

Introduction

The Torres Strait is a unique operating environment for DIAC and other border agencies.

The *Migration Act 1958* (the Act) requires that all non-citizens seeking to enter or remain in Australia must hold a valid visa. In most cases, that visa must be held before the person commences their travel to Australia. Grant of a visa generally requires the applicant to hold a valid travel document. These requirements are supported and enforced by an integrated, layered approach to border security which, for example, checks that a person holds a visa before they are authorised to board their flight to Australia.

Movement in and out of Australia through the Torres Strait requires a different set of management and operational arrangements, both to take account of the provisions of the *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* (the Treaty) and because of the geographical proximity to Papua New Guinea (PNG): In brief, these arrangements mean that:

- traditional visitors (used here to mean traditional inhabitants undertaking traditional activities as defined by the Treaty) are not required to hold a visa or a travel document to travel to and enter Australia; and
- entry arrangements for traditional visitors are tailored to the unique circumstances of the region covered by the Treaty, and recognise the important role that the local Torres Strait Island Regional Council plays.

In addition, the excision of the Torres Strait islands means that people who do not fall within the provisions of the Treaty, and who do not already hold a valid visa on arrival in the migration zone at an excised offshore place, are defined as Offshore Entry Persons (OEPs). Such people are unable to apply for any visa, unless the Minister lifts the bar to them doing so.

These arrangements, the remoteness of the Torres Strait and lack of infrastructure, present a range of challenges for government agencies and for Torres Strait communities. There is close cooperation between Australian government agencies operating in the region, both within the region and at the national level.

DIAC operations in the Torres Strait

DIAC has 6 full-time officers based on Thursday Island who provide a full range of immigration services including visas, citizenship and residency applications.

These officers also manage movement monitoring issues arising from the Treaty and

monitor the traditional flow of people in the Torres Strait. They manage the network of Movement Monitoring Officers (MMO) and they make regular visits to the islands and participate in treaty awareness activities.

Operational responsibility for the Thursday Island office and for activity within the Torres Strait rests with the DIAC Queensland Deputy State Director based in Cairns.

As part of the whole-of-government approach to border security and protection in the Torres Strait, DIAC works closely with other agencies in the region, such as Customs and Border Protection Command, the Australian Quarantine and Inspection Service (AQIS) and Queensland Police, to ensure it meets its obligations.

Loss of the Immigration Response Vessel *Malu Sara*

The Immigration Response Vessel (IRV) *Malu Sara* was lost in the Torres Strait, with five passengers and crew on board, on 15 October 2005. A number of inquiries, including one by the Australian Transport Safety Board (ATSB) and a Coroner's Inquest, have been completed; further inquiries, including a Comcare investigation are still underway.

The Secretary of the department has acknowledged publicly our deep sorrow that the tragic sequence of events as described by the Coroner occurred, and for the losses suffered by all those affected by this avoidable tragedy. The department has since made changes and improvements to its procedures to ensure that such a tragedy could never occur again, and that the welfare and wellbeing of staff will always be a paramount objective in our operations.

These improvement included the immediate withdrawal of the remaining IRVs from service. An independent review of DIAC's Torres Strait operations was also commissioned, and action taken to implement its recommendations, including:

- creation of a North Queensland regional management structure under the control of a Deputy State Director;
- signing of a Memorandum of Understanding with other Commonwealth agencies operating vessels in the Torres Strait concerning the sharing of marine assets and standards and procedures for the operation of boats in the Torres Strait;
- engaging MMOs as permanent ongoing employees;
- reviewing the training needs of the MMO network and implementing a new training regime focusing on occupational health and safety and reporting procedures;
- undertaking a communications study which has resulted in the establishment of a UHF (ultra-high frequency) radio network to significantly improve communications with the MMOs throughout the Torres Strait; and
- development of an emergency response plan, and delivery of associated training for all Torres Strait staff.

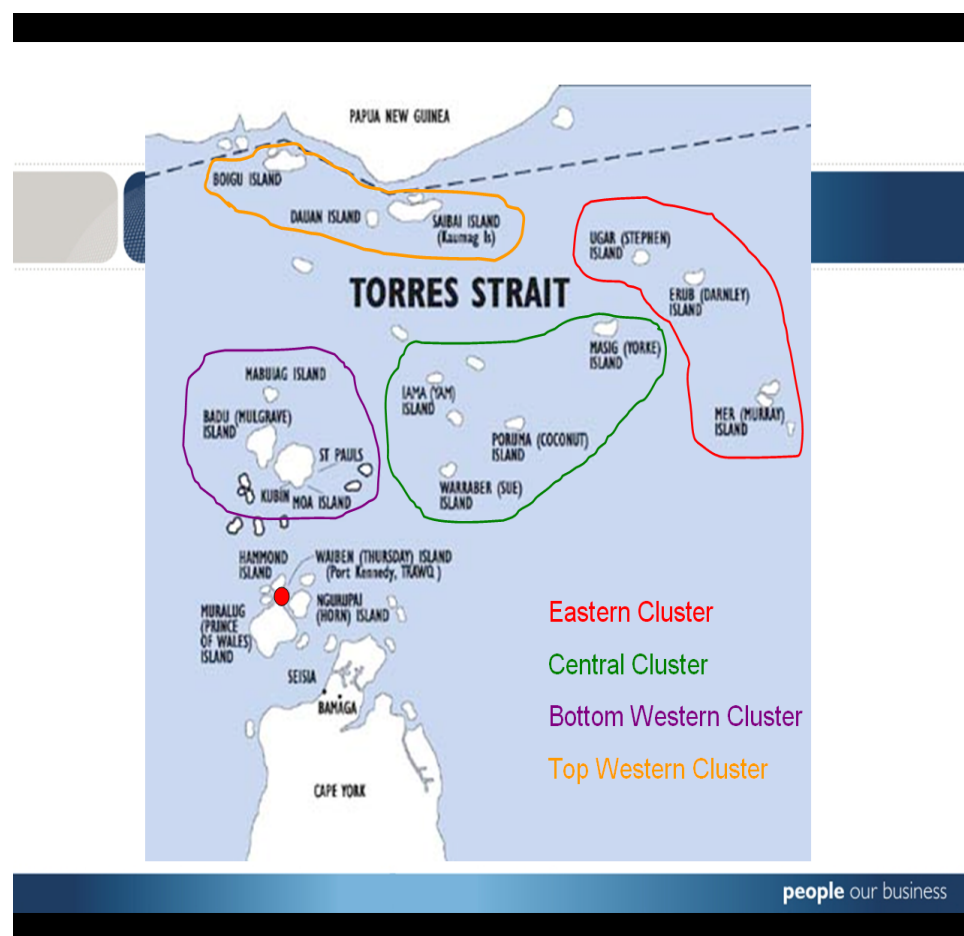
Movement Monitoring Officers

DIAC currently employs 18 MMOs, who are based on the 14 inhabited islands in the outer Torres Strait. All MMOs, except two who have been very recently recruited, are ongoing APS officers and it is expected that the two recently created positions will be filled on an ongoing basis within the next 12 months.

The MMO network is integrated into local communities, providing considerable coverage throughout the Torres Strait. Not only are they experts in their local communities but they act as a conduit for wider community information. All are Indigenous Australians who are local to the Torres Strait, and who work closely with island councillors and their communities to manage the traditional flow of people and report on any other movement in the region. They have a deep understanding of the area, its people and diverse cultures and use this daily in applying migration laws associated with monitoring the movement of traditional visitors between the Torres Strait Islands and Papua New Guinea.

As workload depends largely on the arrival and departure of visitors to the islands on which they are based, some MMOs are employed part time. Recent recruitment has allowed us to expand both the hours and location of MMO coverage on the busier islands.

The MMO network is split into the following clusters, each of which has APS2 team leaders of APS1 officers:



Movement Monitoring Officers are delegated officers under the Migration Act to

clear traditional visitors, refuse immigration clearance, as well as detain and remove unlawful non-citizens. The MMO network come together for two training workshops each year which reinforces movement recording business rules, standard operating procedures, emergency response plans, and occupational health and safety strategies.

DIAC has an agreement with AQIS for MMOs and AQIS officers on the islands to support each other's work and to undertake defined duties for the other agency in the absence of one or other officer.

The Treaty

The Torres Strait Treaty was ratified in 1985. It recognises and protects the traditional way of life and livelihood of traditional inhabitants. Articles 10 and 11 establish the Protected Zone in the Torres Strait and oblige the Parties to permit free movement and the performance of lawful traditional activities within the Protected Zone. The Protected Zone covers the majority of the islands in the Torres Strait; however it excludes the Thursday Island group of islands. Article 16 also allows each country 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.

The Treaty sets out the agreed position by Australia and PNG in relation to sovereignty and maritime boundaries in the Torres Strait. The Treaty was incorporated into Australian domestic law through the *Torres Strait Treaty (Miscellaneous Amendments) Act 1984*. The islands over which Australia has sovereignty continue to be regarded as part of Queensland.

The Treaty also defines a number of terms which are important to the understanding of how the 'free movement' provisions work, including:

- the Protected Zone;
- adjacent coastal area;
- traditional inhabitants; and
- traditional activities.

The Protected Zone

Article 10 of the Treaty established an area of the Torres Strait known as the Protected Zone comprising all the land, sea, airspace, seabed and subsoil within the area bounded by the line described in Annex 9 of the Treaty.

Adjacent coastal area

In relation to PNG, adjacent coastal area means the coastal area of PNG mainland and the PNG islands near the Protected Zone. In relation to Australia, adjacent coastal area means the coastal area of mainland Australia and the Australian islands near the Protected Zone.

Traditional inhabitants

Traditional inhabitants as defined in the Treaty are persons who live in the Protected Zone and are citizens of either Australia or Papua New Guinea. These persons maintain traditional customary associations with the areas or features in or in the vicinity of the Protected Zone, in relation to their subsistence and or livelihood or social, cultural or religious activities.

Traditional activities

Traditional activities, as defined by the Treaty, include activities on the land (such as gardening, collecting food and hunting), activities on water (such as fishing), religious or secular ceremonies (such as marriage), social gatherings and traditional barter and market trade. Business dealings and employment for money are not recognised as traditional activities under the Treaty. The Treaty's provisions also aim to preserve the fragile Torres Strait environment.

Following a recommendation from the Joint Advisory Council (JAC)¹ in October 2008, a set of written guidelines for traditional visitors were agreed at a bilateral Traditional Inhabitants Meeting in April 2009. The guidelines are quite specific about who may visit (defining the villages or islands) and what constitutes 'traditional activities', giving a number of further examples of activities which are considered traditional (eg tombstone openings, church rallies, funerals and birthdays) and others which are not (eg visits to the medical clinic, court appearances and shopping).

The guidelines also address issues such as pass arrangements, maritime safety, duration of visits, quarantine, fisheries and conservation matters, and crime. The guidelines require that children travel with their parents or legal guardians, and that all traditional movement occurs by dinghy or canoe, not by airplane or helicopter.

The guidelines are currently being formatted by DFAT into a brochure design which should be ready for distribution to communities before the end of 2009.

Treaty administration

The Treaty does not list the villages within the Protected Zone. At a bilateral meeting in Port Moresby in May 1984, Australian and PNG officials recognised there were practical difficulties in attempting to specify by name those villages which would be eligible to exercise free movement. The Agreed Note of Discussions on 21 May 1984

¹ The JAC is an annual bilateral forum coordinated by DFAT and PNG to oversee management and issues relating to the Torres Strait Treaty.

attempted to provide a more precise definition of ‘adjacent coastal area’ which relates to the area of origin of traditional inhabitants, and ‘in the vicinity of’ which relates to traditional customary associations as follows:

'adjacent coastal area' for the purpose of assisting in determining the traditional inhabitants of each country (Art.1(m) of the Treaty)

In relation to Papua New Guinea the area would be that part of Papua New Guinea south of the parallel of latitude 9°S and west of the meridian of longitude 143°30'E together with the whole of the remainder of Parama Island and the villages of Sui and Sewerimabu, subject to the possibility of further areas being included as indicated below at para 5.

'in the vicinity of the Protected Zone' for the purpose of Arts.1(m), 11, 12, 16 and 28

In relation to Papua New Guinea the 'vicinity' would be the area of Papua New Guinea jurisdiction outside the Protected Zone and south of the parallel of latitude 9°S and west of the meridian of longitude 144°E together with the whole of the remainder of Parama Island and the villages of Sui and Sewerimabu, subject to the possibility of further areas being included as indicated below (para.5).

In 2000, there was renewed interest in arriving at an agreed list of villages eligible for free movement. Australia accepted PNG's nomination of a list of 13 villages as being those for which the free movement provisions of the Treaty would apply. These villages are referred to as Treaty Villages and are listed below. The majority of these villages are situated on the coast adjacent to the Torres Strait, with the exception of Sui (located north of Daru, on the west bank of the Fly River estuary) and Tais (located near the PNG-Indonesian border several kilometres inland from the Torres Strait coast).

Agreed PNG Treaty Villages

- | | | | | | |
|----|-------|----|-------------|-----|-----------|
| 1. | Bula | 5. | Buji/Ber | 9. | Ture Ture |
| 2. | Mari | 6. | Sigabaduru | 10. | Kadawa |
| 3. | Jarai | 7. | Mabadauan | 11. | Katatai |
| 4. | Tais | 8. | Old Mawatta | 12. | Parama |
| | | | | 13. | Sui |

The above Treaty Village list left open the possibility of further additions or amendments, provided these were agreed by both Parties.

While their entitlement is not well documented, free movement provisions are also extended in practice to a number of 'displaced communities' from both sides of the border. These include Torres Strait Islander residents in the Northern Peninsula area of Cape York who were displaced from Saibai Island before the Treaty was signed, following high tide activity and inundation of traditional lands, and four 'korer' communities in Daru, known as:

- Mabadauan/Old Mawatta korer;
- Ture Ture korer;
- Parama korer; and
- Daru Pioneers (descendants of earliest settlers on Daru).

Designated entry points

On each island traditional visitors are expected to arrive at designated entry points, within specified entry times, and to present themselves for clearance by officers of the Australian Quarantine and Inspection Service (AQIS) and DIAC.

Duration of traditional visits

Communities, through their island councillors, may establish limits on the duration of traditional visits, and all have done so. The Guidelines specify a maximum stay of 3 weeks, but limits vary to suit the circumstances and needs of different communities. Most islands allow for a 3 week visit, while the busier islands of Boigu and Saibai restrict visits to one day only and, at times, to certain days of the week.

The Treaty also describes a range of circumstances in which free movement may be curtailed with the agreement of the parties. These include shortages of food or water or concerns about transmission of disease. In the past few months, these provisions have been used very effectively:

- to suspend free movement arrangements for some weeks in July, to limit the potential spread of the H1N1 influenza virus, as well as
- 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.

Pass system to authorise traditional movements

The pass system has been agreed to by both PNG and Australia, and is outlined in the recently agreed Guidelines. Under the agreements in place, a person wishing to make a traditional visit should obtain a pass from their own community as well as prior agreement from the community to be visited.

The Torres Strait Island Regional Council consists of 16 councillors from 15 islands. It is these councillors, and village chairpersons in the PNG villages, who are empowered to issue passes to authorise traditional movements, and to agree to visits to their communities. Most of the Torres Strait communities have identified other signatories (usually the island managers) who may exercise this power in the absence

of the island councillor. Similarly, in the PNG villages chairpersons regularly allow deputy chairpersons and councillors to sign in their absence.

In practice traditional inhabitants sometimes arrive without seeking or receiving prior approval from the community they are visiting. In these circumstances, Movement Monitoring Officers consult with their island councillor to determine whether a visitor is permitted entry or not. On Saibai, due to the large number of daily visitors, the island councillor permits visitors to arrive without prior approval for practical reasons.

Provisions of the Migration Act 1958 - Section 16 Declaration

Section 16 of the Act provides that the Minister or his/her delegate may use a section 16 declaration where a traditional inhabitant of the Protected Zone has breached free movement provisions. The declaration has the effect of rendering the person ineligible for free movement. This declaration remains in force until it is revoked. Revocation of the declaration is rare as it takes into account the views of the island councillors, Australian residents and other government agencies. It is, in effect, a ban on traditional movement for life and as such is used rarely.

Currently there are thirty (30) PNG nationals who are subject to section 16 declarations. The most recent declaration was made in November 2007. Two requests for revocation are currently being considered by the delegate.

Lawful status of traditional visitors under the *Migration Act 1958*

The Act prescribes a single authority, the visa, for travel to, entry and stay in Australia and requires non-citizens in the migration zone to hold visas in order to be lawful non-citizens. Exceptions to these requirements are specified in a number of areas of the Act.

Subsection 13(2) makes an exception for allowed inhabitants as stated below:

13. (2) An allowed inhabitant of the Protected Zone who is in a protected area in connection with the performance of traditional activities is a lawful non-citizen.

In addition, subsection 168(1) states that an allowed inhabitant who enters a protected area in connection with the performance of traditional activities is not required to comply with section 166 immigration clearance (which specifies the requirement to present evidence of identity and a valid visa in their name). Section 42 stipulates that visas are essential for travel to Australia. Subsection 42(2) provides that allowed inhabitants of the Protected Zone are not required to comply with this requirement, provided that they are travelling to a protected area in connection with traditional activities.

The Guidelines also make it clear that any child who travels without a parent or legal guardian, or any PNG national who travels by air into the Protected Zone, is not considered a lawful non-citizen under subsection 13(2).

People movements in the Torres Strait

The nature of the Torres Strait, the ease of travel by local residents, and operational arrangements in place mean that movement statistics cannot be quoted with exactitude. DIAC is, however, confident that current operational arrangements in the region mean that the vast majority of arrivals by PNG nationals are accurately recorded. Recording of departures is likely to be less complete; people departing are more likely to leave outside the specified times, and sometimes from places other than the designated entry points; in addition, people departing are less likely to consider it necessary to present to an MMO.

Recorded traditional movements (arrivals and departures) in the Torres Strait were in the order of 59 000 in 2008 -09. Arrivals from PNG were approximately half of these movements, of which over 90% were to the top western cluster of islands comprising Saibai, Boigu and Dauan Islands. There were roughly similar numbers of departures during this period.

Improved data collection since 1 July 2009 should make it possible in the future to identify the numbers of individuals making traditional visits – anecdotal evidence suggests that many traditional inhabitants make numerous visits each year. In 2009-10, reports will also be able to be generated on:

- which Treaty villages traditional visitors are coming from;
- the number and type of refused immigration clearance cases;
- a breakdown of traditional visits according to the type of lawful traditional activity defined in the Treaty;
- the approximate number of visitors obtaining prior approval and travelling with a pass;
- the average length of stay on each island; and
- the number of overstayers for each island.

Arrivals by persons who were not considered traditional inhabitants, or whose stated reason for travel did not meet the definition of traditional activities, are in the order of 2 % of all arrivals. These people are refused immigration clearance if they are unable to present a valid visa for entry to Australia, with MMOs monitoring their departure back to PNG as soon as practicable, subject to considerations of inclement weather and fitness to travel.

The Treaty allows for free movement in both directions (ie by both Australian and PNG nationals); however, the data shows that over 98 % of traditional movements are made by PNG citizens. This suggests that some visits by PNG nationals may be prompted by the ability to trade and access services (such as medical centres and shops) in the island communities which are not readily accessible in PNG. Some evidence to support this view is discussed below, but it is important to note that Movement Monitoring Officers seek evidence of a person's authority to travel as well as asking them about the purpose of their travel. If the stated purpose of travel meets the definition of 'traditional activities', the person becomes a lawful non-citizen and is permitted to enter Australia.

The figures shown below are indicative only. Particularly in earlier years, it is likely that some proportion of travellers in both directions were not recorded by MMOs. However, in the last 12 months DIAC has expanded MMO coverage on the busier islands, and instituted more robust collection and management of information on arriving visitors.

While the figures appear to reflect an upward trend in visitor numbers, these need to be treated cautiously for the reasons outlined. It is likely that there has been some increase in visits over the 10 year period shown below, but the extent of that increase is probably smaller than the figures suggest. Certainly, DIAC staff in the region are convinced that the significant increases shown over the last two or three years are reflective of better coverage and data collection, rather than a real increase in individual visitor numbers.

	ARRIVALS	DEPARTURES	TOTAL
1999-2000			
Traditional Movements	23068	22290	45358
non-traditional movements	360	339	699
Total	23428	22629	46057
2000-2001			
Traditional Movements	20448	19485	39973
non-traditional movements	487	400	887
Total	20935	19885	40860
2001-2002			
Traditional Movements	23388	22890	46278
non-traditional movements	610	600	1210
Total	23998	23490	47488
2002-2003			
Traditional Movements	26513	25537	52050
non-traditional movements	768	691	1459
Total	27281	26228	53509
2003-2004			
Traditional Movements	25756	23177	48933
non-traditional movements	515	391	566
Total	26271	23568	49839
2004-2005			
Traditional Movements	25674	25304	50978
non-traditional movements	676	616	1292
Total	26350	25920	52270
2005-2006			
Traditional Movements	24700	24153	48853
non-traditional movements	669	687	1356
Total	25369	24840	50209
2006-2007			
Traditional Movements	25,750	24,395	50145
non-traditional movements	877	922	1799
Total	26627	25317	51944
2007-2008			
Traditional Movements	26015	26028	52043
non-traditional movements	841	811	1652
Total	26856	26839	53695
2008-2009			
Traditional Movements	30,279	28,724	59003
non-traditional movements	737	641	1378
Total	31016	29365	60381

Non-treaty movements

While movements under the free movement provisions of the Torres Strait Treaty account for the great majority of activity in the Torres Strait, there are a range of other movements which do not fall within these provisions. These are reflected in the numbers of 'non-traditional movements' listed in the figures above.

People who fall into this category may be, for example:

- citizens of third countries who arrive in the Torres Strait as their first point of arrival in Australia – yacht crew or passengers are the most common of these;
- PNG nationals from outside the Protected Zone; and
- PNG nationals from within the Protected Zone, whose reason for travel is not related to 'traditional activities'.

The Guidelines require PNG children who enter the Protected Zone without their parents or legal guardians, and/or PNG nationals entering the Protected Zone by air from PNG, to comply with section 166 immigration clearance requirements (i.e. they must travel with evidence of their identity and a valid visa that is in effect and in their name). Those who do not comply will be refused immigration clearance by a Movement Monitoring Officer.

In addition, traditional inhabitants who need to travel to Thursday Island or to the mainland (possibly for medical treatment or to appear in court), also fall outside the Treaty provisions. These people might arrive as traditional visitors, and then need to move out of the Protected Zone, possibly in circumstances that were not foreseen at the time of their arrival. They are then required to present for immigration clearance, as specified in the Act.

Subsection 168(2) states that allowed inhabitants of the Protected Zone, who enter a protected area (i.e. the Protected Zone, or an area in the vicinity of the Protected Zone), in connection with the performance of traditional activities and travel from the protected area to a part of the migration zone outside that area, must comply with section 166 immigration clearance requirements at a prescribed place within a prescribed period.

Regulation 3.05 stipulates that the place at which an allowed inhabitant of the Protected Zone who is required to comply with section 166 must do so is a regional or area office of Immigration (eg. Thursday Island or Cairns DIAC office) or at any place where there is a clearance officer including a port (eg. Horn Island or Cairns Airport). The period within which the allowed inhabitant must do so is 5 working days after he or she goes to a part of the migration zone outside the protected area.

Effect of Declaration of Torres Strait Islands as Excised Offshore Places under the Migration Act

All Torres Strait islands, including Thursday and Horn islands, are excised offshore places but are still part of the migration zone. What this means is that any person who enters Australia at an excised offshore place after the excision time for that offshore place becomes an offshore entry person because of that entry.

These laws were introduced to strengthen Australia's territorial integrity, reduce instances of persons entering Australia illegally by means of hazardous sea or air voyages and deter the activities of people smugglers. The effect of the excision legislation is that non-citizens who have first entered Australia at an excised offshore place without lawful authority – meaning without a valid visa that is in effect – are barred from making valid visa applications on arrival or during their stay in Australia. Excision laws relating to the Torres Strait took effect in 2005.

A consequence of the excision legislation has been to prevent the grant of a visa to certain classes of people who arrive in the Torres Strait without a visa, and who would otherwise have been entitled to apply for and be granted a visa on arrival, in immigration clearance. Included in this group are:

- New Zealand citizens, who would ordinarily apply for a Special Category Visa (SCV) on arrival by completing an Incoming Passenger Card;
- people whose arrival is a result of an unforeseen or emergency event – ie people requiring medical evacuation following an accident or medical emergency; and
- traditional inhabitants who arrived in the Protected Zone but who then needed to move beyond it.

Such people currently become offshore entry persons and can only regularise their status, and apply for a visa to remain in Australia, if the Minister lifts the section 46A bar. This process is cumbersome for travellers and makes them liable to detention as unlawful non-citizens. Remedies for this situation are being developed and, in accord with the principle that immigration detention is to be used only as a last resort, each case is assessed on an individual basis.

In general, PNG nationals seeking medical treatment who become unlawful non-citizens in these circumstances are not detained, but their presence in the migration zone is monitored and their departure is facilitated at the earliest point at which it is reasonable to do so taking account of their health, well being and safety.

Third country nationals who are offshore entry persons may be detained but the circumstances of their arrival and their capacity to depart safely are taken into account in relation to any such decision.

Asylum seeker arrivals in the Torres Strait

A number of asylum seekers have arrived in the Torres Strait or adjacent mainland areas over recent years.

There were no arrivals between 2001 and 2004. From 2005 to date there have been 156 arrivals, ranging from individuals to groups of 50 people. The details of these arrivals are shown below.

In July 2003, Australia and PNG signed a bilateral MOU which provides the framework for cooperation on migration related issues, including the return and readmission of persons who have spent time in the other country and could have availed themselves of protection there. The MOU assists to strengthen the international protection system and to facilitate the prevention of people smuggling and irregular movements, including the strengthening of arrangements to intercept irregular migrants travelling through the Torres Strait.

Date	Number and nationality	Place of arrival
2005		
27/09/2005	1 American	Moa Island
26/11/2005	1 East Timorese	Torres Strait
26/11/2005	1 Russian, 1 Indonesian	Boigu Island
2006		
18/01/2006	43 Indonesians	Cape York Peninsula
17/03/2006	1 Palestinian	Boigu Island
6/05/2006	3 Indonesians	Boigu Island
21/05/2006	3 Afghans	Saibai Island
2007		
25/01/2007	40 Papua New Guineans	Saibai Island
21/08/2007	5 Indonesians	Saibai Island
2009		
17/01/2009	2 Burmese (fishermen)	Rescued at sea in Torres Strait
2/04/2009	50 Sri Lankans	Torres Strait
28/04/2009	2 Afghans, 1 Sri Lankan & 1 Indian	Deliverance Island
7/05/2009	1 Sri Lankan	Saibai Island

It should be noted that, of the three large groups (boats carrying 43 Indonesians, 40 PNG nationals and 50 Sri Lankans) only one came from outside the Torres Strait region.

The Sri Lankan group which arrived in April 2009 was apprehended after their vessel ran aground in the Torres Strait en route to New Zealand. Following significant negotiations between the passengers on the vessel, Australian and New Zealand officials and representatives of the International Organisation for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR), the passengers sought asylum in Australia.

Cooperation with Australia's northern neighbours in relation to the health, welfare and security of the Torres Strait region and communities

While responsibility for the health and welfare of Torres Strait communities lies with other agencies, it is important to note that health, welfare and security may be affected by the application of the free movement provisions of the Treaty.

Indeed, all travel of people into Australia, including that of Australian citizens, has the potential to affect the health status of the Australian community, including through the importation of infectious diseases, for example. The *Migration Act* identifies health as one of the Public Interest Criteria (PIC) which must be met by non-citizens seeking a visa to enter Australia, and a risk-management approach specifies the extent to which applicants must satisfy decision makers that their entry and stay does not pose a health risk. The health risk matrix takes account of the risk posed by the applicant's country of residence (higher, medium or lower incidence of tuberculosis, for example), and the purpose and duration of their intended stay – an applicant wishing to study or to work as a health care worker will be required to undertake further medical examinations to determine their health status than an applicant wishing only to visit for a short period of less than 3 months.

As the free movement provisions of the Treaty do not require traditional visitors to apply for or hold a visa to enter the Protected Zone, there are no health criteria to be met. While PNG is considered a 'higher risk country' for the purposes of the health requirement, the nature and intended duration of stay for traditional visitors would be less than 3 months and would not involve entering a health care or hospital environment.

The health issues associated with the operations of the Torres Strait Treaty were examined in a 2004 report commissioned by AusAID on behalf of the Joint Advisory Council². The report found that:

- movements under the Treaty provisions had increased substantially in the preceding years;
- health services within PNG were inaccessible for many people living in the Treaty villages;
- many villagers referred to clinics on Boigu and Saibai Islands as their primary health service;
- there were high levels of HIV, TB, malaria and dengue in Daru and in Merauke (Indonesia) although levels of HIV infection and TB were thought to be somewhat lower in the Treaty villages; and
- there was evidence of disease transmission from PNG to the Torres Strait, including an epidemic of dengue fever in 2003 which eventually spread to Cairns, and a malaria outbreak on Saibai in 2004.

Travel for the purposes of accessing health care does not fall within the provisions of

² *Report of a study into health issues associated with the Torres Strait Treaty*, Michael Douglas, June 2004.

the Treaty, and it is the most common reason for people being refused immigration clearance on Saibai and Boigu Islands.

While traditional inhabitants are entitled to access health services if necessary during the course of a traditional visit, the numbers of health care consultations suggest that health care may be a primary rather than a secondary factor in some claimed traditional visits. For example, data from the 2004 report indicated that there had been 1775 clinic visits by PNG nationals in the Torres Strait in 2002-03, with 1500 of these on Boigu and Saibai Islands. Records kept at the Saibai Island clinic indicated that the most common conditions presenting were TB and malaria. In the 12 months to September 2009, Queensland Health reported 92 PNG nationals requiring medical evacuation to Thursday Island hospital or the mainland; these cases included approximately 15 patients with tuberculosis and another 15 obstetric cases.

Where a Movement Monitoring Officer knows that a person is travelling to seek health care, they are refused immigration clearance, and their return to PNG is monitored. However, DIAC seeks to ensure that the person is fit to travel back to PNG and so they are allowed to visit the health centre before they are required to depart. If a traditional inhabitant indicates that the purpose of their visit is to undertake traditional activities, they are allowed to remain – and may access health services in the course of their stay if required. In recognition of this fact, Queensland Health has recently drafted guidelines outlining the circumstances in which their facilities will provide treatment to presenting PNG nationals. These guidelines view PNG as the primary source of health care for PNG nationals entering the Torres Strait, but provide authority for medical staff to treat emergency cases. For non-emergency cases, the guidelines state that PNG nationals should be referred back to PNG for treatment, particularly for minor conditions, where clinically appropriate.

DIAC is one of a range of Commonwealth and Queensland government agencies which are working co-operatively to ensure a whole of government commitment to measures which aim to address health and welfare concerns. DIAC also participates in Treaty Awareness Visits arranged by the DFAT Treaty Liaison Officer to reinforce the message that seeking health care is not covered by the free movement provisions.

A Package of Measures to enhance access to health services for traditional inhabitants in the Treaty villages has been developed under the auspices of the Health Issues Committee (HIC), which is chaired by the Department of Health of Ageing. The Package is awaiting funding consideration by the PNG government. The majority of measures are specifically related to boosting the capacity of PNG health services, but there is also a proposal to facilitate the cross-border movement through non-proclaimed ports in the Torres Strait for specified health officials and professionals, as well as for nominated officials from other agencies, including border agencies. This proposal would reduce the time and cost barriers to cross-border

Challenges in relation to the maintenance of strong border security across the Torres Strait region

There are two sets of inter-linked challenges for border security in the Torres Strait, and these arise from:

- operating in a remote environment, without the infrastructure which would be available at most international ports in Australia, but with relatively high numbers of people movements; and
- the unique operational arrangements which are required by the free movement provisions of the Torres Strait Treaty, and which are not replicated in any other part of Australia's border management arrangements.

There are obvious costs and disadvantages to DIAC arising from the remoteness and lack of infrastructure in the Torres Strait. However, there is also one significant advantage and that is the cohesive nature of the small communities in the Torres Strait and the strong relationships the border agencies enjoy with these communities. The DIAC network of Movement Monitoring Officers are integrated into local communities and work closely with island councillors to ensure that persons of concern are brought to attention quickly and that traditional visitors are managed for the benefit of the receiving community.

Australian government agencies in the Torres Strait also work closely together to ensure that border security and the interests of Torres Strait communities are protected. Treaty liaison visits arranged by DFAT are regularly joined by officers of other agencies, including DIAC. Agencies with transport assets – patrol vessels, aircraft and helicopters – share access to these with other agencies which have operational needs to travel within the region.

The Package of Measures developed through the Health Issues Committee reflects the commitment to a whole of government effort, and an acceptance that the health, welfare and border issues are linked and that single agency solutions are not viable or desirable. DFAT is instrumental in ensuring that there is positive cooperation and liaison between Australia and PNG on the multitude of issues and portfolios that are affected by the operations of the Treaty.

For DIAC, the major challenges lie in:

- maintaining accurate data on arrivals and departures, in an environment where people are not carrying passports or other identity documents, and do not arrive on scheduled transport services at predictable times and places
 - *which is being addressed through the recent expansion of MMO services and coverage; and*
 - *improved data collection arrangements.*
- managing the issue of non-Treaty travel by PNG nationals, particularly around travel to access health services
 - *which is being addressed through support for the HIC Package of Measures;*
 - *improved data collection which will provide an empirical base for discussion of the issue; and*
 - *involvement in, and support for, the recent development of guidelines for traditional visitors.*

- maintaining the trust and support of island communities and managing free movement provisions in a way that supports the needs and reasonable expectations of island communities
 - *which is being addressed through involvement in Treaty Liaison Visits;*
 - *expansion of the MMO network, and support for MMOs from Thursday Island; and*
 - *regular meetings between DIAC staff and community representatives.*
- regularising the status of those offshore entry persons (OEPs) who would be eligible to be granted a visa in immigration clearance if they had arrived on the mainland
 - *which is being addressed through consideration of proposals to declare some classes of people as holding a Special Purpose Visa on arrival.*

Conclusion

From a DIAC perspective, almost everything which happens in the Torres Strait is different to the way in which border operations and border security are managed in the rest of Australia.

The loss of the IRV *Malu Sara* in October 2005, and the subsequently identified factors which contributed to that loss, has focussed a significant amount of management attention on our Torres Strait operations. As a result, the North Queensland region was created, the Thursday Island office was expanded, the network of Movement Monitoring Officers was bolstered and provided with improved support and training, Commonwealth agencies have built stronger working relationships, and there is a much greater understanding across elements of DIAC of the unique communities, operating arrangements and environment in which we function in the Torres Strait. Current and proposed initiatives by both DIAC and other Commonwealth agencies will contribute towards the enhanced effectiveness of border control and integrity in this region in the future.