Committee Hansard*, 25 March 2010, p. 4.

7 *Committee Hansard*, 25 March 2010, p. 4.

8 *Committee Hansard*, 18 December 2009, p. 18.

16.10 One particular area that may benefit from further whole-of-government government consideration is the sharing of assets in the Torres Strait.

Sharing assets

16.11 A number of submitters referred to the asset base of the Commonwealth (including helicopters) in the Torres Strait. Ms Kelley, Customs and Border Protection, noted that 'it is probably not formally written down anywhere but we have an agreement whereby the department of immigration can approach us when they require assistance with transportation to the other islands'.⁹ She explained further that the agency had been able to meet every one of the number of requests made over the past 12 months, adding:

We have vessels and we do regular visits to the islands, so we are very happy to take our colleagues with us as required... It has always been on a timely basis.¹⁰

16.12 On the other hand, DAFF informed the committee that 'the availability of Border Protection Command assets for non-essential biosecurity functions is periodically constrained through the allocation of assets to higher priority functions'.¹¹ Also, the Queensland Government suggested that 'more multi-agency infrastructure' should exist on certain islands, that is, that state and federal agencies, particularly those involved in law enforcement, could share resources such as office and accommodation facilities, which would also enhance sharing of information.¹²

16.13 In chapter 8, the committee discussed the Customs facility on Saibai, which is available for other government agencies to use. It noted the suggestion by the Queensland Police Commissioner that community police officers could use the Saibai facility which 'could be available for state and federal agencies to come and use as well'.¹³ He was hopeful that, given the uniqueness of the location, some sort of joint Australian and state government approach could be taken. He thought the Saibai model, or whatever model evolved, where community police and visiting federal and state authorities could use the same building and office was really interesting and had potential.¹⁴

Committee view

16.14 Evidence presented to the committee shows clearly that government agencies in the Torres Strait work together to ensure that their assets are used efficiently and

9 *Committee Hansard*, 17 December 2009, p. 46.

10 *Committee Hansard*, 17 December 2009, pp. 46–7.

11 *Submission* 13, p. 8.

12 Queensland Government, *Submission* 20, p. 6.

13 *Committee Hansard*, 25 March 2010, pp. 11–12.

14 *Committee Hansard*, 25 March 2010, p. 12.

shared as necessary. The Customs unit on Saibai is an example of this sharing. Nonetheless, there may well be potential for even greater sharing or pooling of resources.

Recommendation 30

16.15 The committee recommends that the Australian Government look closely at the operation of the Customs facility on Saibai with a view to increasing the opportunities for greater integration of effort across all agencies engaged in the Torres Strait.

16.16 The committee recommends that the government establish a working group to consider the sharing arrangements for government assets in the Torres Strait with a view to identifying any areas for improvement, any real or potential points of conflict in the sharing of assets and how they could be resolved.

16.17 The committee recommends that a copy of this assessment be provided to the committee for its consideration.

Navy in Torres Strait

16.18 During its visit to C Company, Far North Queensland Regiment, on Thursday Island, the committee was concerned to learn that the Royal Australian Navy (Navy) had withdrawn its personnel and its only vessel, *Malu Baizam*, from the Torres Strait. This Navy vessel formed an integral part of Australia's whole-of-government effort in the far north with other government agencies using it to assist them in carrying out their duties. For example, according to Lieutenant Colonel Brain, the Army relied on this vessel to transport its reservists from their villages to Thursday Island and back for training purposes and also to assist in transporting soldiers for patrol exercises. The withdrawal of this vessel and its crew would limit the Army's capacity to conduct its patrols. Army has level two tier boats which can travel only 15 nautical miles from the coast and do not have the endurance capacity of the Navy vessel.

16.19 DFAT also stressed the importance of the *Malu Baizam* to the whole-of-government effort in the Torres Strait. It cited in particular its reliance on the logistical support provided by the Navy for the Treaty awareness visits (TAV) to PNG. The department explained that the visits to the eastern and central villages are aboard the Navy vessel, with each visit taking about one week. The multi-agency delegation lives on the vessel during such visits. It stated further:

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...in addition to numerous ad hoc visits, the TLO [Treaty Liaison Officer] also leads one TAV each year one to the Australian communities in the Protected Zone aboard the *Malu Baizam*.¹⁵

15 *Submission 23*, pp. [8–9].

16.20 In April 2010, the then Minister for Defence, Senator the Hon John Faulkner, informed the committee that the Navy had not withdrawn its personnel from the Torres Strait region and was currently reviewing its ongoing requirement for the Resident Naval Officer Thursday Island (RNOTI) organisation. He informed the committee that at the time of the committee's visit to the Torres Strait the vessel, *Malu Baizam*, had been relocated to Cairns as a cyclone avoidance measure and would return to Thursday Island shortly. He then stated that a final determination with regard to the RNOTI was yet to be made and that the Navy would remain in consultation with other Australian government agencies on its future presence on the island. The minister assured the committee that the Navy would consult with him before any changes were made regarding the relocation of the RNOTI organisation.¹⁶

Committee view

16.21 The withdrawal of the *Malu Baizam* would affect considerably the capabilities of other agencies in the Torres Strait to exercise their responsibilities. It would limit the capacity of the Army to conduct its patrols in the region and severely disrupt programs such as the Treaty awareness visits. Furthermore, in the committee's view it does not appear sensible for this remote area, with 17 communities separated by large tracts of water and sharing a border with PNG, to be without a naval presence. The committee notes that the Navy was consulting with other government agencies operating in the region before making a decision on the future of RNOTI

Recommendation 31

16.22 The committee recommends that the Royal Australian Navy remain in close consultation with all relevant agencies working in the Torres Strait in order to arrive at a decision regarding a Navy presence there that would best support Australia's whole-of-government effort in the region.

Delivery of services

16.23 Although government agencies were generally satisfied with how they cooperate and coordinate their activities in the Torres Strait, some local leaders expressed misgivings about the way the government delivers services. From their perspective, the complicated governance structure in the Torres Strait was of concern.

16.24 During its visit to the Torres Strait, the committee heard from local leaders about their frustration with people flying in from Brisbane or Cairns but achieving little, especially in dealing with the problems caused by PNG nationals travelling across the border. They cited health and law and order concerns and PNG visitors using resources intended for Australians. As noted earlier they feel as though they keep asking for action but nothing gets done. Mr See Key explained further:

16 Senator the Hon John Faulkner, Minister for Defence to Senator Mark Bishop, correspondence received 21 April 2010.

...you will hear stories as you go through communities about a number of planes showing up each week, of people getting off and asking the same questions and then of another load coming in next week. One community can have an average of three or four planes of departments a week wanting to consult.¹⁷

16.25 The TSRA recognised that in the past there had been failures 'to effectively integrate policy and program delivery, or to consider the effects of different policies on community wellbeing'. In its submission, it also referred to 'consultation overload' where government agencies have not coordinated or consolidated their visits.¹⁸ Mr See Kee stated:

My observation working through the administration and also in engaging with communities...is that if you are on the community it can get very hard to work out who to deal with based sheerly on the physical presence and number of government departments, state and Commonwealth, based in this region...one of the things the TSRA, with the councils, is trying to do in terms of our space in looking at Indigenous disadvantage in the Australian side is that it is trying to pull together a framework...for integrated service delivery—in essence, making government easier for community to engage and work with.¹⁹

16.26 In this regard, he spoke of the need to simplify the 'delivery model' so that local people do not have to 'navigate a labyrinth of government departments but can go to one or two and they can actually do the navigating and get the relevant department in there'. He informed the committee that they were trying to develop a model that would work and one that the community was 'going to be satisfied with, rather than one that would satisfy public servants.'²⁰ Councillor Stephen noted that 'As the Commonwealth sits, a stock take needs to be done in terms of how services are delivered and who is the lead agency'.²¹

16.27 According to Mr Kerlin part of the problem originates from the viewpoint of Torres Strait Islanders who consider any agency that visits the islands as representing the government, regardless of its function or role. As an example, he noted the confusion over who has responsibility for overstayers'. He said:

So if someone on the island is concerned about overstayers they will approach us and ask us to do something about it. That is not our role. That is where the frustration for us comes in. There is an expectation that we can do something on behalf of the community when we really need DIAC to

17 *Committee Hansard*, 24 March 2010, p. 14.

18 TSRA, *Submission 18*, p. 28.

19 *Committee Hansard*, 24 March 2010, p. 14.

20 *Committee Hansard*, 24 March 2010, p.14.

21 *Committee Hansard*, 24 March 2010, p. 28.

take that action. In fairness, DIAC has taken action and it has reduced the number of overstayers significantly in recent times.²²

Committee view

16.28 The committee notes the concern of local inhabitants about the assortment of government officials that are located in or visit the Torres Strait. The committee believes that the Australian government should take account of local calls for a more efficient and streamlined administrative and service delivery structure in the Torres Strait and explore ways with the TSRA and TSIRC on how this simplification could be achieved. The committee is of the view that all agencies must place the highest priority on engaging with and strengthening their relationship with local communities.

Recommendation 32

16.29 The committee recommends that agencies take note of the observations about 'consultation overload' and make real efforts to dispel the notion that government officials fly in and fly out.

16.30 The committee recommends that the Australian Government, the Queensland Government, the two local councils and the TSRA form a working group with the aim of developing a more streamlined and integrated approach to service delivery in the Torres Strait.

Local government

16.31 As noted on a number of occasions in this report, the unique environment of the Torres Strait places particular demands on those in administrative positions. Local bodies form part of the complex administrative arrangement in the Torres Strait and also confront difficulties delivering services and meeting the needs of their constituents.

Responsibilities

16.32 There have been recent reforms to local government arrangements in the Torres Strait in an effort to simplify the multiple and complicated layers of administration. Since March 2008, 15 island councils have combined into the Torres Strait Island Regional Council (TSIRC). Before the amalgamation, a Queensland Government Green Paper on local councils noted that 'the Island councils in general have accepted a range of responsibilities far greater than most other councils in Queensland. For example, housing, employment and community police services are not normally local government functions'.²³

22 *Committee Hansard*, 17 December 2009, p. 43.

23 Queensland Government, *Torres Strait Community Government Review*, Green Paper, October 2005, p. 6.

16.33 Mr Toolis, Queensland's Department of Infrastructure and Planning, explained that the principal objective behind the amalgamation of the 15 councils into the TSIRC, was to provide local government type functions to the community.²⁴ He noted further: 'I think there is work to be done in terms of people understanding the particular roles and functions of the organisations they are with (Local councils etc)'. As an example, he noted that there are elected members of the TSIRC who see their role as 'being greater than providing local government services—they comment on the community in general'. He explained that the Queensland government, 'through legislation changes and supporting implementation policies, is asking local government to focus on core municipal functions. That will be implemented in the coming years'.²⁵

16.34 Despite this observation, the TSIRC still performs tasks not normally the concern of local councils, particularly given the free movement of traditional inhabitants from PNG into their communities and the proximity of some of these communities to PNG. The council also has responsibilities for policing isolated and remote communities and is involved in conservation and biosecurity programs of national and in some cases international concern. For example, Commissioner Atkinson observed that there is probably nowhere else in Australia where local government is expected to be responsible for law and order and community safety. He explained:

Local governments in these communities have the normal responsibilities of local government. But then we ask them to take on responsibility for law and order as well, through the community police. And, to some extent, we ask them to be a bit interested in border security as well. So it is a pretty big ask...by and large [community police], do an outstanding job and have a great deal of pride in what they do.²⁶

16.35 Along similar lines, the TSRA argued, that it was 'working above and beyond its core business'. In its view the Torres Strait Islander and Aboriginal residents of the region are 'acting—informally and often with little recognition—as the 'eyes and ears' of the nation on its northern border whilst also carrying the 'silent burden' of PNG visitation'.²⁷ In its submission the TSRA mentioned that one of its tasks was to manage 'the pressures that the Torres Strait region faces in assisting PNG with its own broad range of challenges'.²⁸

16.36 In the Torres Strait there are also twenty-one Prescribed Bodies Corporate representing local Native Title interests, fourteen of which are for inhabited islands. The TSRA informed the committee that it is the Native Title Representative Body for

24 *Committee Hansard*, 25 March 2010, p. 5.

25 *Committee Hansard*, 25 March 2010, p. 5.

26 *Committee Hansard*, 25 March 2010, p. 10.

27 TSRA, *Submission 18*, Executive summary and p. 10.

28 *Submission 18*, Executive Summary.

the Torres Strait region and has provided administrative, financial and legal service support to claimants since 1996.²⁹

Committee view

16.37 There is no doubt that the TSIRC and the TSRA are key institutions in the overall governance structure of the Torres Strait and have a pivotal role in matters that go beyond local concerns, especially in areas such as community policing, conservation, biosecurity, border security, economic development and Australia's relations with PNG. They are also instrumental in representing the interests and concerns of local inhabitants to state and Commonwealth agencies.

Traditional Inhabitants

16.38 According to Mr Young, one of the pillars of the Treaty is the input of traditional inhabitants.³⁰ There are a number of avenues through which local communities are able to convey their opinions or concerns about the operation of arrangements made under the terms of the Treaty. These various fora also provide an opportunity for government agencies to present their views, to clear-up any misconceptions and in collaboration with local communities devise solutions to problems.

Consultation mechanisms

16.39 Article 18 of the Treaty requires PNG and Australia to appoint a representative each to facilitate the implementation of the provisions of the Treaty at the local level. In exercising their functions as Treaty Liaison Officers, they are required to 'consult closely' with representatives of the traditional inhabitants of their respective countries. According to Mr Bruer:

The consultative process is an extensive one; it reaches down into many levels and involves large groups of people. It involves many different mechanisms, including regular visits. It involves different layers of government at all three levels. It involves representative groups of individuals from the communities.³¹

16.40 The annual cycle of treaty meetings provides the machinery that allows the traditional inhabitants to communicate with those administering the region. In various sections of this report, the committee has discussed the Traditional Inhabitants' Meeting (TIM), the Treaty Liaison Meeting, the Health Issues Committee (HIC), the Environmental Management Committee (EMC) and the Joint Advisory Council (JAC).

29 *Submission 18*, p. 30.

30 *Committee Hansard*, 18 December 2009, p. 12.

31 *Committee Hansard*, 18 December 2009, p. 13.

16.41 The TSRA is a key participant and the main conduit through which traditional inhabitants have their say at these meetings. It has a board comprised of twenty elected representatives who are Torres Strait Islanders and Aboriginal people from each Torres Strait community in the region. According to the TSRA, all elected community leaders in the Torres Strait are permitted to participate in the TIM as well as other TSRA members from communities within the TSPZ that receive regular visits from Treaty villages in PNG's Western Province. Mr Young informed the committee that the TIM is 'for and by those traditional inhabitants, who are the board, led by the chair of the TSRA with me and my counterpart in Papua New Guinea as the secretariat'. He explained:

We are all forced to work well together, and we do; we have a common aim and a common goal and, as I mentioned before, there is a resource efficiency generated by us all working so closely together.³²

16.42 Mr Young noted that the TIMs, with agendas drafted by the traditional inhabitants of the Treaty area, enable local people to voice any discontent. The meetings generate recommendations which need to be considered at different levels including some community-to-community issues that can be dealt with at local gatherings. According to Mr Young, the body of recommendations produced by the TIM go to the JAC, the peak governance body established under the Treaty. He explained that the recommendations are the findings of that subcommittee of traditional inhabitants and not affected by the JAC: they 'exist as a document in their own right' and are 'distributed widely'.³³ He made clear that the JAC's role was not to reject the findings or recommendations of the TIM. The JAC notes and endorses the outcomes of the traditional inhabitants meeting, so, as explained by Mr Young, they are 'not distilled' but attached as an appendix to the joint advisory council report.³⁴

Joint Advisory Council

16.43 As an advisory body, the JAC is largely responsible for helping to maintain a harmonious and strong cooperative relationship between Australia and PNG by providing the means for discussing and recommending ways to implement the Treaty. Its function is not administrative nor can it make binding decisions on the parties—it facilitates cooperation in the administration of the Protected Zone. The council, which meets alternately in Australia and PNG, seeks solutions to problems arising at the local level that are not resolved by the Treaty Liaison Officers. It considers and makes recommendations on any developments or proposals relating to the protection of the traditional way of life and livelihood of the traditional inhabitants.³⁵ The council is

32 *Committee Hansard*, 18 December 2009, p. 5.

33 *Committee Hansard*, 18 December 2009, p. 14.

34 *Committee Hansard*, 18 December 2009, p. 15.

35 DFAT website, http://www.dfat.gov.au/geo/torres_strait/brief.html

also an 'environmental watchdog' and is required to transmit its report and recommendations to the Foreign Ministers of Australia and Papua New Guinea.³⁶

16.44 Article 19(4) of the Treaty states that in the exercise of its functions, the JAC shall ensure that the traditional inhabitants are consulted and given full and timely opportunity to comment on matters of concern to them. The JAC's membership provides for this level of engagement. It consists of representatives of national and regional governments and traditional inhabitants and reflects the diverse interests that the Treaty seeks to accommodate. The Treaty specifies that the JAC shall have a membership of 18, comprising 9 members from each country including at least three representing the traditional inhabitants.³⁷

16.45 Mr Young noted that a significant number of traditional inhabitants are required to form a quorum for the JAC. He explained that members of the TSRA board participate in the JAC meeting and that the TSIRC has an open invitation, with observer status, to attend the TIM and the JAC meetings.³⁸ He observed that they participated in the two meetings held in Australia in 2008 but not the 2009 meetings in PNG—at Daru and Alotau.³⁹ Councillor Stephen noted that forums such as the JAC and TIM are in place so that the people at the grassroots level can actually raise issues and discuss them there and then.⁴⁰

Local views on the consultative framework

16.46 Despite the level of representation by traditional inhabitants and their participation in the cycle of Treaty meetings, some local leaders were critical of the process, particularly the failure to follow-through on recommendations coming out of the meetings. For example, during its visit to Saibai and Boigu, the committee heard local leaders criticise the community consultation process. They made observations such as nothing happens when they ask for action; that monitoring needs to be conducted daily and someone needs to take responsibility. During the hearing on Thursday Island, Mr See Kee was also critical of the consultative framework. He noted that at the JAC meetings there appears to be 'common acknowledgement of issues', many of which are 'long standing', and a level of commitment from all to work issues through. He then stated that:

...because of the cycles, once everybody disengages from the JAC meetings there is very little contact. That is one thing that seems in some ways to contribute to not a lot being done in addressing the long-term issues.⁴¹

36 DAFT website, http://www.dfat.gov.au/geo/torres_strait/brief.html

37 Article 19(6).

38 *Committee Hansard*, 18 December 2009, p. 16.

39 *Committee Hansard*, 18 December 2009, p. 16.

40 *Committee Hansard*, 24 March 2010, p. 25.

41 *Committee Hansard*, 24 March 2010, p. 6.

16.47 The TSIRC wanted better access to the various meetings associated with the operation of the Treaty. It argued that the council must be included as a key decision maker as it is the only local government to which the Treaty relates: that there is 'a strong need' for it to be represented at every forum, committee that is established or will be established that deals with the treaty'.⁴² Mayor Gela reasoned that 'At the end of the day, it is the TSIRC's resources that are expended to accommodate those who choose to travel under the treaty'.⁴³ He acknowledged that while five or six councillors have sat on the TIMs and some of them involved at the JAC level, 'they sit there under the banner of the TSRA, the Commonwealth statutory body'. In his view, 'there needs to be some sort of Torres Strait Island Regional Council presence there'.⁴⁴ He explained further:

We raised those concerns when invited to attend the TIMs meeting, a one off invitation. It was raised there directly with the departments that are responsible. We have also flagged it with not only the state but also some of the Commonwealth ministers. To date we have not received any sort of a response or any type of solution, even to the extent of looking at commencing or starting to look at developing administrative policies which would not only benefit us but would also benefit the monitoring bodies, especially in ensuring that people do not land on any part of the island day or night...Nothing has happened.⁴⁵

16.48 Mr David stated that a serious review of some sort should be undertaken 'to ensure that some of the old arrangements, which to some degree are archaic, be done away with and the traditional owners from the Torres Strait are genuinely included in the process'. He noted that at present, representatives of a number of elected institutions represent the views of traditional owners, which, in his view, 'is a big flaw...simply because you get people who are not traditional owners participating in the process'. He suggested that:

Now that there are native title determinations in this regard, where there are prescribed bodies corporate that genuinely represent native title and traditional owners, a review should be conducted to ensure that as part of that mechanism that native title and traditional owners' views are maintained or are seen to be engaged.⁴⁶

16.49 Although the cycle of treaty meetings provides opportunities for local authorities to air their grievances with officials working in the Torres Strait, clearly some local leaders were dissatisfied with their level of representation or the response to their concerns. Their disappointment extended to the consultations that take place with PNG.

42 *Submission 9, p. 1; Committee Hansard, 18 June 2010, p. 2.*

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

44 *Committee Hansard, 18 June 2010, p. 9.*

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

46 *Committee Hansard, 24 March 2010, p. 33.*

PNG and Australia working collaboratively

16.50 In numerous parts of this report, the committee has discussed capacity constraints in PNG that affect the overall implementation of programs or arrangements under the Treaty whether it is in the delivery of health services, conservation, biosecurity or the fisheries industry in the TSPZ. The same problem is evident when it comes to the work of the consultative mechanisms and particularly putting into practice some of the agreements reached at these meetings. Mr Kris explained that the JAC worked well on the Australian side but was concerned about the PNG side. For example, he noted 'how we police on other side is another issue'.⁴⁷ According to him,

...when we attend those meetings you still have issues from the other side pertaining to those particular communities who are most active under the treaty. There are still issues that need to be cleared up on their side of the border that are beyond the authority of colleagues on our side.⁴⁸

16.51 Moreover, the TSRA informed the committee that the message from local communities was that 'every time an issue crops up, with the way that things are being clarified, more preference is given to the need of people on the PNG side of the border rather than the communities on our side'.⁴⁹ The capacity of PNG to participate in discussions and contribute to resolving issues was a particular concern. Mr Kris drew attention to attendance at meetings:

We have seen very minimal numbers of representatives, but through the other process of the traditional inhabitants meeting of the teams that is referred to we do get the majority of those elected members who attend those meetings. But when we attend the JAC, the numbers are very small when we are looking at the representation of those communities that interact under the treaty compared to the Australian side.⁵⁰

16.52 On this matter, Mr See Kee explained:

...there always seems to be a resourcing issue on the PNG side in terms of getting people to the meetings. There have been occasions when the Australian side have, to the best of their ability, assisted or tried to assist PNG to come to the meeting.⁵¹

16.53 Mayor Gela informed the committee that the TSIRC had the sense that 'the PNG government does not care about the people of the Western Province because Australia is taking care of them via the treaty'. He suggested that 'Appropriate

47 *Committee Hansard*, 24 March 2010, p. 6.

48 *Committee Hansard*, 24 March 2010, p. 6.

49 *Committee Hansard*, 24 March 2010, p. 5.

50 *Committee Hansard*, 24 March 2010, p. 6.

51 *Committee Hansard*, 24 March 2010, p. 6.

consultation in relation to the treaty cannot be one-sided. The Western Province needs to be consulted and not just the PNG government'.⁵²

Committee view

16.54 The committee recognises the importance of having PNG fully engaged in the cycle of Treaty meetings and being able to implement arrangements agreed to at those meetings. It has made a number of recommendations designed to better equip those on the PNG side of the border to take an active and constructive part in activities that support the objectives of the Treaty. The committee suggests further that assistance should also be given not only to encourage PNG representatives to attend meetings but to extend that assistance to providing support for follow-up activities.

Recommendation 33

16.55 The committee recommends that DFAT examine the working of the consultative mechanisms with a view to developing, in collaboration with their PNG counterparts, initiatives that would encourage and assist PNG representatives to attend and participate in all joint activities, build their capacity to contribute to decision making and importantly to follow through with agreed actions.

Ministerial level meetings

16.56 The committee notes that 'Torres Strait Cooperation' was an agenda item in its own right for the 2008 and 2009 Australia–PNG Ministerial Forums. For the 2010 bilateral meeting between the foreign ministers, however, it did not feature prominently as an agenda item.⁵³ Considering the importance of the Torres Strait to Australia and to Australia–PNG cooperation, the committee believes that the Torres Strait should be a standing item on the ministerial meeting agenda. It would hope that attention given to the Torres Strait at this level would then trickle down to other meetings and provide an incentive for PNG to attach greater importance to meetings such as the JAC.

Recommendation 34

16.57 The committee recommends that the Australian Government, in consultation with the PNG Government, establish 'Torres Strait cooperation' as a standing item on the agenda for the annual bilateral ministerial meetings or forums.

52 *Committee Hansard*, 18 June 2010, p. 3.

53 The meeting discussed the matter of the arrangements to facilitate the cross border movement of officials and health professionals. See The Hon Stephen Smith MP, Australian Minister for Foreign Affairs and Trade, 'Visit to Papua New Guinea', Joint media release, 8 July 2010, <http://www.foreignminister.gov.au/releases/2010/fa-s100708a.html> (accessed 24 August 2010).

Conclusion

16.58 Clearly, some local members feel as though their voice is not being heard or not taken seriously by government agencies. The confusion and frustration caused by the multitude of Commonwealth and state agencies delivering a range of services coupled with disappointment with the consultative framework could undermine local support for the Treaty. The following chapter looks closely at the level of support for the Treaty.

Chapter 17

Support for the Treaty

17.1 In its submission, DFAT noted that the Treaty's inherent strength and effectiveness derives from its 'high level of support from traditional inhabitants'. It stated, however, that continuing support is 'arguably the Treaty's most fragile dimension'. In its view, as long as traditional inhabitants regard the Treaty as upholding and protecting their rights and privileges, it would remain effective but without that conviction, the Treaty would become 'increasingly difficult to sustain'.¹ In this chapter, the committee considers how government departments and agencies working in the Torres Strait manage community expectations. It is particularly interested in the level of support for the Treaty and the factors that have the potential to either undermine or strengthen that support.

Views on the Treaty

17.2 DFAT is of the view that the Treaty had 'operated pretty well over time: that it was very flexible and adaptable'.² The Commonwealth Attorney-General's Department and Queensland Government also believe that the Treaty works well.³ According to Australia's Treaty Liaison Officer, Mr Young, while the Treaty has overwhelming support, there remain issues and continuing pressures. He told the committee:

We have a lot of work to do to manage what is a complex treaty and a complex border. We try to do that as effectively as we can. As I say, there are ongoing management issues that I confront every day—and my colleagues from other agencies do too—but generally speaking there is support for the treaty's existence.⁴

17.3 Even though government agencies are satisfied with the implementation of the Treaty, representatives of the local Torres Strait communities identified a number of problems that, in their view, relate directly to arrangements under the terms of the Treaty. In this report, the committee has provided detailed accounts of many of these concerns that relate to specific matters—health, law and order, the strain on communities' limited resources such as water, illegal fishing and poaching, biosecurity and border control. In brief, local community leaders expressed disquiet about:

1 *Submission 23*, p. [5].

2 *Committee Hansard*, 18 December 2009, p. 3 and *Submission 23*, p. [5].

3 Mr William Campbell, *Committee Hansard*, 17 December 2009, p. 3 and Mr Wade Lewis, *Committee Hansard*, 25 March 2010, p. 2.

4 *Committee Hansard*, 18 December 2009, p. 8.

- unregulated visits by PNG residents, that place 'a silent burden' on Torres Strait communities through their use of island infrastructure, scarce resources such as water and health and welfare services;⁵
- the number and nature of visits under the provisions of the Treaty. For example, the TSIRC noted that on many occasions more than 500 PNG nationals have turned up in a community without prior advice, at times landing on any part of an island and staying in the community, sometimes for days before they are noticed by Commonwealth authorities;⁶
- the conduct of some visiting PNG nationals including drunkenness and threatening behaviour when disputes arise.⁷ The TSIRC noted that it could not express its concerns strongly enough regarding the security of its people due to the behaviour of PNG nationals, citing the movement of mentholated spirits from the Torres Strait communities to PNG; major theft, and PNG nationals walking the streets of communities in the Torres Strait brandishing weapons (machetes, knives);⁸
- the lack of commitment or the wherewithal by PNG nationals to support communities in the Torres Strait in their endeavours to maintain healthy stocks of vulnerable marine species and to promote sustainable development, citing the failure to observe conservation measures, trading in protected species or illegal fishing and poaching.

17.4 Moreover, the committee heard from local inhabitants of their fears that changes in climate could exacerbate problems in the region, with the possibility of inhabitants of villages along the southern PNG border being forced to seek food, water, shelter or access to land in the Torres Strait.

17.5 DFAT acknowledged that '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

5 The Torres Strait Island Regional Council (TSIRC) similarly noted the drain on the communities' social welfare system because of PNG nationals access to services. It claimed that cross-border relationships are formed with the longer term aim to resettle families in Australia, which burdens Australian social welfare system, with PNG nationals accessing Centrelink, Austudy etc. TSIRC, *Submission 9*, pp. 2–3 and also *Submission 2*, p. 1. Kevin Murphy claimed that Torres Strait Islanders employ Papuans to undertake 'various menial and domestic tasks at the standard rate of \$10 per day'. *Submission 15*, p. 5.

6 TSIRC, *Submission 9*, pp. 2–3. The TSIRC argued strongly for a designated entry and exit point that would allow those on the ground administering the treaty access to everybody. A submitter proposed that a thorough investigation needs to be carried out on all the islands to identify illegal Papua New Guineans and to make arrangements to 'either send them back or provide support for them and their families on Mainland Australia', *Submission 2*, name withheld, p. 2.

7 TSRA, *Submission 18*, p. 15.

8 TSIRC, *Submission 9*, p. 2.

resources, thereby eroding support for the Treaty among traditional inhabitants'.⁹ Even so, some local leaders believed that government agencies were not addressing their concerns adequately. For example, the TSIRC asserted that 'Immigration turns a blind eye to the fact that "overstayers" are on the island'. In its view, this inaction 'makes a mockery of the treaty' as it is commonly known that nothing would happen if a person overstayed their permit or arrived without one.¹⁰ Mayor Gela stated:

The treaty is inconsistently operated throughout the entire region, with those charged with the responsibility of enforcing the treaty sitting on their hands because that is the easy solution, preferring not to rock the boat, while it is the people of the Torres Strait and the Western Province who ultimately suffer.¹¹

The Torres Strait people are called upon every day to work within a system that is broken. The Torres Strait treaty is only broken; it can be fixed, for the benefit of all.¹²

17.6 During the committee's visit to the northernmost islands of the Torres Strait, local community leaders gave added substance to accounts of people contravening Treaty provisions with impunity. As noted previously in this report, they referred to villagers coming over from PNG to escape from their own law enforcement agencies, to fish or trade illegally or seek medical services. In their view, the law needs to stand firm and because agencies 'close their eyes they remain blind to what is going on so that nothing will get done'.¹³

17.7 At the committee's open forum on Thursday Island, Mr David referred to illegal fishers who are active in the region and the failure to police PNG nationals crossing the border to 'sell anything'. In his view, 'if we are interested in ensuring that this treaty is working as it should then these sorts of things should be reviewed and some real changes made'.¹⁴ Indeed, the TSIRC requested a full review of the Torres Strait Treaty 'as our local Islanders have a different concept of the original treaty, than what is carried out today'.¹⁵ It informed the committee that the communities are '100% behind the Treaty being upgraded'.¹⁶

9 DFAT, *Submission 23*, p. 5.

10 TSIRC, *Submission 9*, p. 2.

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

12 *Committee Hansard*, 18 June 2010, p. 3.

13 As noted in numerous places in this report, local leaders have expressed concerns about the influx of people arriving from PNG, sometime under cover of darkness, creating a drain on scarce resources particularly water, causing wear and tear on infrastructure, giving rise to security concerns or placing their people at risk from infectious diseases.

14 *Committee Hansard*, 24 March 2010, p. 34.

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

16 TSIRC, *Submission 9*, p. 4.

17.8 Although the TSRA was of the view that the Treaty was 'sound', Mr Kris acknowledged that, in discussions with local members and communities throughout the region, some expressed dissatisfaction with the operation of the Treaty. In their view, there should be at some time a review of the treaty:

...to look at how the practices have changed and in particular how the changes have happened throughout the life of the treaty that has moved from a barter system to a cash flow system as has happened in the later years.¹⁷

17.9 In this regard, the concerns raised by local communities about breaches of, or disregard for, Treaty arrangements are not trivial: they go to the heart of their way of life. Any deep-seated and sustained dissatisfaction with the handling of such important matters will clearly influence their attitude toward the Treaty and undermine the support that DFAT identified as so important.

Differing interpretations

17.10 Even though DFAT was of the view that the Treaty had a high level of support from traditional inhabitants, it also noted that the Treaty's two important roles—defining the border and protecting the traditional way of life—had 'sometimes led to confusion and poor understanding' by stakeholders and the general public.¹⁸ Noting that the Treaty is 'a legal document, and people can read it but not always understand the detail', Mr Young explained:

The detail is often decided at local level and it is not always understood beyond that local level. So one of our roles is to explain what those obligations and expectations are.¹⁹

17.11 Mr Bruer reinforced the view that the Treaty was a complex document with dual purposes that provides scope for confusion between what is and is not permitted.²⁰ He later clarified this statement by informing the committee that the role of the treaty was 'reasonably well-defined and...fulfils its roles reasonably well' and there was 'great support to the treaty'.²¹ He thought that the potential for confusion generally was among people outside the region: that people within the region understood it.

17.12 In his view, DFAT's role was to continue 'to work closely with the communities that are in the region and affected by it'.²² In this regard, Mr Bruer

17 See *Submission 18*, covering letter and *Committee Hansard*, 24 March 2010, p. 5.

18 *Submission 23*, p. [5].

19 *Committee Hansard*, 18 December 2009, p. 12.

20 *Committee Hansard*, 18 December 2009, p. 9.

21 *Committee Hansard*, 18 December 2009, p. 10.

22 *Committee Hansard*, 18 December 2009, pp. 10–11.

informed the committee that DFAT consults with 'stakeholders on a day-to-day basis about all aspects of the treaty'.²³ He added:

At the working level we try to minimise that confusion by continual work, through...liaising and negotiating and talking to and with outreach efforts to the various communities on both sides of the border to make sure that the requirements and obligations and responsibilities of people under the treaty are all understood well.²⁴

17.13 According to Mr Bruer, the 'various aspects of the treaty and the ways in which they are implemented are subject to constant review in many ways and we always review and monitor the way in which those things work'.²⁵ Mr Young also pointed out that the rules for, the obligations on, and the expectations of traditional inhabitant communities change from time to time, as pressures change, as issues change.²⁶ He informed the committee that differences in interpretation were dealt with at the TIMs. Citing the confusion over the definition of barter and market trade, Mr Young explained:

Issues like this pop up every year and are workshopped and dealt with at the Traditional Inhabitants Meeting, and this will be one of the issues that I have already taken, on a consultative process, through all of the treaty communities on both sides of the border. We will deal with it, one way or the other, at the local level at the Traditional Inhabitants Meeting.²⁷

17.14 In the previous chapter, the committee described the cycle of Treaty meetings, including the TIMs, and noted that some local leaders were disappointed with the lack of action that follows such meetings. The committee, however, is particularly concerned about what appears to be persistent differences in perception regarding what is happening on the ground in the Torres Strait. This disparity was particularly evident in views on overstayers, misbehaviour or even criminal behaviour of some PNG visitors, and government responses to requests by local councillors for the border to be closed when island resources are under stress. This difference in perception then leads to a sense that the Australian Government is not attending adequately to local concerns. Again, this is evident across many areas but particularly with the free movement provisions and reflected in comments made by local leaders.

17.15 Notably, Mr Rodney Scarce, CEO TSIRC, observed that even in past conversations with the local DFAT representatives and Immigration, 'it has been their interpretation of the treaty as opposed to our interpretation of the treaty that has put us at loggerheads'.²⁸ As an example, he used the differences in interpretation about the

23 *Committee Hansard*, 18 December 2009, p. 10

24 *Committee Hansard*, 18 December 2009, p. 9.

25 *Committee Hansard*, 18 December 2009, pp. 2–3.

26 *Committee Hansard*, 18 December 2009, p. 12.

27 *Committee Hansard*, 18 June 2010, p. 14.

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

term barter and whether the handing over of cash for the exchange of goods was in line with the Treaty. According to Mr Scarce, while DFAT and Immigration allow this level of cash transaction, the literal interpretation of barter does not. He told the committee:

That is something that has evolved over time. I do not believe council cares either way, but it needs to be enforced as it stands on that one particular thing.²⁹

17.16 This idea that government agencies are not responding adequately to local concerns is not confined to PNG visitors to Torres Strait communities. Local people also highlighted what they believe is the lack of attention given to their fears about the adverse effects of climate change in the region.

17.17 The committee is also concerned about the view that PNG does not have the capacity to work alongside Australia as partners in making the Treaty a success. Local leaders from communities in the Torres Strait are disappointed with the effort on the PNG side of the border to support and adhere to arrangements made under the Treaty. The TSRA summed up this view when it stated that the problems associated with the Treaty's operation 'lie with the poor socio-economic circumstances of PNG and the resources that are needed on the Australian side of the border to "carry" the resultant burden'.³⁰ Furthermore, in the previous chapter, the committee noted local community views that 'every time an issue crops up, with the ways things are clarified, more preference is given to the need of people on the PNG side of the border rather than the communities on our side'.³¹

17.18 In this context, the committee considered the inadequate delivery of health services on the PNG side of the border and the failure of PNG to police or enforce Treaty arrangements, for example in the harvesting and trading of dugong and turtle. The committee also presented evidence about the poor attendance of PNG representatives at JAC meetings, with observations about resourcing issues and PNG's limited capacity to act on agreements reached between both countries under the Treaty.

17.19 Local leaders in the Torres Strait recognise the poor living standards in the villages in the South Fly District and their lack of resources and access to essential services. The leaders do not believe, however, that their communities in the Torres Strait should bear an unfair burden in supporting these villagers or in their efforts to make the Treaty a success.

29 *Committee Hansard*, 18 June 2010, pp. 10–11.

30 *Submission 18*, covering letter.

31 *Committee Hansard*, 24 March 2010, p. 5.

Committee view

17.20 There is no doubt that some local leaders feel let down by the way certain aspects of the Treaty are administered and at times believe that their concerns are not listened to or acted upon. In some instances, their perceptions of a problem differ significantly from that of government officials. Even though, there are opportunities to air and resolve these concerns and to reconcile differences in perceptions, notably through the cycle of Treaty Meetings and Treaty awareness visits, a level of discontent remains. This sense of frustration and disappointment extends to PNG's contribution to ensuring that arrangements under the Treaty work effectively.

Recommendation 35

17.21 The committee recommends that DFAT explore the reasons for the different perceptions held by traditional inhabitants and state and Commonwealth authorities on the effectiveness of arrangements under the Treaty and report on its findings. This report to include suggestions on ways to reconcile these differences.

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'.¹ 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'.²

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.³

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'.⁴ 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 Q400.⁵

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.⁶ Councillor Stephen explained, however, that:

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.⁷

18.10 Mr McCarthy informed the committee that lighting at the airport was very antiquated.⁸ 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.⁹

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.¹⁰

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'.¹¹

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.¹²

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.¹³

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.¹⁴

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'.¹⁵ 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'.¹⁶

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'.¹⁷ 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.¹⁸

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'.¹⁹

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:

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.²⁰

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'.²¹

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.'²²

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.²³ 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.²⁴

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

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.

Chapter 19

Conclusion

19.1 Whether considering health issues, law and order, conservation, biosecurity, climate change, border protection or economic development in the Torres Strait, the committee found that a number of clear messages emerged during the course of its inquiry. They underscored the importance of:

- engaging local people, 'the eyes and ears of the north', in activities that come under Treaty arrangements and decision-making associated with them;
- encouraging PNG's full participation in all aspects of Treaty arrangements, including the cycle of Treaty meetings, and strengthening its capacity to support joint undertakings in the region;
- ensuring that Australia's development assistance to Western Province produces benefits that are well-targeted and long lasting;
- recognising the Torres Strait as a joint jurisdiction and capitalising on the potential for Australia's aid agencies and research institutes working on the PNG side of the border to link up, wherever possible, with their counterpart agencies in the Torres Strait to support and complement each other's work;
- achieving effective whole-of-government cooperation and coordination between government agencies, giving particular attention to the sharing or pooling of assets and the delivery of services to the region; and
- preventing or minimising abuses of treaty arrangements and reconciling differences in perceptions between traditional inhabitants and government agencies about the operation of the provisions of the Treaty.

19.2 These messages are evident in the committee's recommendations which have been grouped under the key subject headings as set out in this report.

Provision of health services

19.3 The committee recommends that:

- through the Package of Measures developed by the Health Issues Committee, the Australian Government continue to support PNG initiatives to establish new, or improve existing, health facilities in Western Province so that PNG nationals no longer need to seek health care in the Torres Strait; (recommendation 1, paragraph 4.23)
- the Australian Government give serious consideration to measures that would further facilitate the proposal for greater cross-border involvement by Australian health professionals in both the provision of services and capacity building initiatives on the PNG side of the border; (recommendation 2, paragraph 4.35)

- the Australian Government review its funding to Queensland Health to ensure that such funding is commensurate with the actual costs incurred by Queensland Health in providing health care to PNG nationals; (recommendation 6, paragraph 5.34)
- the Australian Government offer assistance to help the Queensland Government fund the implementation of the new data collection systems for PNG nationals accessing health services in the Torres Strait; and provide funding, if required, for a review of the effectiveness of this system; (recommendation 7, paragraph 5.41.)
- the Department of Immigration and Citizenship ensure that its statistics on PNG nationals visiting Australia, including those in Australia receiving medical treatment, are complete and complement those collected by Queensland Health; (recommendation 8, paragraph 5.42)
- relevant Australian government agencies combine their efforts to ascertain whether, or the extent to which, PNG nationals are coming to Australia to access social services, whether they are misinformed about their entitlements and, if so, the source of this misinformation and how best to correct it. (recommendation 9, paragraph 5.44)

Australia's development assistance to Western Province

19.4 The committee recommends that:

- the Australian Government use the Papua New Guinea–Australia Partnership for Development to detail the assistance it is providing to PNG to improve the delivery of health services in the southern part of Western Province and to ensure that projects undertaken in this region are appropriately monitored and evaluated during implementation and after completion; (recommendation 3, paragraph 4.61)
- to improve accountability and transparency of Australia's development aid spending, AusAID's Office of Development Effectiveness (ODE) conduct an analysis of Australia's funding in relation to Western Province in the Torres Strait region—

This analysis must provide an accurate and quantifiable account on the effectiveness of Australian aid provided to Western Province in the Torres Strait region. Special consideration must be given to the outcomes of Australian Government initiatives in the region, including both technical achievements and outputs and changes in attitudes and behaviour; (recommendation 4, paragraphs 4.62–63)

- the analysis mentioned in the previous recommendation also look closely at the extent and effectiveness of AusAID's cooperation with Queensland Health and consider ways to ensure that their work in the Torres Strait region is seamless across the border and that their operations and funding complement each other; (recommendation 5, paragraph 4.68)

Policing in the Torres Strait

19.5 The committee recommends that:

- the Queensland Government consider, as part of its overall review of policing in Indigenous communities, increasing Community Police Officer powers in order to enable them to respond more effectively to incidents in Torres Strait island communities and providing appropriate training and supervision in the use of these powers. The findings of the recent Queensland Crime and Misconduct Commission inquiry provide an ideal starting point; (recommendation 10, paragraph 8.47)
- with regard to matters dealing with visiting PNG nationals, the committee believes that the Australian Government has a direct responsibility. It recommends that the Australian Government should confer with the Queensland Government on how best it, and more particularly the AFP, can assist with any law and order issues that arise because of the shared border and the presence of PNG nationals in the Torres Strait; (recommendation 11, paragraph 8.64)
- in consultation with law enforcement and border security agencies working in the Torres Strait, the AFP review its presence in the region and consider whether it adequately meets the level of risk and community expectations. (recommendation 22, paragraph 13.79)

Conservation and biosecurity, community management plans and community involvement in protecting the environment and in sustainable management

19.6 The committee recommends that:

- the Australian Government ensure that the funding for the development of community management plans and the employment of community rangers is secure and commensurate with the maintenance and progress of these plans; (recommendation 12—also applies to biosecurity—paragraph 10.15)
- in recognition of the important role of community rangers in both conservation and in maintaining Australia's biosecurity, the Australian Government, in consultation with TSIRC and TSRA, give consideration to making the positions of community rangers permanent; (recommendation 12, paragraph 10.16)
- in conjunction with local communities in the Torres Strait, AusAID consider ways that would enable much greater engagement by PNG villagers in the work of community rangers in the Torres Strait as a means of educating and training them in conservation and biosecurity and in managing their environment. In particular, the committee recommends that the Australian Government support the TSRA's efforts to engage coastal communities in Western Province in turtle and dugong conservation; (recommendation 13, paragraph 10.33)

- the Australian Government fund a number of scholarships for PNG post-graduate students whose research would be linked to the community management plans now in operation in the Torres Strait and the work of community rangers; (recommendation 13, paragraph 10.34)
- the Australian Government ensure that there is adequate funding available for:
 - regular assessments of stocks of protected or vulnerable marine species in the Torres Strait; and
 - research into the nature and size of the catch by traditional inhabitants and the illegal or unauthorised harvest of marine turtles, dugong and bêche-de-mer in the Torres Strait; (recommendation 14, paragraph 10.38)
- when allocating funding for research projects in the Torres Strait, the Australian Government ensure that relevant agencies place a high priority on projects that demonstrate a commitment to engaging local communities in the formulation and design of these projects and, where possible, to training local Indigenous people in research techniques and sustainable management; (recommendation 15, paragraph 10.52)
- as a high priority, the Australian Government consider engaging AusAID and other Australian agencies working in PNG such as ACIAR as partners with Australian research bodies working on the Australian side of the border. This partnership, which would include local communities, would be designed to ensure that work on the PNG side complements, builds on and reinforces the conservation and biosecurity work being done on the Australian side; (recommendation 16, paragraph 10.60)
- in line with this priority, the committee recommends that, wherever practical, researchers or project officers working in the Torres Strait are encouraged to establish or strengthen partnerships with counterparts in PNG so that work on both sides of the border is complementary and builds critical networks of researchers who are then well positioned to collaborate in further research. AusAID could act as a key coordinator in forging these links; (recommendation 16, paragraph 10.60)
- the Australian Government assist Torres Strait Islanders to assume a central role in biosecurity-relevant studies, including research into management of indigenous flora and fauna, and surveying and monitoring threats to their localities, such as illegal fishing or the introduction of harmful weeds or pests. (recommendation 17, paragraph, paragraph 12.65)

Border protection

19.7 The committee recommends that:

- DFAT assume the leadership role in exploring ways with relevant border control agencies to make better use of modern technologies to identify travellers visiting the Torres Strait. The aim would be to implement as soon as

practicable an improved means of identification for people crossing the border in the Torres Strait that would be in keeping with the spirit of the Treaty; (recommendation 18, paragraph 13.32)

- DFAT jointly with DIAC, Customs and Border Protection, the AFP and Queensland Police review the ways in which government agencies currently work with local communities as partners to promote border security. The intention would be to consult with local communities to gauge their views on how their role in border security could be improved and to use this process to strengthen the intelligence network on the ground in the Torres Strait; (recommendation 19, paragraph 13.39)
- the Australian Government continue to support and fund adequately the effort to combat illegal fishing in the Torres Strait; (recommendation 20, paragraph 13.65)
- the Australian Government provide the funding needed to expedite the charting of uncharted waters in the Torres Strait, with priority given to the waters between Saibai and Boigu and the area north of these islands
 - the Department of Defence provide the committee with periodic updates on the progress being made to chart the waters of the Torres Strait. (recommendation 21, paragraphs 13.73 and 13.74)

Climate change

19.8 The committee recommends that:

- the Australian Government
 - place a high priority on implementing practical measures that need to be taken in the short term to assist local communities in the Torres Strait better deal with and, where possible, mitigate the problems caused by higher sea levels and extreme weather events;
 - review the need for an education and training program designed specifically to assist those communities in the region most at risk from the damaging effects of changes in climate. The intention would be to determine how best to assist people to remain productive members of their community in a changing environment; (recommendation 23, paragraph, 14.20)
- the Australian Government lend its full support to CSIRO's 'climate adaptation flagship' and ensure that adequate funding is made available to the institution to continue this initiative; (recommendation 24, paragraph 14.36)
- in conjunction and closely connected with this initiative, the committee recommends that the Australian Government fund a study into socio-economic developments in the region, including in the South Fly District, and their implications for water and food security and population movements in the area; (recommendation 25, paragraph 14.37)

- the Australian Government assist PNG to undertake complementary studies of climate change in Western Province by providing funding for research, opening up research opportunities for PNG researchers to work alongside Australian researchers in this area and for Australian researchers to work in PNG. For example, the Australian Government should consider offering scholarships or traineeships for PNG students to participate in CSIRO's climate adaptation flagship; (recommendation 26, paragraph 14.40)
- ACIAR consider including climate change and the implications for coastal villages in PNG's southern region as research priorities for PNG (traditional fishing, the conservation of species, including the dugong and turtle, and emergence and/or spread of exotic pests); (recommendation 27, paragraph 14.41)
- the Australian Minister for Foreign Affairs consult with his PNG counterpart about removing immediately any possible impediment to the Environment Management Committee and the Joint Advisory Council considering climate change in the Torres Strait. (recommendation 28, paragraph 14.45)

Commercial fishing in the Torres Strait

19.9 The committee recommends that:

- DAFF monitor developments within the Protected Zone Joint Authority (PZJA) during the coming twelve months. Further, at the end of that period, it consult with representatives from the Indigenous and non-Indigenous fishing sectors in the Torres Strait and with the Queensland Government to ascertain whether, in their view, the PZJA is making progress in remedying the problems identified in this report. The committee recommends that DAFF prepare a report for the minister for his/her consideration and for the report to be provided to the committee. (recommendation 29, paragraph 15.66)

Governance, consultation and service delivery

19.10 The committee recommends that:

- the Australian Government look closely at the operation of the Customs facility on Saibai with a view to increasing the opportunities for greater integration of effort across all agencies engaged in the Torres Strait; (recommendation 30, paragraph 16.15)
- the government establish a working group to consider the sharing arrangements for government assets in the Torres Strait with a view to identifying any areas for improvement, any real or potential points of conflict in the sharing of assets and how they could be resolved; (recommendation 30, paragraph 16.16)
 - a copy of this assessment be provided to the committee for its consideration; (recommendation 30, paragraph 16.17)

-
- the Royal Australian Navy remain in close consultation with all relevant agencies working in the Torres Strait in order to arrive at a decision regarding a Navy presence there that would best support Australia's whole-of-government effort in the region. (recommendation 31, paragraph 16.22)
 - agencies take note of the observations about 'consultation overload' and make real efforts to dispel the notion that government officials fly in and fly out. (recommendation 32, paragraph 16.29)
 - the Australian Government, the Queensland Government, the two local councils and the TSRA establish a working group with the aim of formulating recommendations designed to produce a more stream-lined and integrated approach to service delivery in the Torres Strait. (recommendation 32, paragraph 16.30)

Consultative mechanisms under the Treaty

19.11 The committee recommends that:

- DFAT examine the working of the consultative mechanisms with a view to developing, in collaboration with their PNG counterparts, initiatives that would encourage and assist PNG representatives to attend and participate in all joint activities, build their capacity to contribute to decision making and importantly, to follow through with agreed actions; (recommendation 33, paragraph 16.55)
- the Australian Government, in consultation with the PNG Government, establish 'Torres Strait cooperation' as a standing item on the agenda for the annual bilateral ministerial meetings or forums. (recommendation 34, paragraph 16.57)
- DFAT explore the reasons for the different perceptions held by traditional inhabitants and state and Commonwealth authorities on the effectiveness of arrangements under the Treaty and report on its findings. This report to include suggestions on ways to reconcile these differences (recommendation 35, paragraph 17.21)

Commonwealth responsibilities—infrastructure and waste management

19.12 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; (recommendation 35, 18.6)
- the Australian Government consider providing additional funding for Horn Island airport, especially in areas related to safety, security and border control. (recommendation 36, paragraph 18.11)

19.13 Although the committee has made a significant number of recommendations, they do not necessarily reflect adversely on the Treaty or the efforts of government agencies to make the Treaty a success. The recommendations are intended to build on the good work already being achieved in the Torres Strait, to strengthen support for the Treaty and to encourage further the development of constructive and cooperative relations between all who work and live in the region. It should be noted, however, that in the view of the committee the Australian Government should give close attention to three areas of special concern—the perception by local inhabitants that government agencies are not responding adequately to breaches of Treaty provisions, the effectiveness of Australia’s development assistance to Western Province and the apparent slowness and lack of coordination in responding to local concerns about the effects of changes in climate on communities in the region.

Senator Helen Kroger
Chair

Appendix 1

Public submissions

- 1 Hon. Jim Lloyd
- 2 Name withheld
- 3 Mr Graham Smith
- 4 Mr Dan O'Gorman SC
- 5 National Native Title Tribunal
- 6 Mr Raymond Moore
- 7 Queensland Rock Lobster Association
- 8 Mr Peter Sawabbarri, Masaingle Association Inc
- 9 Torres Strait Island Regional Council
- 10 M.G. Kailis Pty Ltd
- 11 Department of Health and Ageing
- 12 Department of Defence
- 13 Department of Agriculture, Fisheries and Forestry
- 14 Australian Customs and Border Protection Service
- 15 Mr Kevin Murphy
- 16 Department of Immigration and Citizenship
- 17 Australian Maritime Safety Authority
- 17A Australian Maritime Safety Authority
- 18 Torres Strait Regional Authority
- 19 Torres Shire Council
- 20 Queensland Government
- 21 AusAID
- 22 Department of Infrastructure, Transport, Regional Development and Local Government
- 23 Department of Foreign Affairs and Trade
- 24 Department of the Environment, Water, Heritage and Arts (DEWHA)
- 25 Australian Federal Police
- 26 Reef & Rainforest Research Centre
- 27 The Right Reverend Saibo Mabo
- 28 Community and Public Sector Union
- 29 Queensland Nurses' Union
- 30 Dr Garrick Hitchcock
- 31 Sawehame Iabu Sawehame
- 32 Goshen Project

Appendix 2

Public hearings and witnesses

Thursday, 17 December 2009—Canberra

Attorney-General's Department

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law

CHANNELLS, Mr Peter, Assistant Secretary, Emergency Management Capability Development

DANCE, Mr Ronald James, Assistant Secretary, Crisis Coordination Branch, Emergency Management Australia

Department of Immigration and Citizenship

ALLEN, Mr Stephen, Acting First Assistant Secretary, Border Security Division

DAVIS, Ms Jackie, Acting Chief Lawyer, Governance and Legal Division

NIBLETT, Ms Julia, Assistant Secretary, Onshore Protection Branch

Australian Customs and Border Protection Service

GRANT, Mrs Marion, Deputy Chief Executive Officer, Border Enforcement

KELLEY, Ms Roxanne, National Director, Enforcement and Investigations

KERLIN, Mr John Paul, Director, Enforcement Operations, Regional Queensland

Department of Agriculture, Fisheries and Forestry

CARROLL, Dr Andrew Gerard, Chief Veterinary Officer

CHAPMAN, Mr Tim, Executive Manager, Quarantine Operations Division

HURRY, Professor Glen, Chief Executive Officer, Australian Fisheries Management Authority

LUI, Mr Stan, Manager, Torres Strait Prawn Fishery, Australian Fisheries Management Authority

MORRIS, Mr Paul Charles, Executive Manager, Trade and Market Access Division

PITTAR, Mr Roland, General Manager, Fisheries

Department of the Environment, Water, Heritage and the Arts

COLREAVY, Ms Mary, Acting First Assistant Secretary, Land and Coasts Division

McDOUGALL, Mr John, Policy Officer, International Section

OXLEY, Mr Stephen, Acting First Assistant Secretary, Marine Division

RISHNIW, Ms Tania, Assistant Secretary, Tropical Marine Conservation Branch, Marine Division

Department of Health and Ageing

BRYANT, Ms Jennifer, First Assistant Secretary

GARDNER, Ms Fay Irene, Assistant Secretary, Health Protection Policy Branch

KLAUCKE, Mr Klaus Gerhard, Director, Asia-Pacific Section

SAASTAMOINEN, Ms Tarja, Assistant Secretary, Family Health and Wellbeing Branch, Office for Aboriginal and Torres Strait Islander Health

Department of Infrastructure, Transport, Regional Development and Local Government

BORTHWICK, Mr Stephen, General Manager, Aviation Industry Policy Branch

PAHLOW, Mr Michael, Acting Executive Director, Local Government and Regional Development Division

WILSON, Mr Andrew, Acting Deputy Secretary

Friday, 18 December 2009—Canberra

Department of Foreign Affairs and Trade

BRUER, Mr Jeremy, Assistant Secretary, Papua New Guinea and Fiji Branch, Pacific Division

COPPEL, Mr Nicholas, Assistant Secretary, Pacific Regional and New Zealand Branch, Pacific Division

YOUNG, Mr Brett, Torres Strait Treaty Liaison Officer, Thursday Island, Torres Strait

Australian Agency for International Development

LEAN, Ms Jennifer, Manager, Cross-cutting Analysis, Program Quality and Review, Papua New Guinea Branch

SHIPLEY, Ms Ellen, Director, Partnerships and Program Coordination, Papua New Guinea Branch, Pacific and Papua New Guinea Division

Commonwealth Scientific and Industrial Research Organisation

BUTLER, Dr James, Leader, Landscapes and Livelihoods Group, Sustainable Ecosystems

SHEPPARD, Dr Andy, Theme Leader, Invasive Species and Biosecurity

SKEWES, Mr Timothy Donald, Research Scientist, Marine and Atmospheric Research

Department of Defence

COLQUHOUN, Mr Lachlan, Acting First Assistant Secretary, Regional Engagement

HALLETT, Mr David, Director, Papua New Guinea

McCANN, Ms Linda, Acting Director-General, Pacific and East Timor Branch

SARA, Mr Tyson, Director, Indonesia

WHITE, Captain Brad, Director, Joint Amphibious Capability Implementation

Australian Federal Police

ZUCCATO, Assistant Commissioner Kevin, National Manager, Border and International

Wednesday, 24 March 2010—Thursday Island

Torres Strait Regional Authority

BANU, Mr Donald, Portfolio Member for Native Title, Member for Boigu Island
BEDFORD, Mr Kenny, Portfolio Member for Fisheries, Member for Erub Island
BIN TAHAL, Ms Napcia, Deputy Chairperson, Portfolio Member for Economic Development, Member for Horn and Prince of Wales islands
FELL, Mr Keith, Portfolio Member for Healthy Communities, Member for Mabuiag Island
KRIS, Mr John Toshie, Chairperson
PEARSON, Mrs Nancy, Portfolio Member for Safe Communities, Member for Hammond Island
SEE KEE, Mr Wayne, General Manager

Torres Shire Council

BIN TAHAL, Councillor Napcia, Deputy Mayor
McCARTHY, Mr Bernard Anthony, Chief Executive Officer
STEPHEN, Councillor Napua Pedro, Mayor

Community Forum

BON, Rev. Lui Dalton, Private capacity
COOK, Mr Fred Harry, Construction teacher, Tagai State College
DAVID, Mr Ned, Director, Magani Lagaugal, Registered Native Title Body Corporate
NATANIELU, Mrs Bertha Cecilia, Private capacity
NONA, Mr Malawap Ali Benjamin, Deputy Chair, Bura Badulgal Native Title Registered Body Corporate
STEPHEN, Mr Seriako, Director, Ugar Kem Le Ged Zeuber Er Kep Le (Torres Strait Islander) Corporation

Queensland Rock Lobster Association

ARLIDGE, Mr Ashley Brett, President
MOORE, Mr Benjamin, Private capacity
MOORE, Dr Raymond, Private capacity

Thursday, 25 March 2010—Brisbane

Department of Environment and Resource Management, Queensland

COOK, Mr Clive, Senior Director, Conservation Strategy and Planning
ROBINSON, Mr David, Acting Senior Director, Queensland Climate Change Centre of Excellence

Department of Infrastructure and Planning, Queensland

TOOLIS, Mr Paul, Manager, Indigenous Policy Unit, Local Government Services

Department of the Premier and Cabinet, Queensland

LEWIS, Mr Wade, Director, Intergovernmental Relations

Queensland Health

NARDI, Ms Bronwyn, Acting Deputy Director-General, Policy, Strategy and Resourcing Division

Queensland Police Service

ATKINSON, Mr Robert, Commissioner of Police

Reef and Rainforest Research Centre

MORRIS, Ms Sheriden, Managing Director

Gizra Tribe

O'GORMAN, Mr Daniel Paul, Lawyer, Gizra Tribe, Papua New Guinea

Friday, 18 June 2010—Canberra**Torres Strait Island Regional Council**

GELA, Mr Frederick Solomon, Mayor

SCARCE, Mr Rodney John, Chief Executive Officer

Department of Foreign Affairs and Trade

BRUER, Mr Jeremy, Assistant Secretary, Papua New Guinea and Fiji Branch

RAWSON, Ms Jennifer Elizabeth, First Assistant Secretary, Pacific Division

YOUNG, Mr Brett, Torres Strait Treaty Liaison Officer

Department of Immigration and Citizenship

ALLEN, Mr Stephen, Assistant Secretary, Border Security Division

HEATH, Mr Andrew, Regional Manager, Torres Strait

Department of Health and Ageing

BRYANT, Ms Jennifer, First Assistant Secretary, Office of Health Protection

HOLDEN, Ms Fay, Assistant Secretary, Health Protection Policy Branch, Office of Health Protection

SAASTAMOINEN, Ms Tarja, Assistant Secretary, Family Health and Wellbeing Branch, Office for Aboriginal and Torres Strait Islander Health

Department of Agriculture, Fisheries and Forestry

BURNS, Mr Craig Stuart, Executive Manager, Trade and Market Access Division

CARROLL, Dr Andrew Gerard (Andy), Chief Veterinary Officer

PITTAR, Mr Roland, General Manager, Fisheries Branch

Department of Climate Change and Energy Efficiency

HIGGINS, Dr John, Director, Adaptation Policy Team, Adaptation Innovation Branch, Adaptation Land and Communications Division

Department of the Environment, Water, Heritage and the Arts

FLANIGAN, Mr Mark, First Assistant Secretary, Land and Coasts Division

ROUTH, Mr Nigel, Assistant Secretary, Marine Biodiversity Policy Branch, Marine Division

Australian Fisheries Management Authority

SOUTHWELL, Mr Malcolm, Senior Manager, Northern Fisheries

Private Individuals

HITCHCOCK, Dr Garrick, Private capacity

LAWRENCE, Dr David Russell, Private capacity

MURPHY, Mr Kevin Michael, Private capacity

Masaingle Association Inc.

BUIE, Mr Paul Giwei, Agent and Facilitator

SAWABARRI, Mr Peter Niwia, Chairman

KEMPTON, Mr David, Solicitor, Preston Law

KERR, Mr Andrew, Consultant, Preston Law

PENA, Mr Peter, Principal, Peter Pena and Associates Lawyers and Attorneys

Appendix 3

Tabled documents, answers to questions on notice and additional information

Tabled documents

17 December 2009

Attorney-General's Department—*The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement*

Department of Immigration and Citizenship—Updated information on demographics and refused clearances

Department of Infrastructure, Transport, Regional Development and Local Government—Joint Australian and Queensland Government Media Release—Horn Island airport upgrade

18 June 2010

Department of Immigration and Citizenship—statistical update for traditional movements within the protected zone

Answers to questions on notice

- Australian Agency for International Development (AusAID)
- Australian Customs and Border Protection Service
- Department of Defence
- Department of the Environment, Water, Heritage and the Arts
- Department of Health and Ageing
- Department of Immigration and Citizenship
- Department of Infrastructure, Transport, Regional Development and Local Government

Additional information

- Australian Federal Police
- Department of Immigration and Citizenship—Layered approach to border management
- Queensland Government
- Reef & Rainforest Research Centre

Appendix 4

Selected recommendations from previous parliamentary reports

The following recommendations made by previous Parliamentary committees have direct relevance for the committee's inquiry into the Torres Strait region

House of Representatives Standing Committee on Climate Change, Water, Environment and the Arts

Selected recommendations contained in the House of Representatives Standing Committee on Climate Change, Water, Environment and the Arts, *Managing our coastal zone in a changing climate The time to act is now*, October 2009

Recommendation 13

The Committee recommends that the Australian Government take urgent action to protect Australians from the threats of dengue fever and chikungunya virus. The knowledge gaps identified by the National Climate Change Adaptation Research Facility research plan with regards to the relationship between climate variation and vector-borne disease should be urgently addressed. The Australian Government should:

- undertake research into the relationship between climate change and vector-borne disease
- produce modelling to allow for advanced early warning of impending threats from vector-borne disease
- continue to work towards producing a structured national framework for dealing with mosquito outbreaks in Australia
- increase biosecurity measures to better protect against chikungunya virus entering Australia

Recommendation 17

The Committee recommends that the Department of Climate Change, in collaboration with the Queensland Government, CSIRO and Indigenous communities in the Torres Strait, undertake a major study into the vulnerability of the Torres Strait to the impacts of climate change and provide assistance in the development of an adaptation plan.

Recommendation 18

The Committee recommends that the Australian Government give the five recommendations calling for information, studies and data, as proposed by the Torres Strait Regional Authority, early and urgent consideration with a view to their implementation.

House of Representatives Standing Committee on Health and Ageing³⁰⁴

Selected recommendations contained in the House of Representatives Standing Committee on Health and Ageing, *Regional health issues jointly affecting Australia and the South Pacific*, Report of the Australian Parliamentary Committee Delegation to Papua New Guinea and the Solomon Islands, March 2010.

Recommendation 2

The Committee recommends that collaborative research be undertaken into the sexual networks that exist in the Torres Strait Treaty zone, that includes the collection of data on the levels of Sexually Transmitted Infections, including HIV, on both sides of the border.

Recommendation 3

The Committee recommends that the Australian government facilitate forums for leaders in the region to come together at regular intervals to discuss HIV/AIDS prevention strategies, and, in particular, to seek ways to lessen the social stigma of talking about the disease.

Recommendation 5

The Committee recommends that the Australian government partner with non-government organisations and communities to find nutritional solutions that promote healthy eating and redress malnutrition, in affected areas in the Torres Strait and Papua New Guinea.

Recommendation 6

The Committee recommends that the Australian government encourage and support further institutional partnerships and/or reciprocal exchanges between the School of Medical and Health Sciences at the University of Papua New Guinea and Australian universities.

Recommendation 7

The Committee recommends that the Australian government make efforts to link Igat Hope with counterpart organisations in Australia to strengthen their advocacy potential.

Recommendation 9

The Committee recommends that the Australian government support additional health communications officer positions in the Torres Strait and treaty villages of the Western Province of Papua New Guinea.

Recommendation 10

The Committee recommends that the Australian government install additional rainwater tanks in treaty villages in the Western Province of Papua New Guinea.

Recommendation 11

The Committee recommends that any new health facility that the Australian government helps construct should provide for staff accommodation and ongoing maintenance, in consultation and partnership with the local community.

Recommendation 12

The Committee recommends that the Australian government, in conjunction with the Papua New Guinean government, facilitate more creative and inclusive forums in which locals on both sides of the treaty zone border can engage on health and other treaty related issues with each other and with government officials of both nations.

Appendix 5

Australian Treaty Series—Department of Foreign Affairs



Australian Treaty Series

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Australian Treaty Series 1985 No 4

DEPARTMENT OF FOREIGN AFFAIRS

CANBERRA

**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**

(Sydney, 18 December 1978)

Entry into force: 15 February 1985

The maps annexed to this Treaty as Annexes 2, 4, 6 and 7 are in the pocket inside the back cover of the printed text.

AUSTRALIAN TREATY SERIES

1985 No. 4

Australian Government Publishing Service

Canberra

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**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**

AUSTRALIA AND PAPUA NEW GUINEA,

DESIRING to set down their agreed position as to their respective sovereignty over certain islands, to establish maritime boundaries and to provide for certain other related matters, in the area between the two countries including the area known as Torres Strait;

RECOGNISING the importance of protecting the traditional way of life and livelihood of Australians who are Torres Strait Islanders and of Papua New Guineans who live in the coastal area of Papua New Guinea in and adjacent to the Torres Strait;

RECOGNISING ALSO the importance of protecting the marine environment and ensuring freedom of navigation and overflight for each other's vessels and aircraft in the Torres Strait area;

DESIRING ALSO to cooperate with one another in that area in the conservation, management and sharing of fisheries resources and in regulating the exploration and exploitation of seabed mineral resources;

AS good neighbours and in a spirit of cooperation, friendship and goodwill;

HAVE AGREED as follows:

PART 1

DEFINITIONS

Article 1

Definitions

1. In this Treaty-

- (a) "adjacent coastal area" means, in relation to Papua New Guinea, the coastal area of the Papua New Guinea mainland, and the Papua New Guinea islands, near the Protected Zone; and, in relation to Australia, the coastal area of the Australian mainland, and the Australian islands, near the Protected Zone;
- (b) "fisheries jurisdiction" means sovereign rights for the purpose of exploring and exploiting, conserving and managing fisheries resources other than sedentary species;
- (c) "fisheries resources" means all living natural resources of the sea and seabed, including all swimming and sedentary species;
- (d) "free movement" means movement by the traditional inhabitants for or in the course of traditional activities;
- (e) "indigenous fauna and flora" includes migratory fauna;
- (f) "mile" means an international nautical mile being 1,852 metres in length;
- (g) "Protected Zone" means the zone established under Article 10;
- (h) "Protected Zone commercial fisheries" means the fisheries resources of present or potential commercial significance within the Protected Zone and, where a stock of such resources belongs substantially to the Protected Zone but extends into an area outside but near it, the part of that stock found in that area within such limits as are agreed from time to time by the responsible authorities of the Parties;

(i) "seabed jurisdiction" means sovereign rights over the continental shelf in accordance with international law, and includes jurisdiction over low-tide elevations, and the right to exercise such jurisdiction in respect of those elevations, in accordance with international law;

(j) "sedentary species" means living organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil;

(k) "traditional activities" means activities performed by the traditional inhabitants in accordance with local tradition, and includes, when so performed-

(i) activities on land, including gardening, collection of food and hunting;

(ii) activities on water, including traditional fishing;

(iii) religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and

(iv) barter and market trade.

In the application of this definition, except in relation to activities of a commercial nature, "traditional" shall be interpreted liberally and in the light of prevailing custom;

(l) "traditional fishing" means the taking, by traditional inhabitants for their own or their dependants' consumption or for use in the course of other traditional activities, of the living natural resources of the sea, seabed, estuaries and coastal tidal areas, including dugong and turtle;

(m) "traditional inhabitants" means, in relation to Australia, persons who-

(i) are Torres Strait Islanders who live in the Protected Zone or the adjacent coastal area of Australia,

(ii) are citizens of Australia, and

(iii) 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; and

in relation to Papua New Guinea, persons who-

(i) live in the Protected Zone or the adjacent coastal area of Papua New Guinea,

(ii) are citizens of Papua New Guinea, and

(iii) 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.

2. Where for the purposes of this Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6,378,160 metres and a flattening of $100/29825$ and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude $25^{\circ}56'54.5515''$ South and at Longitude $133^{\circ}12'30.0771''$ East and to have a ground level of 571.2 metres above the spheroid referred to above.

3. In this Treaty, the expression "in and in the vicinity of the Protected Zone" describes an area the outer limits of which might vary according to the context in which the expression is used.

PART 2

SOVEREIGNTY AND JURISDICTION

Article 2

Sovereignty over islands

1. Papua New Guinea recognises the sovereignty of Australia over-

(a) the islands known as Anchor Cay, Aubusi Island, Black Rocks, Boigu Island, Bramble Cay, Dauan Island, Deliverance Island, East Cay, Kaumag Island, Kerr Islet, Moimi Island, Pearce Cay, Saibai Island, Turnagain Island and Turu Cay; and

(b) all islands that lie between the mainlands of the two countries and south of the line referred to in paragraph 1 of Article 4 of this Treaty.

2. No island over which Australia has sovereignty, other than those specified in sub-paragraph 1(a) of this Article, lies north of the line referred to in paragraph 1 of Article 4 of this Treaty.

3. Australia recognises the sovereignty of Papua Guinea over-

(a) the islands known as Kawa Island, Mata Kawa Island and Kussa Island; and

(b) all the other islands that lie between the mainlands of the two countries and north of the line referred to in paragraph 1 of Article 4 of this Treaty, other than the islands specified in sub-paragraph 1(a) of this Article.

4. In this Treaty, sovereignty over an island shall include sovereignty over-

(a) its territorial sea;

(b) the airspace above the island and its territorial sea;

(c) the seabed beneath its territorial sea and the subsoil thereof; and

(d) any island, rock or low-tide elevation that may lie within its territorial sea.

Article 3

Territorial seas

1. The territorial sea boundaries between the islands of Aubusi, Boigu and Moimi and Papua New Guinea and the islands of Dauan, Kaumag and Saibai and Papua New Guinea shall be the lines described in Annex 1 to this Treaty, which are shown on the map annexed to this Treaty as Annex 2, together with such other portion of the outer limit of the territorial sea of Saibai described in Annex 3 to this Treaty that may abut the territorial sea of Papua New Guinea.

2. The territorial seas of the islands specified in sub-paragraph 1(a) of Article 2 of this Treaty shall not extend beyond three miles from the baselines from which the breadth of the territorial sea around each island is measured. Those territorial seas shall not be enlarged or reduced, even if there were to be any change in the configuration of a coastline or a different result from any further survey.

3. The provisions of paragraph 2 of this Article shall not apply to that part of the territorial sea of Pearce Cay which lies south of the line referred to in paragraph 1 of Article 4 of this Treaty.

4. The outer limits of the territorial seas of the islands specified in sub-paragraph 1(a) of Article 2 of this Treaty, except in respect of that part of the territorial sea of Pearce Cay which lies south of the line referred to in paragraph 1 of Article 4 of this Treaty, shall be as described in Annex 3 to this Treaty. The limits so described are shown on the maps annexed to this Treaty as Annexes 2 and 4.

5. Australia shall not extend its territorial sea northwards across the line referred to in paragraph 1 of Article 4 of this Treaty.

6. Papua New Guinea shall not-

(a) extend its territorial sea off its southern coastline between the meridians of Longitude 142°03'30" East and of Longitude 142°51'00" East, beyond three miles from the baselines from which the breadth of the territorial sea is measured;

(b) extend its territorial sea or archipelagic waters into the area bounded by that portion of the line referred to in paragraph 2 of Article 4 of this Treaty running from the point of Latitude 9°45'24" South, Longitude 142°03'30" East to the point of Latitude 9°40'30" South, Longitude 142°51'00" East and that portion of the line referred to in paragraph 1 of Article 4 of this Treaty which runs between those two points;

(c) establish an archipelagic baseline running in or through the area referred to in sub-paragraph (b) of this paragraph; or

(d) extend its territorial sea southwards across the line referred to in paragraph 1 of Article 4 of this Treaty.

Article 4

Maritime jurisdiction

1. Subject to the provisions of Article 2 of this Treaty, the boundary between the area of seabed and subsoil that is adjacent to and appertains to Australia and the area of seabed and subsoil that is adjacent to and appertains to Papua New Guinea, and over which Australia and Papua New Guinea respectively shall have seabed jurisdiction, shall be the line described in Annex 5 to this Treaty. The line so described is shown on the map annexed to this Treaty as Annex 6 and, in part, on the map annexed to this Treaty as Annex 7.

2. Subject to the provisions of Article 2 of this Treaty, the boundary between the area of sea that is adjacent to and appertains to Australia and the area of sea that is adjacent to and appertains to Papua New Guinea, and in which Australia and Papua New Guinea respectively shall have fisheries jurisdiction, shall be the line described in Annex 8 to this Treaty. The line so described is shown on the map annexed to this Treaty as Annex 6 and, in part, on the maps annexed to this Treaty as Annexes 2 and 7.

3. In relation to the area bounded by the portion of the line referred to in paragraph 2 of this Article running from the point of Latitude 9°45'24" South, Longitude 142°03'30" East to the point of Latitude 9°40'30" South, Longitude 142°51'00" East and that portion of the line referred to in paragraph 1 of this Article which runs between those two points, exclusive of the territorial seas of the islands of Aubusi, Boigu, Dauan, Kaumag, Moimi, Saibai and Turnagain-

(a) neither Party shall exercise residual jurisdiction without the concurrence of the other Party; and

(b) the Parties shall consult with a view to reaching agreement on the most effective method of application of measures involving the exercise of residual jurisdiction.

4. In paragraph 3 of this Article, "residual jurisdiction" means-

(a) jurisdiction over the area other than seabed jurisdiction or fisheries jurisdiction, including jurisdiction other than seabed jurisdiction or fisheries jurisdiction insofar as it relates to *inter alia*:

(i) the preservation of the marine environment;

(ii) marine scientific research; and

(iii) the production of energy from the water, currents and winds; and

(b) seabed and fisheries jurisdiction to the extent that the exercise of such jurisdiction is not directly related to the exploration or exploitation of resources or to the prohibition of, or refusal to authorise, activities subject to that jurisdiction.

PART 3

SOVEREIGNTY AND JURISDICTION - RELATED MATTERS

Article 5

Existing petroleum permit

1. Where prior to 16 September 1975 Australia has granted an exploration permit for petroleum under Australian law in respect of a part of the seabed over which it ceases by virtue of this Treaty to exercise sovereign rights, and a permittee retains rights in respect of that permit immediately prior to the entry into force of this Treaty, Papua New Guinea, upon application by that permittee, shall offer to that permittee a petroleum prospecting licence or licences under Papua New Guinea law in respect of the same part of the seabed on terms that are not less favourable than those provided under Papua New Guinea law to any other holder of a seabed petroleum prospecting licence.

2. An application for a licence under paragraph 1 of this Article shall be made-

(a) in respect of a part of the seabed lying outside the Protected Zone, within six months after the date of entry into force of this Treaty;

(b) in respect of a part of the seabed lying within the Protected Zone, during the period referred to in Article 15 and any extension of that period to which the Parties may agree.

Article 6

Exploitation of certain seabed deposits

If any single accumulation of liquid hydrocarbons or natural gas, or if any other mineral deposit beneath the seabed, extends across any line defining the limits of seabed jurisdiction of the Parties, and if the part of such accumulation or deposit that is situated on one side of such a line is recoverable in fluid form wholly or in part from the other side, the Parties shall consult with a view to reaching agreement on the manner in which the accumulation or deposit may be most effectively exploited and on the equitable sharing of the benefits from such exploitation.

Article 7

Freedom of navigation and overflight

1. On and over the waters of the Protected Zone that lie-

(a) north of the line referred to in paragraph 1 of Article 4 of this Treaty and seaward of the low water lines of the land territory of either Party, and

(b) south of that line and beyond the outer limits of the territorial sea,

each Party shall accord to the vessels and aircraft of the other Party, subject to paragraphs 2 and 3 of this Article, the freedoms of navigation and overflight associated with the operation of vessels and aircraft on or over the high seas.

2. Each Party shall take all necessary measures to ensure that, in the exercise of the freedoms of navigation and overflight accorded to its vessels and aircraft under paragraph 1 of this Article-

(a) those vessels observe generally accepted international regulations, procedures and practices for safety at sea and for the prevention, reduction and control of pollution from ships;

(b) those civil aircraft observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft, and State aircraft normally comply with such of those rules as relate to safety and at all times operate with due regard for the safety of navigation;

(c) those vessels and aircraft north of the line referred to in paragraph 1 of Article 4 of this Treaty do not engage in the embarking or disembarking of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the other Party, provided that the relevant laws and regulations of that Party do not have the practical effect of denying, hampering or impairing the freedoms of navigation and overflight accorded under paragraph 1 of this Article; and

(d) those vessels and aircraft, north of the line referred to in paragraph 1 of Article 4 of this Treaty, do not act in a manner prejudicial to the peace, good order or security of the other Party.

3. Vessels of a Party engaged in the exploration or exploitation of resources in an area of jurisdiction of the other Party shall remain subject to the laws and regulations of the other Party made in the exercise of its resources jurisdiction consistently with this Treaty and with international law, including the provisions of those laws and regulations concerning the boarding, inspection and apprehension of vessels.

4. In those areas of the Protected Zone north of the line referred to in paragraph 1 of Article 4 of this Treaty to which paragraph 1 of this Article does not apply, civil aircraft of a Party engaged in scheduled or non-scheduled air services shall have the right of overflight, and the right to make stops for non-traffic purposes, without the need to obtain prior permission from the other Party, subject to compliance with any applicable laws or regulations made for the safety of air navigation.

5. In areas of the Protected Zone to which paragraph 1 of this Article does not apply, the vessels of a Party shall enjoy the right of innocent passage. There shall be no suspension of that right, and neither Party shall adopt laws or regulations applying to those areas that might impede or hamper the normal passage of vessels between two points both of which are in the territory of one Party.

6. In cases where the provisions of neither paragraph 1 nor paragraph 5 of this Article apply, a regime of passage over routes used for international navigation in the area between the two countries, including the area known as Torres Strait, shall apply in respect of vessels that is no more restrictive of passage than the regime of transit passage through straits used for international navigation described in Articles 34 to 44 inclusive of Document A/Conf. 62/WP.10 of the Third United Nations Conference on the Law of the Sea, provided that, before a Party adopts a law or regulation that might impede or hamper the passage over those

routes of vessels proceeding to or from the territory of the other Party, it shall consult with the other Party. If the provisions of those Articles are revised, are not included in any Law of the Sea Convention or fail to become generally accepted principles of international law, the Parties shall consult with a view to agreeing upon another regime of passage that is in accordance with international practice to replace the regime of passage applying under this paragraph.

7. The rights of navigation and overflight provided for in this Article are in addition to, and not in derogation of, rights of navigation and overflight in the area concerned under other treaties or general principles of international law.

Article 8

Navigational aids

With a view to maintaining and improving the safety of navigation through the waters in the area between the two countries, the Parties shall cooperate and, with due regard to the technical and other means available to each of them, shall, where appropriate and as may be agreed between them, provide mutual assistance in the provision and maintenance of navigational aids and in the preparation of charts and maps.

Article 9

Wrecks

1. Wrecks of vessels and aircraft which lie on, in or under the seabed in an area of seabed jurisdiction of a Party shall be subject to the jurisdiction of that Party.

2. If a wreck of historical or special significance to a Party is located or found in an area between the two countries under the jurisdiction of the other Party, the Parties shall consult with a view to reaching agreement on the action, if any, to be taken with respect to that wreck.

3. The provisions of this Article shall be without prejudice to the competence of the courts of a Party, for the purposes of the laws of that Party, in relation to maritime causes of action in respect of wrecks coming within the provisions of this Article.

4. This Article shall not apply to any military vessel or aircraft of either Party wrecked after the date of entry into force of this Treaty.

PART 4

THE PROTECTED ZONE

Article 10

Establishment and purposes of the Protected Zone

1. A Protected Zone in the Torres Strait is hereby established comprising all the land, sea, airspace, seabed and subsoil within the area bounded by the line described in Annex 9 to this

Treaty. The line so described is shown on the maps annexed to this Treaty as Annexes 6 and 7 and, in part, on the map annexed to this Treaty as Annex 2.

2. The Parties shall adopt and apply measures in relation to the Protected Zone in accordance with the provisions of this Treaty.

3. The principal purpose of the Parties in establishing the Protected Zone, and in determining its northern, southern, eastern and western boundaries, is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement.

4. A further purpose of the Parties in establishing the Protected Zone is to protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Protected Zone.

Article 11

Free movement and traditional activities including traditional fishing

1. Subject to the other provisions of this Treaty, each Party shall continue to permit free movement and the performance of lawful traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other Party.

2. Paragraph 1 of this Article shall not be interpreted as sanctioning the expansion of traditional fishing by the traditional inhabitants of one Party into areas outside the Protected Zone under the jurisdiction of the other Party not traditionally fished by them prior to the date of entry into force of this Treaty.

3. The provisions of this Article and the other provisions of this Treaty concerning traditional fishing are subject to Article 14 and paragraph 2 of Article 20 of this Treaty.

Article 12

Traditional customary rights

Where the traditional inhabitants of one Party enjoy traditional customary rights of access to and usage of areas of land, seabed, seas, estuaries and coastal tidal areas that are in or in the vicinity of the Protected Zone and that are under the jurisdiction of the other Party, and those rights are acknowledged by the traditional inhabitants living in or in proximity to those areas to be in accordance with local tradition, the other Party shall permit the continued exercise of those rights on conditions not less favourable than those applying to like rights of its own traditional inhabitants.

Article 13

Protection of the marine environment

1. Each Party shall take legislative and other measures necessary to protect and preserve the marine environment in and in the vicinity of the Protected Zone. In formulating those measures each Party shall take into account internationally agreed rules, standards and

recommended practices which have been adopted by diplomatic conferences or by relevant international organisations.

2. The measures that each Party shall take in accordance with paragraph 1 of this Article shall include measures for the prevention and control of pollution or other damage to the marine environment from all sources and activities under its jurisdiction or control and shall include, in particular, measures to minimise to the fullest practicable extent-

(a) the release of toxic, harmful or noxious substances from land-based sources, from rivers, from or through the atmosphere, or by dumping at sea;

(b) pollution or other damage from vessels; and

(c) pollution or other damage from installations and devices used in the exploration and exploitation of the natural resources of the seabed and subsoil thereof.

3. The measures taken by each Party in accordance with paragraph 1 of this Article shall be consistent with its obligations under international law, including obligations not to prejudice the rights of foreign ships and aircraft, and shall be subject to the provisions of Article 7 of this Treaty.

4. The Parties shall consult, at the request of either, for the purpose of

(a) harmonising their policies with respect to the measures that each shall take pursuant to this Article; and

(b) ensuring the effective and coordinated implementation of those measures.

5. If either Party has reasonable grounds for believing that any planned activity under its jurisdiction or control may cause pollution or other damage to the marine environment in or in the vicinity of the Protected Zone, that Party shall, after due investigation, communicate to the other Party its assessment of the potential impact of that activity on the marine environment.

6. If either Party has reasonable grounds for believing that any existing or planned activity under the jurisdiction or control of the other Party is causing or may cause pollution or other damage to the marine environment in or in the vicinity of the Protected Zone, it may request consultations with the other Party, and the Parties shall then consult as soon as possible with a view to adopting measures to prevent or control any pollution or other damage to that environment from that activity.

Article 14

Protection of fauna and flora

1. Each Party shall, in and in the vicinity of the Protected Zone, use its best endeavours to-

(a) identify and protect species of indigenous fauna and flora that are or may become threatened with extinction;

(b) prevent the introduction of species of fauna and flora that may be harmful to indigenous fauna and flora; and

(c) control noxious species of fauna and flora.

2. Notwithstanding any other provision of this Treaty except paragraph 4 of this Article, a Party may implement within its area of jurisdiction measures to protect species of indigenous fauna and flora which are or may become threatened with extinction or which either Party has an obligation to protect under international law.

3. The Parties shall as appropriate and necessary exchange information concerning species of indigenous fauna and flora that are or may become threatened with extinction and shall consult, at the request of either of them, for the purpose of-

(a) harmonising their policies with respect to the measures that each may take to give effect to paragraphs 1 and 2 of this Article; and

(b) ensuring the effective and coordinated implementation of those measures.

4. In giving effect to the provisions of this Article, each Party shall use its best endeavours to minimise any restrictive effects on the traditional activities of the traditional inhabitants.

Article 15

Prohibition of mining and drilling of the seabed

Neither Party shall undertake or permit within the Protected Zone mining or drilling of the seabed or the subsoil thereof for the purpose of exploration for or exploitation of liquid hydrocarbons, natural gas or other mineral resources during a period of ten years from the date of entry into force of this Treaty. The Parties may agree to extend that period.

Article 16

Immigration, customs, quarantine and health

1. Except as otherwise provided in this Treaty, each Party shall apply immigration, customs, quarantine and health procedures in such a way as not to prevent or hinder free movement or the performance of traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other Party.

2. Each Party, in administering its laws and policies relating to the entry and departure of persons and the importation and exportation of goods into and from areas under its jurisdiction in and in the vicinity of the Protected Zone, shall act in a spirit of mutual friendship and good neighbourliness, bearing in mind relevant principles of international law and established international practices and 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.

3. Notwithstanding the provisions of paragraph 1 of this Article-

(a) traditional inhabitants of one Party who wish to enter the other country, except for temporary stay for the performance of traditional activities, shall be subject to the same immigration, customs, health and quarantine requirements and procedures as citizens of that Party who are not traditional inhabitants;

(b) each Party reserves its right to limit free movement to the extent necessary to control abuses involving illegal entry or evasion of justice; and

(c) each Party reserves its right to apply such immigration, customs, health and quarantine measures, temporary or otherwise, as it considers necessary to meet problems which may arise. In particular each Party may apply measures to limit or prevent free movement, or the carriage of goods, plants or animals in the course thereof, in the case of an outbreak or spread of an epidemic, epizootic or epiphytotic in or in the vicinity of the Protected Zone.

Article 17

Implementation and coordination

In order to facilitate the implementation of the provisions of this Treaty relating to the Protected Zone, the authorities of each Party shall, at the request of the authorities of the other Party, as may be appropriate and necessary-

(a) make available to the authorities of the other Party information on the relevant provisions of its laws, regulations and procedures relating to immigration, citizenship, customs, health, quarantine, fisheries, the protection of the environment and other matters; and

(b) consult with the authorities of the other Party with a view to making appropriate administrative or other arrangements to resolve any problems arising in the implementation of those provisions.

Article 18

Liaison arrangements

1. Each Party shall designate a representative who shall facilitate the implementation at the local level of the provisions of this Treaty.

2. The two designated representatives shall-

(a) exchange information on relevant developments in and in the vicinity of the Protected Zone;

(b) consult together and take such action as is appropriate to their respective functions to facilitate the practical operation at the local level of the provisions of this Treaty and to resolve any problems arising therefrom;

(c) keep under review free movement by the traditional inhabitants of one Party into areas under the jurisdiction of the other Party and the local arrangements applying in respect of such free movement; and

(d) draw to the attention of their Governments, and make recommendations as appropriate on, any matters affecting the implementation of the provisions of this Treaty or arising therefrom which are not capable of resolution at the local level or which may otherwise require consideration by both Parties.

3. In the exercise of his functions, each representative shall-

(a) consult closely with representatives of the traditional inhabitants of his country, particularly in relation to any problems which may arise in respect of free movement, traditional activities and the exercise of traditional customary rights as provided for in this Treaty, and convey their views to his Government; and

(b) maintain close liaison with national, State, Provincial and local authorities of his country on all matters falling within their respective responsibilities.

4. Unless a different location is required by the circumstances, the representative of Australia shall be based at Thursday Island and the representative of Papua New Guinea shall be based at Daru.

Article 19

Torres Strait Joint Advisory Council

1. The Parties shall jointly establish and maintain an advisory and consultative body which shall be known as the Torres Strait Joint Advisory Council (called in this Article "the Advisory Council").

2. The functions of the Advisory Council shall be-

(a) to seek solutions to problems arising at the local level and not resolved pursuant to Article 18 of this Treaty;

(b) to consider and to make recommendations to the Parties on any developments or proposals which might affect the protection of the traditional way of life and livelihood of the traditional inhabitants, their free movement, performance of traditional activities and exercise of traditional customary rights as provided for in this Treaty; and

(c) to review from time to time as necessary, and to report and to make recommendations to the Parties on, any matters relevant to the effective implementation of this Treaty, including the provisions relating to the protection and preservation of the marine environment, and fauna and flora, in and in the vicinity of the Protected Zone.

3. The Advisory Council shall not have or assume responsibilities for management or administration. These responsibilities shall, within the respective areas of jurisdiction of each Party, continue to lie with the relevant national, State, Provincial and local authorities.

4. In the exercise of its functions, the Advisory Council shall ensure that the traditional inhabitants are consulted, that they are given full and timely opportunity to comment on matters of concern to them and that their views are conveyed to the Parties in any reports and recommendations made by the Advisory Council to the Parties.

5. The Advisory Council shall transmit its reports and recommendations to the Foreign Ministers of the Parties. After consideration by appropriate authorities of the Parties, consultations may be arranged with a view to the resolution of matters to which the Advisory Council has invited attention.

6. Unless otherwise agreed by the Parties, the Advisory Council shall consist of eighteen members, that is nine members from each Party who shall include-

(a) at least two national representatives;

(b) at least one member representing the Government of Queensland in the case of Australia and one representing the Fly River Provincial Government in the case of Papua New Guinea; and

(c) at least three members representing the traditional inhabitants,

with each Party being free to decide from time to time from which of the aforementioned categories any other of its members will be drawn.

7. The Advisory Council shall meet when necessary at the request of either Party. Consecutive meetings of the Advisory Council shall be chaired alternately by a representative of Australia and a representative of Papua New Guinea. Meetings shall be held alternately in Australia and Papua New Guinea or as may from time to time be otherwise arranged.

PART 5

PROTECTED ZONE COMMERCIAL FISHERIES

Article 20

Priority of traditional fishing and application of measures to traditional fishing

1. The provisions of this Part shall be administered so as not to prejudice the achievement of the purposes of Part 4 of this Treaty in regard to traditional fishing.

2. A Party may adopt a conservation measure consistent with the provisions of this Part which, if necessary for the conservation of a species, may be applied to traditional fishing, provided that that Party shall use its best endeavours to minimise any restrictive effects of that measure on traditional fishing.

Article 21

Conservation, management and optimum utilisation

The Parties shall cooperate in the conservation, management and optimum utilisation of Protected Zone commercial fisheries. To this end, the Parties shall consult at the request of either and shall enter into arrangements for the effective implementation of the provisions of this Part.

Article 22

Conservation and management of individual fisheries

1. The Parties shall, where appropriate, negotiate subsidiary conservation and management arrangements in respect of any individual Protected Zone commercial fishery.
2. If either party notifies the other in writing that it regards one of the Protected Zone commercial fisheries as one to which common conservation and management arrangements should apply, the Parties shall within ninety days from the date of the notification enter into consultations with a view to concluding arrangements specifying the measures to be applied by them with respect to that fishery.
3. The Parties shall, where appropriate, also negotiate supplementary conservation and management arrangements in respect of resources directly related to a fishery referred to in paragraph 1 of this Article, including resources involving stocks occurring in the Protected Zone where such stocks are not otherwise subject to the provisions of this Treaty.

Article 23

Sharing of the catch of the Protected Zone commercial fisheries

1. The Parties shall share the allowable catch of the Protected Zone commercial fisheries in accordance with the provisions of this Article and of Articles 24 and 25 of this Treaty.
2. The allowable catch, that is to say the optimum sustainable yield, of a Protected Zone commercial fishery shall be determined jointly by the Parties as part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty.
3. If either Party has reasonable grounds for believing that the commercial exploitation of a species of Protected Zone commercial fisheries would, or has the potential to, cause serious damage to the marine environment, or might endanger another species, that Party may request consultations with the other Party and the Parties shall then consult as soon as possible with a view to reaching agreement on whether such commercial exploitation could be undertaken in a manner which would not result in such damage or endanger another species.
4. In respect of any relevant period where the full allowable catch of a particular Protected Zone commercial fishery might be taken, each Party shall be entitled to a share of the allowable catch apportioned, subject to paragraphs 5, 6 and 8 of this Article and to Articles 24 and 25 of this Treaty, as follows:
 - (a) in areas under Australian jurisdiction, except as provided in (b) below:

Australia - 75%

Papua New Guinea - 25%
 - (b) within the territorial seas of Anchor Cay, Black Rocks, Bramble Cay, Deliverance Island, East Cay, Kerr Islet, Pearce Cay and Turu Cay:

Australia - 50%

Papua New Guinea - 50%

(c) in areas under Papua New Guinea jurisdiction:

Australia - 25%

Papua New Guinea - 75%

5. Papua New Guinea shall have the sole entitlement to the allowable catch of the commercial barramundi fishery near the Papua New Guinea coast, except within the territorial seas of the islands of Aubusi, Boigu, Dauan, Kaumag, Moimi and Saibai where, in respect of that fishery, the provisions of paragraph 4(a) of this Article shall not apply.

6. In apportioning the allowable catch in relation to an individual fishery, the Parties shall normally consider the allowable catch expressed in terms of weight or volume. In calculating the apportionment of the total allowable catch of the Protected Zone commercial fisheries, the Parties shall have regard to the relative value of individual fisheries and shall, for this purpose, agree on a common value for production from each individual fishery for the period in question, such value being based on the value of the raw product at the processing facility or such other point as may be agreed, but prior to any enhancement of value through processing, including processing at a pearl culture farm, or further transportation or marketing.

7. The Parties may agree to vary the apportionment of the allowable catch determined for individual fisheries as part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty but so as to maintain in respect of the total allowable catch of the Protected Zone commercial fisheries the apportionment specified in paragraph 4 of this Article for each Party.

8. In calculating the total allowable catch of the Protected Zone commercial fisheries, the allowable catch of the commercial barramundi fishery referred to in paragraph 5 of this Article shall be disregarded.

Article 24

Transitional entitlement

1. As part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty, the level of the catch of each Protected Zone commercial fishery to which each Party is entitled, provided it remains within the allowable catch-

(a) shall not, during the period of five years immediately after the entry into force of this Treaty, be reduced below the level of catch of that Party before the entry into force of this Treaty; but

(b) may, during the second period of five years after the entry into force of this Treaty, be adjusted progressively so that at the end of that second five-year period it reaches the level of catch apportioned in each case in Article 23 of this Treaty.

2. The entitlement of a Party under this Article shall, where the limitation of the allowable catch makes it necessary, take priority over the entitlement of the other Party under Article 23 of this Treaty, but shall be taken into account in calculating the entitlement of the first Party.

Article 25

Preferential entitlement

If, in any relevant period, a Party does not itself propose to take all the allowable catch of a Protected Zone commercial fishery to which it is entitled, either in its own area of jurisdiction or that of the other Party, the other Party shall have a preferential entitlement to any of the allowable catch of that fishery not taken by the first Party.

Article 26

Licensing arrangements

1. In the negotiation and implementation of the conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty-

(a) the Parties shall consult and cooperate in the issue and endorsement of licences to permit commercial fishing in Protected Zone commercial fisheries;

(b) the responsible authorities of the Parties may issue licences to fish in any Protected Zone commercial fishery; and

(c) persons or vessels which are licensed by the responsible authorities of one Party to fish in any relevant period in a Protected Zone commercial fishery shall, if nominated by the responsible authorities of that Party, be authorised by the responsible authorities of the other Party, wherever necessary, by the endorsement of licences or otherwise, to fish in those areas under the jurisdiction of the other Party in which the fishery concerned is located.

2. The persons or vessels licensed by one Party which have been authorised, or are to be authorised, under the provisions of paragraph 1 of this Article to fish in waters under the jurisdiction of the other Party shall comply with the relevant fisheries laws and regulations of the other Party except that they shall be exempt from licensing fees, levies and other charges imposed by the other Party in respect of such fishing activities.

3. In issuing licences in accordance with paragraph 1 of this Article, the responsible authorities of both Parties shall have regard to the desirability of promoting economic development in the Torres Strait area and employment opportunities for the traditional inhabitants.

4. The responsible authorities of both Parties shall ensure that the traditional inhabitants are consulted from time to time on the licensing arrangements in respect of Protected Zone commercial fisheries.

Article 27

Third State fishing in Protected Zone commercial fisheries

1. The responsible authorities of the Parties shall inform one another and shall consult, at the request of either of them, concerning the proposed exploitation of the Protected Zone commercial fisheries-

(a) by a joint venture in which there is third-State equity participation; or

(b) by a vessel of third-State registration or with a crew substantially of the nationality of a third State.

2. Vessels the operations of which are under the control of nationals of a third State shall not be licensed to exploit the Protected Zone commercial fisheries without the concurrence of the responsible authorities of both Parties in a particular case or class of cases.

Article 28

Inspection and enforcement

1. The Parties shall cooperate, including by exchange of personnel, in inspection and enforcement to prevent violations of the Protected Zone commercial fisheries arrangements and in taking appropriate enforcement measures in the event of such violations.

2. The Parties shall consult from time to time, as necessary, so as to ensure that legislation and regulations adopted by each Party pursuant to paragraph 1 of this Article are, as far as practicable, consistent with the legislation and regulations of the other Party.

3. Each Party shall make it an offence under its fisheries laws or regulations for a person to use a vessel of its nationality to fish in Protected Zone commercial fisheries for species of fisheries resources in areas over which the other Party has jurisdiction in respect of those species-

(a) without being duly licensed or authorised by that other Party; or

(b) in the case of a licensed or authorised vessel, in breach of the fisheries laws or regulations of the other Party applying within those areas.

4. Each Party will, in relation to species of fisheries resources in areas where it has jurisdiction in respect of those species-

(a) investigate suspected offences against its fisheries laws and regulations; and

(b) except as provided in or under this Article, take corrective action when necessary against offenders against those laws or regulations.

5. In this Article, "corrective action" means the action normally taken in respect of a suspected offence, after due investigation, and includes, where appropriate, the apprehension

of a suspected offender, the prosecution of an alleged offender, or the execution of a penalty imposed by a court or the cancellation or suspension of the licence of an offender.

6. In accordance with the provisions of this Article, and in other appropriate cases as may be agreed between the Parties, corrective action in respect of offences or suspected offences against the fisheries laws or regulations of the Parties shall be taken by the authorities of the Party whose nationality is borne by the vessel or person concerned (called in this Article "the first Party") and not by the Party in whose area of jurisdiction the offence or suspected offence occurs (called in this Article "the second Party").

7. The Parties acknowledge that the principle stated in paragraph 6 of this Article should not be applied so as to frustrate the enforcement of fisheries laws or regulations or to enable offenders against those laws or regulations to go unpunished.

8. Where, in the case of a suspected offence alleged to have been committed in or in the vicinity of the Protected Zone, it appears that the offence was, or might reasonably be considered to have been, committed in the course of traditional fishing, corrective action or other measures shall be taken by the authorities of the first Party and not by the authorities of the second Party and, if being detained by the authorities of the second Party, the alleged offenders and their vessel shall be either released or handed over to the authorities of the first Party, in accordance with arrangements that will avoid undue expense or inconvenience to the authorities of the second Party.

9. Where paragraph 8 of this Article applies, the authorities of the second Party may require assurance in a particular case that corrective action or other measures will be taken by the authorities of the first Party that will adequately ensure that the activity complained of will not be repeated.

10. Where the provisions of paragraph 8 of this Article do not apply, and the person or vessel alleged to have been involved or used in the commission of a suspected offence in the Protected Zone is licensed to fish in the Protected Zone by the authorities of the first Party, corrective action shall be taken by the authorities of the first Party and not by the authorities of the second Party and, if being detained by the authorities of the second Party, the alleged offenders and their vessel shall be either released or handed over to the authorities of the first Party, in accordance with arrangements that will avoid undue expense or inconvenience to the authorities of the second Party, and the provisions of paragraphs 13 and 14 of this Article shall apply.

11. The provisions of paragraph 10 of this Article shall also apply in respect of a suspected offence by a person or vessel of the first Party in an area of jurisdiction of the second Party outside the Protected Zone where-

(a) that person or vessel was authorised by the authorities of the second Party to fish in the area where the suspected offence was committed under the arrangements referred to in paragraph 1 of Article 22 of this Treaty; and

(b) the suspected offence was committed in relation to the fishery the subject of that authorisation and did not involve the taking of other species or potential injury to another fishery.

12. Persons or vessels of the first Party detained by the authorities of the second Party in the circumstances described in paragraphs 8 and 10 of this Article may be detained for as long as necessary to enable those authorities to conduct an expeditious investigation into the offence and to obtain evidence. Thereafter, they shall not be detained other than for the purpose of the handing over of the persons or vessels in accordance with the provisions of those paragraphs unless they are lawfully detained on some other ground.

13. If an alleged offender referred to in paragraph 10 of this Article is, in respect of conduct in waters under the jurisdiction of the second Party-

(a) convicted of an offence against the fisheries laws or regulations of the first Party; or

(b) found by the authorities of the first Party, on the basis of sufficient available evidence, to have contravened or failed to comply with a condition of his licence or authorisation or that of his vessel;

the authorities of the first Party shall, where appropriate and having regard to paragraph 7 of this Article, cancel or suspend the licence or authorisation of the person or his vessel so far as it relates to the Protected Zone commercial fisheries.

14. Where a person or vessel involved or used in the commission of the alleged offence referred to in paragraph 10 of this Article is also currently licensed or authorised to fish in the area of the Protected Zone by the second Party, the authorities of the second Party may, after receiving a report and representations, if any, from the authorities of the first Party, cancel or suspend that licence or authorisation in accordance with its laws for such period as is warranted by the circumstances of the case.

15. Each Party shall provide the other Party with any evidence obtained during investigations carried out in accordance with this Article into a suspected offence involving a person or vessel of the other Party. Each Party shall take appropriate measures to facilitate the admission of such evidence in proceedings taken in respect of the suspected offence.

16. In this Article references to persons and vessels of, or of the nationality of, a Party include references to persons or vessels licensed by that Party under sub-paragraph 1(b) of Article 26 of this Treaty, and the crews of vessels so licensed, except where such persons or vessels have a prior current licence from the other Party under that sub-paragraph.

PART 6

FINAL ARTICLES

Article 29

Settlement of disputes

Any dispute between the Parties arising out of the interpretation or implementation of this Treaty shall be settled by consultation or negotiation.

Article 30

Consultations

The Parties shall consult, at the request of either, on any matters relating to this Treaty.

Article 31

Annexes

The Annexes to this Treaty shall have force and effect as integral parts of this Treaty.

Article 32

Ratification

This Treaty shall be subject to ratification and shall enter into force on the exchange of the instruments of ratification.[\[1\]](#)

IN WITNESS WHEREOF the undersigned being duly authorised have signed the present Treaty and have affixed thereto their seals.

DONE in duplicate at Sydney on this eighteenth day of December, One thousand nine hundred and seventy-eight.

FOR AUSTRALIA: FOR PAPUA NEW GUINEA:

[Signed:] [Signed:]

MALCOLM FRASER MICHAEL SOMARE

Prime Minister Prime Minister

[Signed:] [Signed:]

ANDREW PEACOCK N. EBIA OLEWALE

Minister for Foreign Affairs Deputy Prime Minister and

Minister for Foreign Affairs and Trade