



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES  
COMMITTEE

**Reference: Matters relating to the Torres Strait region**

FRIDAY, 18 JUNE 2010

CANBERRA

BY AUTHORITY OF THE SENATE



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## SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE

### REFERENCES COMMITTEE

Friday, 18 June 2010

**Members:** Senator Trood (*Chair*), Senator Mark Bishop (*Deputy Chair*), Senators Ferguson, Forshaw, Kroger and Ludlam

**Participating members:** Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cor-mann, Crossin, Eggleston, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Williams, Wortley and Xenophon

**Senators in attendance:** Senators Mark Bishop, Ferguson and Trood

#### Terms of reference for the inquiry:

To inquire into and report on:

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.

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**Committee met at 9.02 am**

**CHAIR (Senator Trood)**—I declare open this public hearing of the Senate Foreign Affairs, Defence and Trade References Committee inquiry into matters relating to the Torres Strait region. These are public proceedings. The committee, however, may agree to a request to have evidence heard in camera or may determine that certain evidence could be heard in camera. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness may state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist upon an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

[9.03 am]

**GELA, Mr Frederick Solomon, Mayor, Torres Strait Island Regional Council**

**SCARCE, Mr Rodney John, Chief Executive Officer, Torres Strait Island Regional Council**

*Evidence was taken via videoconference—*

**CHAIR**—Welcome, gentlemen; it is good to see you. You have sent us a submission for the inquiry, which is No. 9. It is a public document. Do you wish to make any amendments to the submission at this stage?

**Councillor Gela**—No, no amendments whatsoever.

**CHAIR**—We would like to ask you some questions about the submission but, before we do, do you wish to make an opening statement to the committee?

**Councillor Gela**—Yes, please. It is customary for me to take this first opportunity to acknowledge the Kaurareg people who are the traditional owners of this land we are conducting our teleconference from. As a sign of utmost respect—or, as we say, ‘good pasin’—I would also like to use this opportunity to acknowledge the traditional owners of the land where the actual sitting is taking place in Canberra. On behalf of the Torres Strait Island Regional Council, I would like to thank the Senate Foreign Affairs, Defence and Trade References Committee for the opportunity to contribute to the inquiry’s deliberations through our submission and participation at today’s hearing.

I cannot stress enough that this inquiry is very important to my constituents as it will be considering a range of issues that have a direct impact on their lives. The following statements are consistent with the formal written submission by the Torres Strait Island Regional Council, submitted to the Senate inquiry on 29 October 2009.

In short, the TSIRC would like the treaty to be reviewed and amended to ensure the treaty is reflective of the needs today of both Torres Strait Islanders and the people of the Western Province of Papua New Guinea. All 14 Torres Strait communities that are respondents to the treaty fall within the jurisdiction of the TSIRC. We are requesting a full review of the Torres Strait treaty as our people have a different concept of the original treaty than what is carried out today.

There is a strong need for the TSIRC to be represented at every forum and committee that has been established or will be established in the future that deals with the treaty. 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. 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.



The solutions the TSIRC highlighted to the Senate inquiry were sound and, if implemented, would alleviate many of the concerns of both the people of the Torres Strait and those of the Western Province. 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. There will be hard decisions to be made, and we trust our elected leaders in Canberra are prepared to make them—even if it means a potential diplomatic incident with the PNG government.

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.

We have reasons to believe that some of the current villages named are not the original villages that traded with the Torres Strait, some of which are excluded and now wish to be recognised under the treaty. The communities are 100 per cent behind the treaty being updated to reflect the current needs of the Torres Strait and the Western Province.

**CHAIR**—Does that conclude your statement, Mayor Gela?

**Councillor Gela**—That does conclude my statement, Chair; thank you.

**CHAIR**—Thank you very much. Mr Scarce, do you wish to say anything at this stage?

**Mr Scarce**—No, thank you.

**CHAIR**—I might begin the questions, and then I am sure my colleagues will have questions for you as well. There seems to be a very clear difference of perception about the way in which the treaty is operating. As you know, we have taken quite a lot of evidence from agencies and groups concerned with the Torres Strait, during hearings in Canberra and while the committee visited the Torres Strait. One view is that the treaty is actually working very well. You seem to have a very different perspective on the treaty and how successful it has been in relation to the whole range of issues that it deals with, whether they be health issues, issues of the management of resources, matters relating to access of PNG nationals into the Torres Strait, or a whole range of other issues. It would be helpful I think, Mayor Gela, if you could just tell us why you think the treaty is so inefficient or inadequate as it is presently operating.

**Councillor Gela**—If it would help, I could touch on a range of issues in summary and then we could actually dive into them in your questions so that I may be able to elaborate on them even further. Trading is on a barter system only, and was never intended to be a cash sale program. Administrative policies consistent with the treaty need to be developed to establish designated entry and exit points. Immigration needs to enforce the provisions of the treaty with overstayers.

In the past, island councils and now regional councils have closed the borders to traditional visits either until the overstayers have all left the island or until sufficient water supply is available to accommodate them. Queensland police needs to be present on-ground in every

community that has responded to the treaty. There needs to be a final date set where Torres Strait Islanders can rely on the traditional inhabitants form. Those who have not claimed to be Australians via their traditional inhabitants form must do so by the date advertised. Prior advices that are used need to be adhered to prior to any movement. Stop the movement of people purely for health reasons. There are 13 Western Province communities now plus an additional 16 communities outside of the treaty zone who access our health facilities. Those are a range of issues that I would love to have the opportunity to expand and elaborate on even further.

**CHAIR**—This is the opportunity to do so. If you would care to emphasise any one of those issues in particular or several of them then we would like to hear from you.

**Councillor Gela**—Thank you. There is a strong need for law and order. Sly grog and drugs and other contraband find their way easily across the border and into our communities. There is no recognition of law and order on the PNG side compared to the Australian side. It is not uncommon for large groups of PNG nationals brandishing weapons such as machetes and knives to walk the streets in our communities. The federal department of immigration turn a blind eye to the fact that overstayers are on the island. Their inaction in dealing with the problem makes a mockery of the treaty. It is common knowledge that nothing will happen if you overstay your permit or arrive without a permit. Hence it is rife, and there is nothing we can do about it. I cannot stress enough that Immigration must start to do their job. The Torres Strait Island Regional Council cannot express enough our concerns regarding the security of our people.

There is also a strong need for administrative policies consistent with the treaty and for a designated entry and exit point that would allow those on-ground administering the treaty access to everybody. Currently the people accessing the treaty land on any part of the island at any time, day or night. Strength needs to be given to the TSIRC and the community to close the border whenever we need to, for whatever reason. The TSIRC in the 2009-10 budget has adopted a budget that is \$25 million in deficit, and that is not taking into consideration a reported 28,000 extra visitors that access our community. The mechanisms in place in relation to prior advice need to be issued before movement. On many occasions we have had in excess of 500 PNG nationals turn up to one of our communities without prior advice. They travel over without prior approval in bad weather and use the excuse for not returning of not being able to travel back in bad weather or not having any money for fuel. Prior advice issued would stop people travelling in bad weather and would assist us to gauge if we have sufficient water and a desire for the extra visitors.

Movement of people purely for health reasons is outside the scope of the treaty. Limited doctor availability sometimes means that legal residents do not have access to health professionals because their time is spent on PNG nationals. No health screening prior to their arrival means they are sometimes carrying into our communities TB—and we are all aware that there are other strains of TB that have been detected on the PNG side—and malaria, not to mention HIV-AIDS, Ross River virus, dengue fever et cetera. For human rights reasons we cannot have these people turned away from accessing or receiving medical attention. We need to ensure that appropriate health infrastructure is provided within the Western Province.

**CHAIR**—I think I understand that the essential point you are making—and please correct me if I have misunderstood it—is that the arrangements that exist under the treaty are not being adequately enforced. Is that a fair way to put it, that you are comfortable with some of the

arrangements but there is not enough policing or enforcement of those arrangements in relation to access and movement, for example? Would that be a fair way to put it?

**Councillor Gela**—That would be a fair way of putting it. 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. 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 that is place because there is no way of policing it; there is no way of penalising people for breaches.

**CHAIR**—Which authority do you think would be the most appropriate to have the responsibility for more strongly enforcing the arrangement that exists under the treaty? Is it a community officer or is it a Queensland police officer, is it the Australian Federal Police, is it Australian border security, or is it a combination of them all? Is there a relatively straightforward way in your view to manage this issue.

**Councillor Gela**—There is. There has to be a combination of ways in terms of securing and administering and monitoring the arrangement now. We are aware that, regardless of having QPS presence, there are limitations that they would have as well so they would require assistance from either the Federal Police or other key agencies. We need to look at a concerted effort by the relevant agencies in terms of policing and administering what is actually in place.

**Senator MARK BISHOP**—We have had two or three submissions from some lawyers acting on behalf of people I think described as traditional inhabitants, they say with longstanding rights to hunt and fish in the Torres Strait and immediate areas. Their communities are not recognised and, as I understand it, have never been recognised as treaty villages under the original treaty. Could you comment on the extent to which those people who are, can I say, inside the tent who do come from traditional treaty villages, and those on this side of the Torres Strait. Do they support those claims by some PNG nationals that they are traditional inhabitants and should be allowed to carry out traditional activities in the Torres Strait? Is there any substance to those claims in your mind?

**Councillor Gela**—There have been instances where village people have raised concerns in relation to sitting outside and not being able to access the arrangement, when in the past they were able to. I cannot comment on what happens on the PNG side. All I can say is that we need to be mindful of the types of practices that PNG has in terms of, say, for this discussion, 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.

**Senator MARK BISHOP**—In that context, in your opening remarks you addressed perceptions of significant shortcomings in terms of the scope of the original treaty and its

application in modern times. Do you care to comment on the view that, in terms of the scope of the treaty, its direct application to this country and to aspects of PNG and particular treaty villages, it should not be extended to areas that we would describe as non-traditional—communities not recognised as treaty villages? Is that what you are really saying?

**Councillor Gela**—There are two parts to the opening remark I made. We are aware that there are now villages on the Western Province side that want to come on board and be part of this arrangement. They are putting up strong arguments in relation to opposing communities that are in the tent now, that are accessing that arrangement, when they should not be. Once again, that is a debate that needs to happen on their side; we cannot manage or dictate to them who should have right of way and who should not. Our position is that in the current climate we cannot allow any additional villages to come on board until all these arrangements are made—until what is in place is strengthened and what needs to be in place is implemented—and there is no flexibility around it. In the opening remarks I made earlier, I said that there is always a strong mentality among our people that the treaty has been set up in the past merely for trading and bartering purposes. Today it is a cash sale program. There is different thinking about the arrangement out in the communities that are direct respondents to that arrangement.

**Senator MARK BISHOP**—In your submission you suggested that Boigu and Saibai have ‘great potential to establish a sustainable and commercially viable live mud crab industry’. However, you say, quite strongly, that ‘once again regulatory factors and agencies have derailed the then Island Council’s and now the Torres Strait Island Regional Council from establishing this lucrative business venture’. So, you are saying that regulatory agencies, both in the past and now, are getting in the way of creating a profitable enterprise. Can you be more specific about the obstacles to commercial development in the Torres Strait and what you suggest are immediate remedies that this committee could recommend to government, if you want us to go down that path?

**Councillor Gela**—I will give you a brief summary of the current arrangement—a quick snapshot of what actually happens now. In the past, prior to the amalgamation, the Boigu Island Council accessed some dollars for setting up tanks, pumps and so forth for live mud crabs so that they could either sell them to the domestic market or export them to the international arena. Boigu itself does not have a large population; it is a small population. In terms of supporting that to make it a sustainable and viable industry, you would obviously need the right amount of people catching the product and selling it back to support that industry.

What was requested in the past, and is still requested now, is that we look at that possibility, because it is currently done now. That opportunity could be in place as a means of employment not only for the people of Boigu but for the people of Western Province who access the communities under the treaty arrangement. Currently we are told you cannot do that because it is in breach of the treaty, but when we took a step back and looked at the situation it looked stupid—absolutely ridiculous—for the departments that commented because of the fact that individuals from Papua New Guinea access the treaty arrangement and set up on the foreshore selling crabs to people in the community and visitors to the community. So, if it can be done now and the regulatory bodies are turning a blind eye to that, why couldn’t it be done in a fashion that supports both the people of Boigu in terms of employment and the people who come over from the Western Province to support that industry because of the lack of facilities and the lack of employment on their side?

**Senator MARK BISHOP**—You made some comments in the early part of your submission about the need for increased policing, I think you said in all communities. You are asking for the Queensland police to provide relevant officers. That is obviously an issue of the level of supply or availability from the Queensland government. I must say, it was my strong impression from the snapshot time we spent up there that nearly all of the communities were well regulated and well controlled, as distinct from a lot of communities on the mainland. They were under much better control. But you say there is a continuing problem, so in that respect what is your view on the recommendation from the Queensland police commissioner that there is a need for some form of community policing officers who have powers somewhere between those of the state police and the community police officers to carry out local law enforcement, local regulation and local protection? Do you need a new or increased community presence to address what you perceive as breaches of the law?

**Councillor Gela**—A crime is not committed every day in our communities, but that does not mean that it will not be committed. I think having a presence in the community, especially for the 14 communities that are directly respondents to the treaty, would assist in reassuring my constituents that their safety is being respected. I basically experienced it myself. I had a public meeting at Saibai at the community hall. 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.

There are a lot of comments in relation to crimes but there is nothing to actually support the need to have a policing presence. We cannot use that to evaluate whether or not the community requires a police presence or not. Right now the community police employs five regional councillors. Some of them are not trained enough to even complete the reports in order to submit them in the first place. There are a number of reasons as to why those reports are not completed. It can be through family ties because families are involved. There are a range of issues. 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. 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.

**Senator MARK BISHOP**—On that point I now view more clearly where you are coming from on this issue. There does not appear to be a major crime activity problem in the Australian communities up there. Is the major problem the overstayers, the presence of overstayers, their lack of understanding of our law and their lack of respect for our practices because of their own cultural background in their own country? Is that the primary problem that you are seeking to address or is it more than that?

**Councillor Gela**—Overstayers are definitely one of the key problems. The other aspect is lack of knowledge as you mentioned and understanding in relation to our laws here. In the communities that are the respondents to the treaty, speaking to the community constituents, at the grass roots level they can tell me they know which villages behave well during the visits and they can identify which villages misbehave and what incidents occur. There have been instances where brawls have occurred, where people have been hit over the head with a star picket.

**Senator MARK BISHOP**—The local villages and all of the local communities on the outlying islands away from TI have a very firm knowledge of the level of overstay, the level of abuse, where it is coming from and would be able to assist community police officers or a heightened Queensland state police force to address that issue—is that which you are really saying to us?

**Councillor Gela**—That is correct.

**Mr Scarce**—The Torres Strait people are not angels either. There are instances in the Torres Strait region of violence, sly grog and drugs whether it is from the south or the north that could also be addressed by having a QPS presence within our communities. That would alleviate that. We have been speaking with Commissioner Atkinson and the minister responsible and we are hoping that, as part of the CMC review into remote community policing, they come up with a model. Whether that model is halfway between community police and fully fledged officers or whether it is the QATSIP model that they were trying to bring out before it is not a responsibility of local government. If it is the responsibility of local government, we want the ability to be a policing agency. We are a local government agency and the QPS is a policing agency so that is where it rightfully sits.

Just recently we had an Island of Origin event on Badu. Seven additional police officers were flown in for that festival. Any other time that we have requested QPS presence on another island for a festival it has been at our expense. The QPS have said, 'If you pay for the charter and the accommodation we will get the QPS officers there.' So we put our hand in our pocket. That is how it has been done for the past 24 years—we have actually paid for the police to be there. But Badu is run and controlled by the QPS out of Horne Island, so they send in officers free of charge to the community. They sent in seven officers to do their job on the ground. That is the sort of contempt that is being shown by the QPS in relation to policing within the Torres Strait Regional Council area.

**Senator MARK BISHOP**—I think you have answered my questions. Thank you, gentlemen.

**Senator FERGUSON**—I know we are running short of time, but there are a couple of issues I want to go back over. You spoke about the pressures that are being put on the health system by PNG nationals seeking the health services in the Torres Strait, but I think you also said that this could be easily stopped by us ensuring that there are proper medical services in the Western Province. How do you propose that we can ensure proper medical services in the Western Province?

**Councillor Gela**—For the strategy that we need to look at, I am aware that we cannot dictate to the PNG government what needs to be done on their side, but I think the Australian government needs to flex its muscles in relation to dictating to the PNG government where

AusAID assistance should be spent. It is clearly evident to us that the villagers who access the treaty arrangement have been neglected for years—for generations. For some of those villagers it is practical for them to walk to Daru to access the health facilities there. 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.

I need to place on the record also that a new facility will be constructed at Saibai which the federal government has poured a substantial amount of money into. My concern is: what are we trying to achieve here? Time and time again we have stressed and highlighted the issues that we face. The facilities are underresourced and underfunded. 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. So my question is: what signal are we sending? We need to look at building the capacity within the areas that have been neglected for quite some time. I am not sure how that will be done, but that is something that our government needs to engage the PNG government on to work out some sort of a solution. Until we have that sort of arrangement in place, we will forever and a day be trying to police and monitor the treaty arrangement. The majority of them access the health facilities under that arrangement now anyway, which is totally outside the scope of the arrangement.

**Senator FERGUSON**—But it is also fair to say, as you have highlighted yourself, that it is difficult for the Australian government to dictate to the PNG government what it should do in the Western Province with regard to medical services. But it can take some of the pressure off what you say is the strain on your health services by putting a new facility on Saibai.

**Councillor Gela**—That is placing the people of Saibai at risk as well. On Saibai now there is no law enforcement at all. Saibai is one of the busiest communities because they do not have prior advices in place so people from those villages that access the treaty arrangement rock up daily.

**Senator FERGUSON**—We have seen the existing facilities there and realised that there was a need for a new facility on Saibai. The existing facility is under terrible stress and I think that we all agreed when we were there that there was a need for a new facility. I move on to one other thing because we are out of time—

**Councillor Gela**—Senator Ferguson, before you move on, I think we need to acknowledge and respect the people of Saibai in terms of what wishes they have. They are not comfortable with the idea.

**Senator FERGUSON**—I understand that. You stated in your submission that there is a very strong need for the council to be represented at every forum that deals with the treaty. What is the current level of representation of the council on the various treaty related meetings?

**Councillor Gela**—There have been five or six councillors that sit on the TIMs and some of them are involved at the JAC level. But they sit there under the banner of the TSRA, the Commonwealth statutory body. There needs to be some sort of Torres Strait Island Regional Council presence there; that is all I am saying.

**Senator FERGUSON**—Are you saying your council should be represented at every meeting that has any relationship whatsoever with the treaty?

**Councillor Gela**—The TIMs and JAC were what I referred to, yes.

**Senator FERGUSON**—Thank you. I am conscious of the time so I will leave it there.

**CHAIR**—You have had these concerns for quite some period of time, I assume. I also assume that you have tried to have your views accepted by the Australian government through the various authorities. What efforts have you made to try and persuade people that these changes need to be made, and what sort of reaction have you received to those suggestions?

**Councillor Gela**—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—that is, the entry and exit points that I am referring to. Nothing has happened.

**Mr Scarce**—When councils in the past have tried to close the borders they have not done so for any other reason. 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.

**CHAIR**—Are any current discussions taking place between the council and any of the federal agencies about trying to rectify some of these problems?

**Councillor Gela**—The representation on the regional council includes 15 councillors plus me. Five of our councillors sit on the TIMs and the JAC. They talk about these same issues that we talk about a lot of the time, so it is being echoed as well. However, they are sitting in their capacity as TSIRC representatives. Discussions have happened in the past and they still occur today.

**Mr Scarce**—Saying that, even in conversations with the local DFAT representatives and Immigration in the past it has been their interpretation of the treaty as opposed to our interpretation of the treaty that has put us at loggerheads. In instances where Councillor Gela has been on the island with the DFAT representative it has been clear that it is a barter system and not a cash system and that is taken in the mind of the local representatives from DFAT or Immigration that the handing over of cash for the exchange of goods is in line with the treaty. But the literal interpretation of it is not. 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. The people from the western province are then in turn penalised when they go to exchange the Australian dollar into kina as the agencies at Daru just take 50, 60 or 70 per cent of it anyway. So if we give them \$10 they will end up with two or three kina anyway instead of what the exchange rate is. I think it is over 50c or something like that. They are penalised by getting Australian dollars as it is now.

**CHAIR**—We have run out of time, unfortunately. I want to thank you for your evidence this morning. We are very grateful for the time you have given the committee and we are very grateful for the submission. Is there anything, just in closing, that you wish to say to us?

**Councillor Gela**—I would like to, once again, thank the committee for the opportunity here today. I have personally given written and verbal evidence to many inquiries that were set up with terms of reference to find solutions to benefit my people and Indigenous people at large. I have yet to see solutions on the ground being implemented. My concern is whether this inquiry will be just another example of lip service in the same vein as the inquiry into remote stores or whether the federal government will really listen to our concerns and implement the solutions that we have put forward.

**CHAIR**—We will be putting a series of recommendations to government. Of course, we cannot compel the government to follow the recommendations or to adopt them, but we will certainly be putting some recommendations to government in relation to the Torres Strait. We are hopeful that the government will accept those recommendations, but it is a matter of government as to whether they do that.

Just before you go, can I ask you one question which slipped my mind. In relation to photo ID and arrangements, in your view would that be a workable arrangement in the context of the Torres Strait?

**Councillor Gela**—On the Australian side that would definitely be a workable arrangement. That has been echoed at numerous meetings. I am not sure whether or not that is practical for the PNG people. However, we need to have some sort of identification measure in place—whether it be a thumbprint or photo ID. I am not sure how that can be worked on the other side, but that would be great. That would be better than what is in place now.

**CHAIR**—Thank you again for your time this morning. We appreciate it. We will let you have the advice of the report in due course.

[9.51 am]

**ALLEN, Mr Stephen, Assistant Secretary, Border Security Division, Department of Immigration and Citizenship**

**BRUER, Mr Jeremy, Assistant Secretary, Papua New Guinea and Fiji Branch, Department of Foreign Affairs and Trade**

**HEATH, Mr Andrew, Regional Manager, Torres Strait, Department of Immigration and Citizenship**

**RAWSON, Ms Jennifer Elizabeth, First Assistant Secretary, Pacific Division, Department of Foreign Affairs and Trade**

**YOUNG, Mr Brett, Torres Strait Treaty Liaison Officer, Department of Foreign Affairs and Trade**

**CHAIR**—Good morning, ladies and gentlemen. Thank you for coming to this committee hearing this morning. I think you have been shown a copy of the opening statement. Do you have any questions about that?

**Mr Allen**—No.

**CHAIR**—Both agencies have made submissions to the committee. In the case of DFAT it is submission No. 23 and DIAC it is submission No. 16. These are public documents. Do you wish to make any amendments to those submissions at this stage?

**Mr Allen**—No, but we have provided in addition a statistical update for traditional movements within the protected zone for this financial year till the end of May.

**CHAIR**—We have that. Thank you, Mr Allen. Does either agency wish to make an opening statement at this stage?

**Ms Rawson**—No.

**Mr Allen**—We did have an opening statement but, given the time constraints, I will keep my remarks to a minimum, as we have already provided substantial written submissions to the inquiry and we have provided answers to questions on notice and answers as a result of our initial testimony last year. I merely want to take this opportunity to thank the departments' officers for their efforts in recent years in implementing and administering improved border management reporting for the Torres Strait and improved arrangements for the reception of traditional movements within the strait.

As you will see in the comparison of last year's statistics with this year's statistics there has been a much more rigorous approach taken in relation to the assessment of traditional movements. This has resulted in a substantial increase in the number of refused immigration

clearances amongst that cohort. This has been characterised in the press as a ‘crackdown’. We would prefer not to use that term. It is a more rigorous approach, which is intended to continue into the future. A crackdown to us seems to be something that comes and goes. This is evidence of an approach in the strait which we intend to be a permanent change in our operations. Mr Heath will be able to answer any detailed questions you have on this in the course of the hearing this morning.

There is another thing I would like to say, very briefly. In December last year, I expressed to the committee, on behalf of the department, the deep sorrow that we all feel for the losses suffered by those affected by the *Malu Sara* tragedy, and I mentioned at the time that the department was working with the families of those lost to respond to their compensation claims as quickly as possible. As you may be aware, agreement was reached in May of this year to settle one of the compensation claims, and there is another claim outstanding where there is yet to be a settlement but the department remains hopeful of reaching a settlement in that case. That is all I wanted to say.

**CHAIR**—Thank you, Mr Allen. Before we begin, may I thank you, Mr Young, for making the time to come all the way down here for the purposes of the hearing. We very much appreciate it. I extend to you particularly and to your agencies the thanks of the committee for facilitating our visit to the Torres Strait earlier in the year. It was a very productive visit, I think, from our perspective, and we are very grateful for the support we received in that period of time, so thank you very much for that.

I will begin and then my colleagues, I know, have questions. You heard at least part of the evidence this morning, I know. There seems to be, from the evidence we have received in writing and from our visit there, quite a significant divergence of views about the way in which the treaty is operating and the successes for it. The view of the DFAT in particular—and I think it is probably shared by Immigration—is that the treaty arrangements are working reasonably effectively and, certainly, there is not a case for profound or fundamental change to those arrangements. On the other hand, there is clearly, amongst members of the local community, a measure of apprehension about the way in which those arrangements are operating, and you heard some of that this morning. Can you perhaps help me at least to understand why there seems to be such a divergence of views about the success of the arrangements that are in place up there—Mr Young or whoever.

**Mr Young**—I think sometimes we might overstate the divergence there, and that might be a function of the inquiry asking people questions and people responding. I note that the submission from the Torres Strait Regional Authority has a covering letter from the chairman of that authority, who is also the chairman of the treaty community leaders, which does not support a review of the treaty. That body of members are the traditional inhabitants’ representatives and take the views of those people to the Traditional Inhabitants Meeting, which is a compulsory part of the treaty implementation process. As a result, year on year, several issues at the local level are dealt with through that treaty process by the views voiced at the Traditional Inhabitants Meeting by those leaders. So I do not know why there is the divergence of views that you describe, but I would argue that perhaps that is a function of this inquiry more than it is a reality on the ground, as we have seen.

**CHAIR**—I imagine you heard Mayor Gela this morning make the point that his council has made representations to federal agencies—and of course he mentioned you in particular—with regard to some of these issues like visa overstayers and crossing barter arrangements. Have you received strong representations from the council about these matters?

**Mr Young**—In regard to, for instance, the water shortages in the communities, there has not been an occasion where my office has not supported a community leader who has asked for a temporary restriction on cross-border movement. 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. As I said, 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. On the issue of market and barter trade, market and barter trade both appear quite discretely in the treaty as traditional activities and therefore it is our job to make sure that that is provided.

**Senator MARK BISHOP**—Does ‘market trade’ mean barter trade in a formal geographic area designated as a market, or does it use ‘market’ as a synonym for the cash economy?

**Mr Young**—We have defined ‘market trade’ both as trade in the cash economy and as trade at market scale. We also use the word ‘commercial’ when talking about the treaty.

**Senator MARK BISHOP**—Was that the original intent—commercial trade via the cash economy within markets? That is different from just a barter, isn’t it?

**Mr Young**—We have described commercial trade as not being allowed—that is, trade for money above the traditional market scale. Everything is prefaced with ‘traditional’. The traditional market, even in pre-treaty times was certainly for money and/or barter, but commercial activities are not allowed under the treaty. They can still be conducted but must go through the normal processes of bilateral trade.

**CHAIR**—There is a difference of interpretation here, essentially, about what the terms of the treaty mean, is there?

**Mr Young**—That is true; I can see that. That is one of the issues we are dealing with at the moment and one of the items on this year’s agenda of the Traditional Inhabitants Meeting. 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.

**CHAIR**—When is that due?

**Mr Young**—On 13 August.

**CHAIR**—There seems to be a continuing discussion about identification and whether that is necessary and, if it is necessary, how one undertakes this activity. Do you believe some kind of stronger identification arrangement is necessary for people moving back and forth across the border?

**Mr Young**—This is not really something that I think DFAT could comment on. It is really the agencies that would have to implement and manage that that could give you a guide as to how practical it is to do such a thing.

**CHAIR**—I acknowledge that the practicalities are perhaps not your strength or your responsibility, but can you advise the committee as to whether or not you think that, given that this is an international issue, there is a need for this kind of arrangement.

**Mr Young**—I can say that I think there is a—

**Senator MARK BISHOP**—Mr Young, just before you answer that question, I have something to say on exactly this point. We were advised by Ms Grant from the Australian Customs and Border Protection Service on 17 December—it is on *Hansard* and also in a written submission—that, if we were going down this path, DFAT would be the appropriate agency responsible for this action. They are saying it would be you. You just said it would not be you.

**Mr Young**—It would not be us implementing it, but as the lead agency on the treaty we would have to chair any meeting that decided to go down this path. In terms of actually implementing it or making a decision on whether it would be a practical, affordable, sensible option—

**Senator MARK BISHOP**—That is a distinction I cannot fathom. Come on! People have raised this issue of the need or otherwise for some form of identification for those coming in and out. The chair has asked you a direct question. The border protection agency says it is your responsibility and you do not have a view. Come on! It is not just implementation; it is the policy behind. Is it necessary? That is what we are asking.

**Mr Young**—I do have a view.

**Senator MARK BISHOP**—Let us have it, then.

**Mr Young**—In answer to Senator Trood's original question, I can say that there would be widespread acceptance among the treaty communities of an ID system, but that does not mean it is a practical thing to do. 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 it is actually possible, again, is something for other agencies to decide.

**CHAIR**—And the department is sympathetic to that perceived need?

**Mr Young**—We are open to the discussion. It is an ongoing discussion. It has been raised at meetings over recent years.

**CHAIR**—Associated with the question of movement there is also this debate about the possibility of having designated arrival points. There are some, as I think you have told us in the past, but the widespread view is that rarely is any attention paid to these matters. People arrive and depart as it suits them rather than necessarily coming to a particular point, unless there is a

reason, as there might be with regard to some kind of trading activity. I think you have told us that for the most part that is not a widespread problem. Is that still your position?

**Mr Young**—It is my position. This might be a question better put to the Department of Immigration and Citizenship. They have people on the ground, who observe this on a daily basis. They may give a more accurate indication of how well that rule is adhered to.

**CHAIR**—Do you have a view on this, Mr Allen?

**Mr Allen**—I will defer to Mr Heath in a moment, but I would point out that considerable progress has been made in recent months through the publication and dissemination of guidelines for traditional visitors. This actually includes—I think probably for the first time—a much more accurate depiction for visitors of where the designated landing places are, and why they should be used. So I think that this is, to some degree, a work in progress. I will hand over to Mr Heath to give the local perception of how well that actually works in practice.

**Mr Heath**—It is fair to say that in the past, 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. We will then move towards refusing people who arrive in other points. We wanted to work on getting the illustrations of each of the designated points done and provide that to the traditional inhabitants so that, going forward, they have no—

**CHAIR**—Why have you taken so long to get around to this? It seems to have been a long-standing problem for the communities.

**Mr Heath**—It is difficult, especially on the larger islands—Erub or Darnley in particular—because it is quite some distance to go to the back side of the island to the designated landing point at the front wharf there. 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.

**CHAIR**—I think this is precisely the concern—that people coming to these places in surreptitious ways may have any kind of intent in doing so—but there is also the problem of monitoring health issues and things of that kind, which exercises the community at the same time.

**Mr Heath**—We are notified of arrivals and undertake the clearance procedures as soon as we are notified.

**CHAIR**—How have you publicised these new arrangements?

**Mr Heath**—Our colleagues at Foreign Affairs have produced some guidelines for traditional visits, which include illustrations of designated landing points, which we will, in the next program year, be disseminating to all visitors on our islands. Our movement monitoring officers will provide that to each of the visitors as a guide. This will also be distributed during treaty

awareness visits. I understand they have already been distributed to the villages that Mr Young has visited in the last month. It will be an ongoing information awareness program.

**CHAIR**—Have you begun to pass these out? You have done some of it already; is that right?

**Mr Heath**—We just received copies last week and we will be in the process of sending them out to the islands. We are hoping that from 1 July we will have this as a process to all visitors to the islands.

**CHAIR**—I see. So you are planning to do it during the period of treaty visits, as well.

**Mr Young**—If I could just clarify that: these guidelines have been distributed to all the treaty communities on both sides of the border—personally by me to the Papua New Guinea treaty communities and to some Australian communities. Certainly they have been delivered to the leaders of all the treaty communities in Australia. I have handed them out personally to all Papua New Guinea treaty communities over the last six months or so.

**Senator MARK BISHOP**—Ms Rawson, you probably heard the discussion in the first part of this morning concerning the problem with overstayers, the perception of abuse by some of those people, different cultural practices on our side of the border and the alarms of Australian citizens in some of the village communities. We have been having a similar discussion with Mr Young just recently about the need or otherwise for some sort of identification. Firstly, does DFAT have a view on the adequacy of current levels of policing in this area? Secondly, if there were more adequate levels of policing up in this area, would that address some of the issues that were raised in a practical sense by Mr Young, bearing in mind the extensive local knowledge that local villagers, local communities, local inhabitants have of who should be there and who should not be, who breaks the law and who does not break the law, and who shows respect and who does not show respect? Having giving you a topic that big, can you give us the department's formal thoughts on that?

**Ms Rawson**—Certainly. The department is not in a position to make judgements about policing levels for Australian communities in the Torres Strait or elsewhere. I am sure Mr Young could elaborate on this, but through the treaty processes, through the consultation mechanisms that are provided for under the treaty, we do allow the discussion of those issues to be had in a way where a whole range of views can be expressed and heard by the Queensland Police Service, for example, and then judgements made by those who have the expertise about what sorts of policing levels are appropriate. But we do not regard ourselves as having that competence.

**Senator MARK BISHOP**—No, and I am not suggesting for one minute that one department has the ability to comment on the personnel demands of another department. We all know that is subject to a range of variables. But earlier groups today, and groups from up there, have come to us with a particular problem—overstayers, apprehended violence, breach of the law, different cultural practices—and a particular solution. Their solution was extra and heightened and continuing policemen and women on the outlying islands to stop those sorts of abuses. I am really asking you in a policy sense not to say we need seven officers here and four officers there, but would a more permanent policing presence on some or all of the islands make, firstly, the

administration and, secondly, the implementation of the goals in the formal treaty more practical, more capable of being achieved?

**Ms Rawson**—Again, I would not express a departmental view on the level of policing. It may indeed be that in some of the issues you have cited there is a case to be made for it. But within the treaty itself as I understand it—I should say I have only been in this position for the last month or so, so I certainly would not express or assert a great deal of knowledge of the day-to-day arrangements—and perhaps Mr Young could elaborate, where you have a whole range of issues being identified by the communities as a problem, there needs to be a discussion about that to see where the various mechanisms are under the treaty. If they are mechanisms that rightly belong to judgements by a policing service about where assets need to be deployed to respond to issues, then those issues and the range of solutions, which may include policing presence, can be discussed and considered and decisions taken. I would be loathe certainly to express a departmental or a personal view on whether, looking across a range of issues that has been raised, policing is the solution or one of the solutions to those issues.

**Senator MARK BISHOP**—Thank you.

**Mr Allen**—I would like to make a comment. You started out discussing the perceived issue of overstayers. This is one of the areas where there is clearly a difference of perceptions between agencies and their staff and the communities within the Torres Strait. In many cases Papuan families have acquired permanent residency since the amnesty that was in effect in the early 1980s or have acquired Australian citizenship. There is a perception among some of the Torres Strait Islanders that no Papuans have the right to reside on Torres Strait islands, but there are many Papuans who lawfully reside on those islands, and this is one of those areas where there is a misperception about what an overstayer is. Last year when we spoke to the committee about our definition of an overstayer—that is, a Papuan New Guinea national who had arrived since that amnesty and had overstayed their approved length of stay—at that time there were 10 by our definition in the entirety of the strait. Today I understand there are approximately 80, of whom 40 are people affected by some of the issues that were raised in earlier evidence. They are there because of inclement weather and they are expected to leave this week, as soon as the weather clears.

This gets us back to one of our important roles in the strait, which is to provide a better statistical base so that going forward the discussions about these issues are based on evidence rather than perceptions. Certainly what we have been able to do over the past two years in having a more rigorous approach to the measurement of traditional visits, visits by others, is to demonstrate it is a genuine misperception about overstayers. There is nothing we are collecting at the moment which indicates that the problem is as big as it appears to be in the views of some in the strait.

**CHAIR**—It is good to know that your statistical base is more reliable than it has been in the past, but it seems to me there is a problem of perception. I wonder whether or not you have considered the possibility of doing something about that locally—in other words, better educating those who have this perception about the nature of the entitlements that people have. If you think they are misunderstanding their entitlements under the treaty then perhaps you have an obligation to try to better inform the community.



**Mr Heath**—That is right. Accusations that there are thousands of overstayers in the Torres Strait are simply untrue in the sense there would be several hundreds of Papuan-born permanent residents in the strait. I think there is a difference of opinion about what is an overstayer. I have met with both the TSRA and TSIRC to address those concerns and inform them of the statistics that we are gathering. I direct the committee's attention to the statistics for the first quarter of this program year, which is a detailed analysis of all the 6,000-odd movements. In that analysis we found that more than 90 per cent come and go in one day. We find that only 2.6 per cent of all visitors to all islands overstay past the maximum three-week limit. And these are statistics that we will continue to produce and continue to use to advise the appropriate bodies so they can inform their policy work.

**Senator FERGUSON**—I understand that Minister Smith has endorsed an initiative involving the cross-border movement of health professionals and that it has been referred to the PNG minister for foreign affairs. What is the status of that initiative? Is it still with the New Guinea minister? How long ago did this get passed on to him?

**Ms Rawson**—I am not sure of the date. Maybe my colleagues can advise me.

**Senator FERGUSON**—Was it a few months ago?

**Mr Bruer**—Mr Smith and his PNG counterpart have exchanged correspondence on this matter and have reached some level of agreement. We are now in the process of agreeing at a technical level the mechanisms by which such an arrangement would operate. There are, I think, two papers currently with the Papua New Guinean government for their consideration, which, if they agree, will enable that arrangement to commence.

**Senator FERGUSON**—How long have discussions been taking place?

**Ms Rawson**—The initial proposal was put by Mr Smith to his counterpart in March last year. There was a response from his counterpart in November of last year. The details of that, as Mr Bruer said, are now being worked through. We are hopeful that we will be able to finalise that within the short term.

**Senator FERGUSON**—It is easy to understand some of the frustrations expressed by people in the Torres Strait if an initiative like that is still under discussion 15 months later.

**Ms Rawson**—Yes, I agree that sometimes issues take longer than any of us would want. But I think it is important to remember that there are complexities when you are dealing with only a domestic issue. When you are dealing with one that involves relationships and the need for both our country and another country to look at their own arrangements and at what can be done, then inevitably some things take time. That is not to say that both sides should not work to move it along as quickly as possible, and we have been doing that.

**Senator FERGUSON**—That is a good try, Ms Rawson. But we do have a treaty in place already and we have the simple matter of allowing health professionals to go back over that way instead of people from PNG coming over this way. I would have thought that something like that would seem simple. It may have other complexities. But if it is a matter between our foreign

affairs minister and their foreign affairs minister, an okay should be able to be arranged. We have no idea when this might be resolved, have we?

**Ms Rawson**—As I said, I hope it will be in the short term, but I would not put an exact date on that. I do not want to come and explain why the exact date was not met.

**Senator FERGUSON**—The problem is that I am not quite sure what a short term is in foreign affairs speak. Is it two years? I will leave that, anyway. If a PNG inhabitant has a communicable disease and they come to the Torres Strait Islands for treatment, what safeguards are in place to ensure the communicable disease is not transmitted to Torres Strait Islanders?

**Ms Rawson**—I have to refer you to Health and Ageing to answer that.

**Senator FERGUSON**—They are coming, so I will ask them. I thought Foreign Affairs might be interested in things like that as well.

**CHAIR**—We heard during our visit a measure of frustration about dealing with the multiple agencies that have responsibility for various aspects of managing the treaty area. I think you may have been present, Mr Young, when we took some of that evidence in the Strait. Have there been any discussions in the various consultations about the possibility of trying to rationalise some of these arrangements so that there is a single point of call or to some extent some capacity to provide a point of reference for individuals? It could be for matters of policing, resource exploitation or commercial development et cetera. Are you relatively comfortable with the way in which the agencies operate together?

**Mr Young**—I think there is a robust treaty process in place at the moment whereby communities are visited by treaty delegations of representative agencies. We have the treaty guidelines, which are widely distributed in the various forms. Community leaders take part in the Traditional Inhabitants Meeting and also participate in the Joint Advisory Council. There are already in place a number of mechanisms to allow communication to occur between agencies and individuals in the treaty area at different levels. If there were a decision to provide some other arrangement, that would not be one for DFAT to make. But, as I said, there are a whole range of mechanisms already in place.

**CHAIR**—I know there are. This is not a criticism, but you and your counterpart agencies seem to be perfectly reassured by the level of communication that you have with each other about resolving issues that emerge in relation to the management of the Torres Strait area. However, that is not necessarily the view that exists in the region, it seems to me. There is a perception that there is a maze of Australian and Queensland government agencies and a measure of duck shoving that takes place between the various agencies. They are saying, 'That's not our problem. That's someone else's problem.' Have you given any thought to looking at these arrangements as they operate on the ground with some view to providing what in other contexts is called a one-stop shop for trying to manage some of these issues and deal with them? It could just mean providing the opportunity for somebody to say, 'We'll listen to that and this is where it has to go.' Have you undertaken any consultations or discussions about how you might better manage the way in which those agencies operate on the ground up there?

**Mr Young**—I think the one-stop shop already exists to some extent with the community leaders, who are members of the TSRA board and also councillors. We have regular ongoing discussions with them and I field phone calls every day from those community leaders asking for advice on what issue should be taken to what agency. I am often asked for letters in support of certain actions and so on and so forth. There already is a direct link between the communities and government through my office and also through the office of my colleagues in the Department of Immigration and Citizenship. I am not sure what form some new type of arrangement would take, but I am certainly confident that what is in place at the moment works well. If I could speak for them, the leaders of those communities certainly know how they may access government to talk about treaty matters.

**CHAIR**—I am not sure that your confidence is necessarily widely shared amongst the members of the community. I acknowledge that the agencies seem to work well together both here and in the Torres Strait, from my observation. But individuals who have frustrating issues to deal with are not quite sure where they can go to get those matters resolved. If they choose the wrong agency then they are sent on a frustrating circuit around various other offices to try and solve their problems. Perhaps there is some way to address that.

**Senator MARK BISHOP**—I think this is a question for you, Mr Allen. I have just been reading these statistics you referred to earlier. They are quite fascinating statistics because they go right to the heart of the issue of the reality and the perception of movement and overstayers. There are three tables and the first table is ‘Traditional movements 1 July to 31 May’. When I see the total of the visits for Saibai and Boigu on the top two rows, there is a huge reduction—14 per cent and seven per cent respectively—2,000 and something in the order of 600 or 800. Can you give me an explanation for that apparent radical change in one year?

**Mr Allen**—I will let Mr Heath answer in detail in a moment but I would point out that when I saw these statistics, like you, I compared the different tables and looked at what they actually imply. Overall, when you take away the number of people who have been refused immigration clearance from the number of traditional movements you can begin to understand why there is an 11.7 per cent drop overall in the number of traditional visits. That is in fact made up of people who have been refused immigration clearance and who have returned. I will ask Mr Heath to speak in relation to Saibai and Boigu.

**Senator MARK BISHOP**—I was going to come to that second table.

**Mr Heath**—There is nothing much further to add because when you combine it with the refused clearances there is not much difference between this year’s and last year’s figures. It is just that this year, particularly on Saibai, we are refusing clearance to people who perhaps we should have in previous years.

**Senator MARK BISHOP**—So when you look at the traditional movements table and the refused immigration clearances table the bulk of the difference between 27,000 and 23,919 in traditional movements is accounted for by the 4,253 in refused immigration clearances.

**Mr Heath**—Yes.

**Senator MARK BISHOP**—The question then becomes: in one year there has been a huge increase in refused immigration clearances which has resulted in a huge reduction in traditional movements; why has that occurred and what is the policy purpose behind it?

**Mr Heath**—Since 1 July last year 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. 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.

**Senator MARK BISHOP**—This might address the perception issue in due course, then?

**Mr Heath**—It is an ongoing challenge for us to keep on informing the appropriate bodies of that perception, but I think that a lot of that perception is due to the difference of opinion of overstayers. People see Papuan-born people walking around their community as foreigners when they are permanent residents. Some of them have Australian citizenship and, obviously, the same entitlement to public housing, Medicare and Centrelink.

**Senator MARK BISHOP**—When we get a trend line in three or four years' time with these stats we will be able to have different answers.

**Mr Allen**—That is correct, and the comment that I would make there is that as with any area where you introduce a change in the way you enforce the rules you will expect to see a bump up. What I would expect to see—and, like you, I will be looking at the figures in the years out—is the number of refused immigration clearances decline as the understanding of the correct reasons for traditional visits becomes better understood.

**Senator MARK BISHOP**—Thank you for that. Mr Heath, I think you made some earlier remarks about the aggregate numbers of overstayers being 2.4 or 2.7 per cent?

**Mr Heath**—Yes.

**Senator MARK BISHOP**—And with the 90 days they appear to be very low figures. How do those sorts of figures for this group of people coming into Australia from the other side compare generally with illegal overstays and length of times that your department detects for other people coming from other countries into various ports of Australia? Are the figures consistent?

**Mr Allen**—I would need to go back and look at the statistical base to give you an accurate answer on that. In terms of the overall refused immigration clearance rates for Australia, we work to a benchmark figure of 0.015 per cent. The RIC rate here is substantially higher than the refused immigration clearance rate you would expect from normal air and sea arrivals. But, of course, we are dealing with a much more rigid and codified form of entry into the country in those other areas and you would expect to see a much lower figure. We can get you those figures, and I think we will be able to get them for you very quickly.

**Senator MARK BISHOP**—I am not asking you to do a heap of statistical work—

**Mr Allen**—I do not think it will take much time to get them for you.

**Senator MARK BISHOP**—In that case, I am interested in the comparison levels of overstays—I guess in one respect they are illegal immigration attempts—in a particular port of entry up there and other ports where we have people coming into this country, to see if there is any aberration.

**CHAIR**—While we are on statistics, I was looking at these medevac numbers for 2009-10, which are double the patients for the 2008-09 period, and indeed the escorts are nearly double as well. Can we explain that figure, Mr Heath?

**Mr Heath**—It does support the anecdotal information that there seem to be a few more medevacs this financial year. I will need to leave that to the Department of Health and Ageing in terms of the rationale, as to what has led to that increase. You will see that there is a lesser proportion of people from outside treaty villages included in that number of patients.

**CHAIR**—You compile these statistics, but you rely on information provided by Health, do you?

**Mr Heath**—These statistics are very accurate because we work closely with Queensland Health in the cases that do exit the protected zone onto Thursday Island or hospitals on the mainland. So, yes, these are statistics that we have compiled over previous years but it is the first time we have actually pulled it together in the fashion we have now.

**CHAIR**—I see the list refers to various islands, but are medevacs from those islands to somewhere on the mainland? I think it is often Cairns, or can be Cairns.

**Mr Heath**—Most of them are evacuations just to Thursday Island, but because this island sits outside the protected zone we closely monitor those cases. Some do go to the mainland upon triage assessment at TI. They are medevacs from those particular islands, and that is why a lot of our medevac cases naturally occur on Saibai and Boigu. There are very few on any of the other islands.

**CHAIR**—The committee has received representations with regard to non-treaty villages. Perhaps this is a Department of Foreign Affairs matter. We have received representations saying that there are villages which were inappropriately excluded from participation in the treaty arrangements. Do you continue to receive representations on that particular matter?

**Mr Young**—Our position remains the same as stated to the PNG government a number of years ago, and that is 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. That has not been forthcoming at this stage.

**CHAIR**—So you have not received any requests from the Papua New Guinea government on this matter?

**Mr Young**—That is correct.

**CHAIR**—Do you know whether any representations have been made by these villages to the Papua New Guinea government?

**Mr Young**—I do not know.

**CHAIR**—But the Australian government's position is that we would be prepared to entertain a request?

**Ms Rawson**—As Mr Young said, if the Papua New Guinea government were to make a request, we would certainly be prepared to listen to and discuss that request. But we have not formed a view whether that request would be accommodated. I suppose it is open to discussion, if they wish to make a request. Certainly we have not formed a view on what the response to that request would be.

**CHAIR**—That accommodation could take place under the existing provisions of the treaty, is that right? It would not be necessary to amend the treaty in any formal way to admit another village, would it?

**Ms Rawson**—If there were to be an accommodation, and, as I said, there has been no decision that there would be and no request made so far, my understanding is that the villages that are presently designated are not within the treaty itself; it is a separate arrangement so it would not be an amendment to the treaty.

**CHAIR**—Thank you for your time this morning. The committee is very grateful for the time you have given us and particularly Mr Young for coming down from the north to give us his time and the benefit of his wisdom on these matters. If we have any further questions we will let you know in due course.

**Proceedings suspended from 10.40 am to 10.57 am**

**BRYANT, Ms Jennifer, First Assistant Secretary, Office of Health Protection, Department of Health and Ageing**

**HOLDEN, Ms Fay, Assistant Secretary, Health Protection Policy Branch, Office of Health Protection, Department of Health and Ageing**

**SAASTAMOINEN, Ms Tarja, Assistant Secretary, Family Health and Wellbeing Branch, Office for Aboriginal and Torres Strait Islander Health, Department of Health and Ageing**

**CHAIR**—I welcome officers from the Department of Health and Ageing to this inquiry. Thank you for coming along this morning. A copy of the committee's opening statement has been provided to you. Do you have any questions about that?

**Ms Bryant**—No.

**CHAIR**—DoHA has provided us with a submission, which is No. 11. Do you wish to make any amendments to that submission?

**Ms Bryant**—No, thank you.

**CHAIR**—Do you wish to make an opening statement before we ask any questions?

**Ms Bryant**—No. We are happy to assist where we can.

**CHAIR**—Health issues in the region, most particularly with regard to Torres Strait Islanders and PNG nationals, have emerged in this inquiry. So far as you are concerned this relationship deeply involves your relationship with the Queensland Department of Health. What is the status of the funding arrangements now existing between the Commonwealth department and the state Department of Health?

**Ms Holden**—The current funding arrangements are under a national health partnership agreement. It sits as a schedule to the agreement. There is a funding agreement in place, and we are currently negotiating an implementation plan as part of that.

**CHAIR**—Presumably there is provision under the recent budget for these funds to be made available to the Queensland government. Is that right?

**Ms Holden**—That is correct. It was in the previous budget—the 2009-10 budget—that we continued funding of \$16.2 million over four years to Queensland Health.

**CHAIR**—So there have been no additional funds in relation to the Queensland part of this funding in this recent budget. Is that right?

**Ms Holden**—That is correct.

**CHAIR**—You may be aware that the Queensland government, in evidence to the committee, noted that there is something in the vicinity of a \$2 million shortfall in the funding arrangements. Their contention is that the services they are delivering on your behalf are not fully funded. Do you have a response to that evidence?

**Ms Bryant**—We are aware of the Queensland submission to the committee. We are also aware that the Queensland Premier wrote to the Prime Minister raising these issues. We are very dependent on the data collected and provided by the Queensland Department of Health. We know that they have moved to establish more robust data collection in recent times, which we are strongly supportive of. The position that we have put—or that we understand that the government has put—is that we would like to look at the enhanced data that Queensland puts together, because the figures they have provided to date, I think they acknowledge, are only an estimate, and over the coming 12 months we will jointly examine the enhanced data and then have further discussions about the cost implications.

**CHAIR**—Has the Prime Minister responded to the Premier's letter at this juncture?

**Ms Bryant**—It is my understanding that he has.

**CHAIR**—Is the response in the terms that you have just provided to us?

**Ms Bryant**—Yes.

**CHAIR**—When will these consultations take place—or have they begun?

**Ms Bryant**—We talk to Queensland regularly, and we have spoken to them I think in the past couple of months. We will continue to have discussions over the next year as the data becomes available.

**CHAIR**—So you are expecting it to be at least a year before this is settled—is that right?

**Ms Bryant**—Normally government would consider issues like this in a budget context, so I anticipate that we would be considering the data in order to provide advice to government to enable it to make decisions in that type of context.

**CHAIR**—So there is unlikely to be any further funding to the Queensland government ahead of the next budget process?

**Ms Bryant**—I cannot comment on the likelihood of the government taking a decision like that, clearly. I can say that we would be seeking to position ourselves to give advice within a time frame that would allow governments to consider matters consistent with a normal budget cycle.

**CHAIR**—I think we also spoke to you last time about the PNG budget. You may have told us—or some officers from the department told us—that the budget for PNG had not been finalised. Can you give us any further information about that situation?



**Ms Bryant**—Just while we get the figures here, there are elements that PNG has moved to provide enhanced funding for, including some funding towards their laboratories—commitments under the package. But there are other elements of the broader package of measures that still await funding commitments by PNG.

**Ms Holden**—There has been a commitment from the PNG government in their recent budget. It was a commitment of around five million kina—I will just have to double check my figures—towards scoping the elements of the measures that they had identified. The PNG government—their Department of Health—is still 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 that was attached to our submission to this inquiry. We are still waiting on advice on which ones that means will be scoped and for which the implementation will start.

**CHAIR**—So this is funding for the Western Province? Is that right? Is it directed specifically to the Western Province?

**Ms Holden**—The majority of the funding is directed towards the Western Province.

**CHAIR**—I see. Have they committed to any of the initiatives at this stage or to none of them at the moment?

**Ms Holden**—Previously they provided in-principle commitment to the initiatives that they had included in the package of measures. Given their budget announcement, which was less than the total indicative cost of what the full range of measures would cost to be implemented, they have needed to review which ones are now captured as part of that budget process. We are waiting on advice.

**CHAIR**—Could you perhaps remind me, Ms Holden, of which initiatives they were, the ones that you were putting to the PNG government?

**Ms Holden**—Certainly. There is a range of different measures that are outlined in the package of measures. They 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. Activity in relation to that one has actually commenced. There is upgrading and improving the Mabudaun and Kunini health centres. They are developing a training school for Rumginae community health workers, strengthening their key 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. Those are the primary ones. There is also funding for the Western Province communication officer as well that is included in that.

**CHAIR**—Did you yourselves make an assessment of the cost of that?

**Ms Holden**—No, we have not ourselves.

**CHAIR**—Approximately how much in Australian dollars is five million kina?

**Ms Bryant**—It is about \$2 million.

**Senator FERGUSON**—Can I ask about the initiatives endorsed by the foreign ministers for cross-border movement of health professionals. That does not seem to get a mention anywhere there.

**Ms Holden**—Sorry, as I was reading through I think I stopped early. That one was a joint proposal. The ones that I outlined were the proposals that had been put forward by the PNG government and that they were funding. The facilitated cross-border movement proposal is a joint proposal between our governments.

**Senator FERGUSON**—So how far advanced is it? I asked Foreign Affairs and it seemed to be going at a tediously slow pace.

**Ms Holden**—It has been going at a slow pace in recent times. Since earlier this year I think we have made significantly more progress than where we were the last time that we appeared before this committee. We have developed high-level guidelines that Queensland Health and the Department of Health and Ageing have put together that would provide the principles for the movement of health professionals and Customs and Border Protection have also developed some high-level guidelines. These have been provided to the PNG government for consideration and comment.

**Senator FERGUSON**—So when would you anticipate it might occur?

**Ms Holden**—In terms of the actual movements under that?

**Senator FERGUSON**—Yes.

**Ms Bryant**—I think our Foreign Affairs colleagues indicated that it is subject of course to final endorsement and agreement between the governments. That is the step that we cannot anticipate.

**Senator FERGUSON**—The point is they said they hoped it would be in ‘the short term’ but I do not know whether ‘the short term’ for Foreign Affairs means one year, two years, three years or four years.

**Ms Bryant**—I do not think we can assist you with that.

**Senator FERGUSON**—Is it true that—I have tried to find this in your submission and I cannot find it right now—the proposal was going to receive funding of \$5,000 per year until 2015? Is that right?

**Ms Holden**—That is correct. There was a small amount of funding provided to cover the administrative costs that would still be associated with the movements.

**Senator FERGUSON**—What do you get for \$5,000?

**Ms Holden**—It looked at the visa and various administrative costs that came along and it counted a number of visits. I do not have the exact costings with me but I can give them to you. I think we indicated the number of movements that would happen under this. 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. 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 come to the Australian health services in a mentoring and capacity building process.

**Senator FERGUSON**—So it is really more of a public relations exercise than a health exercise?

**Ms Holden**—It is a health exercise in terms of better management of referrals back to the health services. At the moment when clinicians refer back they are not necessarily always aware of the conditions where they are referring to and the capacity that the health services have. We hope that this will improve that. There is also the capacity aspect. One of the key focuses is to undertake cross-border health projects. So if there were a joint project—and there is not one in particular in my mind at the moment—that would facilitate the movement to undertake that project. I would like to clarify though that it is certainly not intended to be for the provision of health services.

**Senator FERGUSON**—I am surprised to hear that. On a different tack can I ask you a question that I asked the foreign affairs department, who said I should ask you. If a PNG traditional inhabitant has a communicable disease and comes to the Torres Strait Islands for treatment, what precautions are taken to ensure that communicable disease is not transferred to, in broad terms, guard the public health of Torres Strait Islanders?

**Ms Holden**—In terms of the treatment of PNG nationals, you may be aware of the guidelines that Queensland Health have produced. My understanding is that within those guidelines there is one of the reasons why Queensland Health provide health services to PNG nationals. It is based on humanitarian grounds and on a public health ground. So that is to treat and hopefully reduce the impact of any communicable diseases that people would have. In terms of the treatment, there are normal clinical guidelines that clinicians would follow.

**Senator FERGUSON**—For safeguarding the public health?

**Ms Bryant**—Yes. With a communicable disease, of course depending on the circumstances of the exposure and so on, you can never guarantee that an infection will not be transmitted. Normally what we have are arrangements that are directed at early detection. So we have ongoing surveillance arrangements and the Queensland Health authorities have response arrangements so that if an outbreak of infection is detected there is an early and effective response in terms of treatment with antibiotics or other things, plus the normal sanitation

infection control type measures that health services have in place. But of course you can never give a 100 per cent guarantee that—

**Senator FERGUSON**—Are communicable diseases recorded?

**Ms Bryant**—Sorry?

**Senator FERGUSON**—If a PNG national comes to the Torres Strait with a communicable disease like TB or HIV-AIDS—and TB is probably the most common—is it recorded?

**Ms Bryant**—My understanding is that when an individual is treated by one of the health services in the Torres Strait—or, indeed, if a person is treated in Cairns after an evacuation or whatever—the diagnosis is recorded and Queensland Health collects and maintains data about diagnoses of that sort.

**Ms Holden**—In part, I think that is where the improvement of their information systems, their improved data collection, is around ensuring that there is more comprehensive capturing of the incidences of illnesses such as TB and other diseases.

**Senator MARK BISHOP**—The immigration department provided us with a table of the number of PNG Medevacs. It shows a significant increase from the 2008-09 year of 80-odd patients up to 172 patients and 58 escorts up to 97. So, effectively, it doubled. We were told up there that the cost per unit of Medevac travel used by the helicopter system was something in the order of \$8,000 or \$9,000 per unit travelled. That is an effective blow-out of costs from about \$1 million or \$1½ million to \$3 million per year. That is funded by Queensland Health. Do we provide any funding for that particular purpose, that Medevac exercise?

**Ms Holden**—Not for that specific purpose; however, the \$16-odd million that we provided to Queensland Health over the four years, which I mentioned earlier, is a contribution towards the cost of treating PNG nationals. That is across the range of areas—the clinic services, the Medevac services and the hospital services. We do not direct it to any particular service, but it is our contribution towards the costs that they incur for those.

**Senator MARK BISHOP**—That is \$16 million over four years, is it?

**Ms Holden**—It was \$16.2 million.

**Senator MARK BISHOP**—That is just a budget allocation that we provide to the Queensland Health.

**Ms Holden**—Yes.

**Senator MARK BISHOP**—Has that figure of \$16 million been increasing in more recent years, apart from the CPI?

**Ms Bryant**—Not above the CPI. Funding to Queensland as a contribution to the cost of treating PNG nationals began in 1998-99 and it was then about \$2 million. I think it is currently,

in 2010-11, \$3.969 million. By 2012-13 it is projected to be \$4.36 million. It is increasing, but approximately by CPI.

**Senator MARK BISHOP**—If you have gone from \$2 million to \$4.6 million in 10 years that is a bit more than the CPI.

**Ms Bryant**—I think the present indexation is around the CPI.

**Senator MARK BISHOP**—Nonetheless, if you have gone from \$2 million to \$4.6 million in a 10- or 11-year period, there is a real increase as well. Do you monitor this Medevac thing?

**Ms Bryant**—Only in the sense that Queensland provides data to us and we anticipate that the enhanced information that we will be discussing over the next 12 months will include more detail about that sort of thing.

**Senator MARK BISHOP**—The apparent growth is not yet of concern to our department?

**Ms Bryant**—Senator, I do not know whether I could put it as ‘concern’, but clearly there is an issue of, or discussion to be had around, costs. I think the Queensland submission, from memory, put a figure of \$6 million to \$6.8 million on what they estimated at that point their cost would be. We contribute around \$4 million of that each year.

**Senator MARK BISHOP**—That is the lion’s share, then.

**Ms Bryant**—I think, as you observed at the beginning of the discussion, there is a difference. Queensland estimates there is a shortfall of around \$2 million and presumably that is driven by some of these areas of growth. But the data is emerging anew and that is what we have agreed to look at with them over the next 12 months.

**Senator MARK BISHOP**—All right. Data is emerging—it is new and it has now been studied. You are doing your job. It just struck me that they told us up there that the apparent unit cost was \$8,000 or \$9,000 per shift of person. I thought that was a huge amount and, if the new figures are showing a doubling of usage in one year, there is a problem on the horizon.

**Ms Bryant**—Yes.

**Senator MARK BISHOP**—Thank you, Chair.

**CHAIR**—I want to clarify what seems to be a difference in evidence with regard to the incidence of HIV-AIDS in Western Province. Do you have statistics on that? I think you told us previously that there was, on average, one case per year among PNG nationals who come to the health clinics. AusAID, however, gave us evidence that there was no incidence of diagnosis in Western Province. Do you have any more recent information about that situation?

**Ms Bryant**—My recollection is that we provided you with the information in our responses to questions on notice after the last occasion on which we spoke. Certainly, I think we did tell you that there was one diagnosis, but that is our understanding.

**CHAIR**—That is the most recent information that you have on the subject, is it, Ms Bryant?

**Ms Bryant**—That is correct.

**CHAIR**—I see. All right; that is fine.

**Ms Bryant**—I am happy to take that back and check on that, but certainly that is my understanding.

**CHAIR**—Maybe your information is more recent than AusAID's on this issue. But if you can find the most recent information I would be grateful.

**Ms Bryant**—Actually, Chair, just looking at our response last time, the way in which we couched it was that we had anecdotal evidence from clinical workers in the Torres Strait that, on average, it was one. So what AusAID may be saying is that there has not been one in the most recent year, whereas our evidence is that, if you look at a period of time, on average we might see one a year. That might be where the apparent difference is, in the way we have expressed it. But I am happy to check on our most recent data.

**CHAIR**—The implication of that, Ms Bryant, is that over a five-year period there could be quite a few instances but they would be averaged out, obviously. We could be seeing—

**Ms Bryant**—And in some years, as the AusAID evidence might suggest, there could be none.

**CHAIR**—Yes.

**Ms Bryant**—That is the nature of averages, yes.

**CHAIR**—In relation to presentations of tuberculosis at the clinics, do you have more recent information?

**Ms Bryant**—I think in our answer to a question on notice we did say that PNG had reported an incidence rate of TB in Western Province, as at March 2009, of 552 per 100,000, and they reported that to the Torres Strait Cross Border Health Issues Committee. I am not aware of any more recent data but, again, I am happy to see if there is anything we can provide that would update that number.

**CHAIR**—Is it the Queensland government that keeps these statistics on presentations at the clinics or do you have that information as well?

**Ms Bryant**—No.

**Ms Holden**—No, it would be the Queensland health department, and again we are hoping that, with their enhanced data collection, they will be capturing more of the incidence and we will be able to get much clearer reports in terms of the numbers of patients that are presenting at the clinics and then being treated and referred back.

**CHAIR**—All right. Good.

**Ms Holden**—That will be one of the bonuses once their system is in place: we will get a much clearer picture. We are starting to develop that at the moment, just between our Torres Strait communications officer and the Western Province communications officer. They are looking at how they can share data on TB patients. But the more comprehensive collection will give us a much clearer picture.

**CHAIR**—Okay. Ms Holden, with regard to the initiatives that you have put to the PNG government, have you had any discussions with AusAID about the possibility, if some of those initiatives are not funded, of funding them through the AusAID budget?

**Ms Holden**—Broadly we have had those discussions. AusAID work with the PNG national Department of Health in looking at their projects as well. I have not had any recent discussions in terms of which ones could be covered through other AusAID programs. I am hoping to travel to PNG next month to try and work with the PNG government to clarify their measures and to look at how they will be funded.

**CHAIR**—So do we have some capacity to move them forward on this issue?

**Ms Holden**—We are trying!

**CHAIR**—You are our advance guard on this, Ms Holden, are you? You are going up there to try and move the PNG bureaucracy along on this subject perhaps?

**Ms Bryant**—We are hoping to get clarity around the priorities. And, of course, as you would appreciate, decisions on the allocation of the AusAID budget are taken in a broader context of the overall relationship with PNG—

**CHAIR**—I understand that.

**Ms Bryant**—and they are ultimately matters for that portfolio.

**CHAIR**—Thank you. There being no further questions, I thank the officers from the Department of Health and Ageing for coming to the hearing this morning. We are grateful for the time you have given us. If we have any further questions will let you know. In the meantime, thank you.

**Ms Bryant**—Thank you.

[11.27 am]

**BURNS, Mr Craig Stuart, Executive Manager, Trade and Market Access Division, Department of Agriculture, Fisheries and Forestry**

**CARROLL, Dr Andrew Gerard (Andy), Chief Veterinary Officer, Department of Agriculture, Fisheries and Forestry**

**FLANIGAN, Mr Mark, First Assistant Secretary, Land and Coasts Division, Department of the Environment, Water, Heritage and the Arts**

**HIGGINS, Dr John, Director, Adaptation Policy Team, Adaptation Innovation Branch, Adaptation Land and Communications Division, Department of Climate Change and Energy Efficiency**

**PITTAR, Mr Roland, General Manager, Fisheries Branch, Department of Agriculture, Fisheries and Forestry**

**ROUTH, Mr Nigel, Assistant Secretary, Marine Biodiversity Policy Branch, Marine Division, Department of the Environment, Water, Heritage and the Arts**

**SOUTHWELL, Mr Malcolm, Senior Manager, Northern Fisheries, Australian Fisheries Management Authority**

**CHAIR**—I welcome officers from the departments of Agriculture, Fisheries and Forestry; Environment, Water, Heritage and the Arts; and Climate Change and Energy Efficiency to the hearing. Is there anything any of you would like to add about the capacity in which you appear today?

**Mr Flanigan**—The Australian government's Land and Coasts Division is a joint team of officers from the Department of Agriculture, Fisheries and Forestry and the Department of Environment, Water, Heritage and the Arts. I am the First Assistant Secretary responsible for the Caring for our Country and Working on Country programs.

**CHAIR**—Thank you, gentlemen. I assume a copy of the committee's opening statement has been provided to you. Do you have any questions about that matter? No.

We have submissions from each of the departments—submission No. 13 from DAFF; submission No. 24 from DEWHA. These are public documents. Does either department wish to make changes or amendments to those submissions? No. I think the Department of Climate Change, Energy Efficiency and Water has not made a submission. Does anybody wish to make an opening statement at this juncture?

**Mr Burns**—No.



**CHAIR**—Okay. I will begin and I am sure my colleagues will have some questions for you. I am particularly interested in the management of fisheries and resources in the Torres Strait Region. When we visited the Torres Strait perhaps the most vehement criticism we received about some of the things that go on there was in relation to the way that PZJA manages the fishery. In fact, there was strong criticism of the management of the commercial fishery in the Torres Strait from the TSRA, from the Queensland government and, indeed, from some private interests who have been very directly affected by the consequences of the management arrangements. Mr Southwell, is this your department or Mr Pittar's? Have you seen that evidence?

**Mr Pittar**—Thank you for the question. Perhaps I could mention that the Protected Zone Joint Authority comprises two of the agencies that you mentioned—namely, what was the Queensland department of fisheries and is now part of the Department of Employment, Economic Development and Innovation, and the Torres Strait Regional Authority. The chair of the PZJA is the Commonwealth fisheries minister. So there is a joint decision-making arrangement for the Protected Zone Joint Authority. The authority needs to take account of the Torres Strait Fisheries Act, which is informed by the Torres Strait Treaty that exists between Australia and Papua New Guinea. The nature of that joint decision making is to find a balance between the interests of traditional inhabitants—under the treaty traditional inhabitants have primacy—as well as trying to have effective arrangements in relation to the non-Indigenous commercial sector.

So the criticisms that you refer to from the non-Indigenous commercial sector are criticisms that we are aware of. What we are currently doing—I think we talked about this when we appeared before the committee in late 2009—is to develop, through a consultancy that has been let, a business plan for the management of fisheries in that area which takes into account the aspirations of the commercial non-Indigenous sector and the Indigenous sector, because there are differences in views between those sectors about how the fishery should be managed.

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.

**CHAIR**—That is useful information but it did not answer my question, which was: have you seen the evidence? If you have not I suggest you look at the evidence we took while we were in the Torres Strait, because it is quite compelling. It reflects a deep degree of frustration which is, I must say, underscored by your answer to the question.

The central point of this criticism, which I think it is fair to say has had quite severe commercial consequences for some of those who wish to exploit this resource within the boundaries, is that the arrangements that exist are extraordinarily complicated and cumbersome and that there needs to be some kind of process put in place which would allow for all of those things you are concerned about—that is, a balance between traditional and commercial fisheries,

protection of the stocks et cetera. The thrust of the information and evidence we received was that whatever you are trying to do there at the moment is not working very successfully and, somehow or other, you need to think of a way to provide a better management system. Can you give me any encouragement that this process which you are working through is going to be resolved in the foreseeable future?

**Mr Pittar**—The decision of the PZJA relates to the tropical rock lobster industry, which is probably the sector that is most concerned about the arrangements.

**CHAIR**—Yes, it is.

**Mr Pittar**—I am aware of the efficiency concerns that that sector has and the fact that they are not able to catch the amount of lobster that they would be entitled to due to some existing input constraints. That definitely is having an impact on the sector. The process we are going through is one which we hope will allow the fishery to move from those input restrictions around 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. We hope that those can be removed and that the fishery can move toward output controls and modern fishery management arrangements, which would be, for example, managing on the basis of quota. In terms of fisheries management that is a far more efficient and effective way to go. Part of what the business planning process that I referred to earlier is trying to achieve is to get to that situation. Traditional inhabitants in the area, however, have been uncomfortable with some of the move toward that and have issues. 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. That is the objective.

**CHAIR**—Where are we in this process, Mr Pittar? Are we near to it being concluded, or is that months or perhaps even years away?

**Mr Pittar**—We have had a consultant working on developing the business plan. That is at a point where it can be considered by the Protected Zone Joint Authority in terms of future decisions about the management of the fishery. The PZJA, when it made its decisions on the arrangements for the 2010 season, rolled over the existing input constraints but made it clear that it wanted this to be the last year for those input constraints. It wanted arrangements from next year to take into account the findings from that business plan and try to move the fishery toward those output controls that I referred to earlier.

**CHAIR**—When is the business plan to be presented? Is there a date by which this work will be concluded?

**Mr Pittar**—It is essentially at that point around now. We have a copy of the business plan that has been provided to the Protected Zone Joint Authority for information and we would expect decisions around that business plan to be made in the future.

**CHAIR**—When will that go to the authority?

**Mr Pittar**—It has been provided informally to the authority for information. It will be considered by the authority. There is another administrative review underway, so the PZJA would be looking at it, as we would see it, as a job lot. So there are fisheries management arrangements and the business plan plus steps that could be taken to improve the administrative efficiency of the PZJA itself.

**CHAIR**—It was put to us that the best arrangement here would be for AFMA to do it, but I assume that that is an impractical suggestion in light of the particular arrangements that apply to the management of the fishery within the zone. Is that correct or is it a practical suggestion?

**Mr Pittar**—I might ask Mr Southwell to talk about that a little bit further but, again, part of what the administrative review is trying to do is to have a clearer definition of which agencies do what. But I might ask Mr Southwell to respond on that one.

**Mr Southwell**—Yes, we are aware of the concerns of stakeholders about the complexity of arrangements. We hear it day to day. We have a presence on Thursday Island. There are a range of options being considered in terms of simplifying the administration, and 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.

**CHAIR**—So you are actively considering that as a possibility, are you?

**Mr Southwell**—There was a review undertaken by all the agencies, and there are options being considered.

**CHAIR**—So it is a possibility. Is that being considered in the context of this consideration in relation to the management of a program that you have asked for?

**Mr Southwell**—Sorry; I am not quite sure I understand the question.

**CHAIR**—The plan is going to the authority in a short time. Is that proposal in relation to AFMA part of the discussions that you are going to be having about management?

**Mr Southwell**—No, the business plan that Mr Pittar referred to relates to the tropical rock lobster fishery, and that is to try to deal with the competing aspirations of the two sectors. There is a separate administrative review that the agencies have undertaken to look at ways to simplify and streamline the administration arrangements.

**CHAIR**—Would the rock lobster fishery not be included in that arrangement?

**Mr Southwell**—Yes, it would be. The review applies to how all the fisheries are administered day to day.

**CHAIR**—Where are we in relation to that review?

**Mr Southwell**—That is with the agencies for consultation and comment, and that will go to the PZJA in the near future as well.

**CHAIR**—Simultaneously with the rock lobster consideration or not?

**Mr Pittar**—We are not sure at this stage whether it will be simultaneous or at about the same time, but we would expect that the administrative review that Mr Southwell has talked about and the consultant's work on the tropical rock lobster industry are essentially things which it would make sense to consider at the same time or around the same time.

**CHAIR**—Indeed; it would make an enormous amount of sense for them to be considered simultaneously, because I think this is a reflection of the frustration that at least the commercial fishery has in the straits: that there are just too many layers of bureaucracy here to be able to conduct a reasonably profitable business—consistent, of course, as I say all the time, with the adequate and proper management of the fishery, whether it be rock lobsters or anything else. That is the point. So I am pleased to hear that there is some progress being made about reviewing the arrangements. I am less enthusiastic about the fact that you cannot provide me with any clear time lines and with some confidence that this is going to be settled within a short period of time. I am troubled by the possibility that this will go on for another few months and perhaps even a year and that we will be no better off at the end of the process.

**Mr Pittar**—I understand what you are saying. As I say, if we look at the PZJA decision from last year, the intention is to get that sorted this season so that arrangements for next season are getting away from the sorts of input controls that are currently in place and have been in place for some time.

**CHAIR**—So it will be done in a timely way so that those who are concerned about it will have the opportunity to take advantage of any changes that take place?

**Mr Pittar**—That is the intention.

**CHAIR**—Thank you.

**Senator FERGUSON**—When we were on Saibai, there was considerable discussion about the construction of a new seawall on Saibai. Can someone tell me whether or not this proposal is going to be taken up, because I understand that there has not been any funding allocated for it.

**Dr Higgins**—That is a matter that would be handled within the portfolio for Families, Housing, Community Services and Indigenous Affairs, who are responsible for those infrastructure projects in the Torres Strait, so I am afraid this group is not able to help you with that one.

**Senator FERGUSON**—I would have thought that it was as a result of the department of climate change or some issues relating to climate change that they were requesting the wall be built.

**Dr Higgins**—I am aware that there is some concern on the Torres Strait Islands about the impacts of climate change—

**Senator FERGUSON**—I am mainly thinking of Saibai.

**Dr Higgins**—You are probably aware that when Minister Wong visited the Torres Strait Islands in May she announced a \$400,000 study to get more information about the likely impacts of climate change and possible adaptation strategies. 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.

**Senator FERGUSON**—The \$400,000 might have been better spent helping to build the seawall. If it is another department that has to build it, was it upon the recommendation of the department of climate change that there should be a seawall? Who is actually pushing for this seawall? That is what many of them were talking about. Has the department of climate change had no input whatsoever?

**Dr Higgins**—As I indicated, our role is in generating information that can be used to help make these decisions. Those decisions are made within the FaHCSIA portfolio. Again, I understand that there was some interest in the community in those sorts of issues.

**CHAIR**—We heard from DEEWR that \$40 million was being allocated to some joint research activity on marine and tropical sciences for 2006 to July 2010. Are there any existing arrangements in place for the continuation of that research? That funding would just about be coming to an end.

**Mr Routh**—I am not aware of the specifics, but we have a program called MTSRF. That may be the one that you are referring to, or an intersection with that.

**CHAIR**—It could be. It is a program in relation to the Marine and Tropical Sciences Research Facility. Its funded period is ending in July this year, so I am interested to know whether or not that work is going to continue.

**Mr Routh**—We would be happy to provide the information on our funding program.

**CHAIR**—Would you take that on notice?

**Mr Routh**—Definitely. Unfortunately the right area is not at the table, but we can find that information readily.

**CHAIR**—Mr Skewers from CSIRO provided us with some evidence with regard to a joint survey which was taking place in relation to beche-de-mer. That was apparently a joint activity between AFMA and CSIRO. Can anybody provide me with any further information about whether that joint survey has actually gone ahead?

**Mr Southwell**—That survey has been undertaken. We have a draft report, which is being considered at the moment. That will be released later in the year.

**CHAIR**—Thank you very much.

**Senator FERGUSON**—What are the quarantine restrictions on the islands in relation to the farming of pigs, chickens and things like that? I understand that there are prohibitions or restrictions in place.

**Dr Carroll**—I do not think there are any complete prohibitions on the holding of animals. We do encourage certain practices and the quarantine restrictions that apply through the Torres Strait are based on zoning within the Torres Strait. To move from one zone to another you have to comply with quarantine requirements. Product that is not allowed to move into the mainland is not allowed to move around Torres Strait either. There are sentinel animals held and disease surveillance work carried out through the Torres Strait. We have quarantine officers on all the inhabited islands as well to watch out particularly for animal diseases but also for plant diseases.

**Senator FERGUSON**—If food was to be produced locally on the island and consumed on the island does that present a quarantine risk?

**Dr Carroll**—It could present a quarantine risk if fruit was moved let's say from Papua New Guinea—

**Senator FERGUSON**—I am only talking about if it is produced on an island and consumed on that island.

**Dr Carroll**—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—it is currently in West Papua—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.

**Senator FERGUSON**—It is just that the cost of food is horrendous in the Torres Strait. The regional council informed us that environmental laws and regulatory control or regulatory bodies prevent local inhabitants from sourcing their own food locally. They are not allowed to farm pigs or chickens. Not only are they deprived of a productive income but they are deprived of any opportunity to create any economic wealth through the production of food.

**Dr Carroll**—Some of those restrictions may well be environmental restrictions and not animal health restrictions. The running of poultry and the running of pigs, if you are going to do it on any sort of significant scale, can have significant environmental impact as well.

**CHAIR**—We are grateful to you for coming this morning. We may have some questions on notice which we will direct to you and we would be grateful if you could provide answers to those as quickly as possible. In the meantime, thank you for your attendance at the committee this morning.

[11.54 am]

**HITCHCOCK, Dr Garrick, Private capacity**

**LAWRENCE, Dr David Russell, Private capacity**

**MURPHY, Mr Kevin Michael, Private capacity**

**CHAIR**—Thank you, gentlemen, for attending the hearing this morning. For the purposes of the *Hansard*, could you each please state the capacity in which you appear before the committee.

**Dr Lawrence**—I am attached at the Resource Management in Asia-Pacific unit at the Australian National University. I have done my PhD research in the Fly River and the Fly estuary on customary trade across the Torres Strait. I subsequently was employed by the Great Barrier Reef Marine Park Authority to manage a four-year research program in the Torres Strait called the Torres Strait Baseline Study, looking at the possible impacts of the Ok Tedi mining pollution in Torres Strait. That was from 1990 to 1994.

Following that, I was part of a program called the Ok-Fly Social Monitoring Program, which was a complete social monitoring program of the whole river from the top of the Fly down to the estuary. My area was to survey 30 villages in the estuary. It was part of the process towards the compensation program for mining pollution.

**CHAIR**—I think that gives us a sense of your expertise, Dr Lawrence.

**Mr Murphy**—I appear in a private capacity. I have made a submission where I have outlined my experience in Torres Strait, so I do not need to go over that.

**Dr Hitchcock**—I also appear in a private capacity. I have made some reference to my experience in both Torres Strait Islands and Western Province in areas adjoining Torres Strait on the Western Province coast, including the Torres Strait treaty villages. I do not know whether you want me to expand on that now or perhaps later.

**CHAIR**—I think we can explore that if we need to, thank you, Dr Hitchcock. A copy of the committee's opening statement has been provided to you. Do you have any questions about that?

**Dr Lawrence**—No.

**Mr Murphy**—No.

**Dr Hitchcock**—No.

**CHAIR**—We have submissions from two of you, which have been numbered No. 15, in your case, Mr Murphy, and No. 30 in relation to Dr Hitchcock. We have those as public documents, but do any of you wish to make opening remarks?

**Mr Murphy**—I do not have any corrections to make to my submission but I would like to make a very brief statement, if I might, about something that I have not covered in my submission, which is a major focus of my PhD research—which I am still, at present, writing up at the Australian National University—and that is the way in which the concept of tradition is administratively deployed to classify people and to regulate their activities, as it is in the treaty.

Tradition is an inherently ambiguous concept, and I would like to outline some of the history of this region to give you a sense of the effects that its use in the treaty has on relationship among people in the area. For at least 100 years before colonial annexation, which began in the 1870s and went through a series of stages up through the late 1880s, this region was highly unstable demographically. There was a lot of headhunting going on and people were migrating from place to place. They did not, generally speaking, live in permanent villages. But when we come to today, the people who are classified as traditional inhabitants under the administrative definition must belong to one of 14 villages. So there is an incongruity there between the precolonial relationships across the border and the way in which people are classified according to the use of the concept ‘tradition’ today.

In addition, tradition is used to regulate activities. People are allowed to engage in traditional activities across the border in so-called free movement, but the concept is not clearly defined in the treaty. There is some guide to its interpretation, where it says that the term traditional activities is to be ‘interpreted liberally and in light of prevailing custom’, which probably adds to the ambiguity inherent in the concept. It says ‘except in relation to activities of a commercial nature’. Among the activities that are specifically defined as traditional activities are ‘barter and market trade’. Market trade is explicitly understood in that term to be distinct from and additional to barter.

So, although it is to be interpreted ‘liberally and in light of prevailing custom’, according to the definitional notes in the treaty, we are left with a very vague concept which is on the ground in Torres Strait interpreted quite strictly to mean usually barter. A lot of other activity involving money does go on. There is a constant attempt by Torres Strait Islanders and by Australian law enforcement officials to restrict trading activities to non-commercial activities—however that is understood usually to mean not involving money. But, as I said, a lot of trade involving money does go on, including trade in labour. Torres Strait Islanders employ Papuans, who come across, as domestic servants to work in their gardens and to do their ironing, washing or whatever at the going rate of \$10 a day.

One other thing to keep in mind in interpreting what traditional activity might mean in the historical context here is the fact that from before annexation, before the laws of Australia and the colony of British New Guinea were established, the people in that region had already been engaging with Europeans for many decades beforehand. So what they understand their own traditions to be includes interactions not only with other Torres Strait Islanders but with white Australians and people from all over the world who have settled there.

I wanted to give you a sense of some of the complications that arise out of the use of this concept of tradition. I will leave it there because I know our time is limited.

**CHAIR**—Thank you, Mr Murphy. That was very interesting. Since you have opened up, I might begin with this—and, gentlemen, if you have other contributions, that would be helpful.



Allowing for the ambiguity of the term, is it your view that the ambiguity is not reflected in the way in which the treaty is operating? This is obviously an international treaty and therefore there is a need for a measure of certainty in the way in which it is interpreted. But is it your view that the way in which it is interpreted for the purposes of making the treaty operate reasonably successfully is at substantial odds in relation to the concept of tradition or is it just a matter of peripheral limitation in a way? I am trying to get a sense whether the way in which the treaty operates has in fact captured the essence of traditional activity or whether it is essentially focusing on a narrow part of what might be regarded as tradition and therefore is in fact at odds with the general custom and practices of the region.

**Mr Murphy**—It is my understanding that it is substantially at odds with the ambiguity and the openness of the concept of tradition to accommodate change, in particular the classification of who is and who is not allowed to come across the border under the free movement provisions. 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.

I spent 2½ years there recording stories of the relationships between Torres Strait Islanders and Papuans. It is quite clear to me that there are many villagers who do have relationships with people in the Torres Strait and with places in the Torres Strait going back many generations who are now excluded from the treaty because they do not live in one of the 14 villages.

**CHAIR**—I see. Is there a significant way of discriminating between the 14 villages and others that might properly claim to be traditional villages for the purposes of the exercise? As you may know, we have received submissions to the inquiry from villages that believe that they are traditional—

**Mr Murphy**—Yes.

**CHAIR**—and they ought to be included in the treaty arrangements but are not. On the basis of what you are telling us, it seems that the 14 are rather arbitrarily determined, because the 14 and perhaps another 10 or another three, whatever the number might be, have equally justifiable claims to be included. Would that be a fair statement?

**Mr Murphy**—Yes. But it is not entirely arbitrary. My understanding of what happened is that before 2000, perhaps in 1998 or 1999, the Australian Department of Foreign Affairs and Trade made a request to the Papua New Guinea Department of Foreign Affairs for a clearer indication of who it is that Australia has granted these privileges to. The person who was the Papua New Guinea Department of Foreign Affairs treaty liaison officer in Daru told me that the people in Port Moresby did not know the answer to the question so they sent the question to Daru, to him. Now, his mother is from the village of Mabadauan and his father is from another part of Papua New Guinea. At that time, he had only recently been posted to Daru, so he went to his uncles for advice. There is a longstanding ethnic tension, I suppose you could call it, between Kiwai-speaking people, including those who live at Mabadauan, and non-Kiwai-speaking people, normally classified in the ethnographic literature as TransFly groups of people. So his uncles told him, ‘Here’s your list of villages,’ and that was a list of all treaty villages along the coast, up to Mabadauan, and then Sigabuduru and Buzi—Buzi is lumped in with Ber—are the two Agob-

speaking villages immediately across the coast from Saibai and Boigu. There are four other villages that are now treaty villages further west along the coast and they speak another set of languages again, but because they were on the coast they made representations to this group of Kiwai uncles, who basically controlled the outcome, and they were included in this list of villages later. Basically, these guys pulled a swifty. The answer came back to Australia, and of course the people in the department of foreign affairs did not know the situation on the ground there.

I did write a report about this in 2004 for the department of foreign affairs. I do not know whether you have received a copy of that or not; the committee secretary did ask me for it. I do not actually have property of it because I wrote it for DFAT, but it was also commissioned by the Torres Strait Regional Authority, so I told the secretary that they should be able to obtain it from the TSRA. That goes into a lot of detail about all the villages, who they are and this history of tension between them.

I might just add, to give a greater sense of the effects of all of this on the ground, that when I wrote that report in 2004 I went down to Thursday Island to get access to a computer to write it up. I wrote in there that there was the potential for violent conflict deriving from the tensions there. Two days before I arrived in Daru, the villagers of Masingara walked into Old Mawatta and burnt the whole village to the ground, and I understand one person was killed in the melee. There was a lot of revenge going on in Daru. Masingara people's houses were getting burnt down and people were getting attacked and all those kinds of things. It is not only about the treaty, but the treaty is certainly part of people's understanding of what the differences are between them, the interests they have that are at odds with each other.

**CHAIR**—That was in 2004; have there been any such instances since then?

**Mr Murphy**—Not that I am aware of—not on that sort of scale, no. But it is hard to separate 'this is a fight about the treaty' from 'this is a fight about land ownership' from 'this is a fight about access to the reef'. They are all tied up together. By having this concept of 'traditional inhabitant' vaguely defined in the treaty, my analysis is that the Australian and PNG governments are incorporating these disputes into the administration of the border.

**CHAIR**—Thank you. Senator Bishop.

**Senator MARK BISHOP**—I have a few questions. Mr Murphy, you made some comments about barter and market trade in the original treaty. Barter we understand. What is your understanding of the meaning of the word 'market' and its application in the original treaty? Is it a defined geographic area where people go to engage in trade, like the Old Bus Depot Market here in Canberra, or do you mean the wider concept of market?

**Mr Murphy**—I do not know. It would be interesting to look at the notes of the people who were drafting it at the time to see what they intended it to mean. I suspect that your first meaning is probably what they meant. But I am sure that people on Wall Street say that they are engaged in market trade, so it is inherently ambiguous. I cannot answer your question; I do not know.

**Dr Lawrence**—Perhaps I can help. Most village communities in Melanesia—in Papua New Guinea and Solomon Islands—operate on a dual economy. People may exchange goods for other

goods, or women may have surplus vegetables and they may go to the local market and sell them for cash. So the concept of a market is a wider concept than a commercial trading system. It is very much small scale and family related. Often it is women doing that marketing. Quite a lot of the material that Torres Strait Islanders present—for example, dance costumes, headdresses, mats, brooms, drums and those sorts of things—all come from Papua New Guinea. When they come across, they may be given cash for them, which they go and use in a local store to buy goods, or they may have an arrangement where someone might give them some petrol or something that they need for the house, like timber or iron. So it is a fuzzy arrangement. But it is not an either/or concept. Both can operate together.

**Senator MARK BISHOP**—And it evolves and changes.

**Dr Lawrence**—Yes, and it depends on your relationship with the person. You might say, ‘I don’t know that person, so I will just take \$5.’

**Senator MARK BISHOP**—Mr Murphy, you referred to growing levels of dissatisfaction because there is a growth in population and a shift west in population. The new people who are coming look over the road, so to speak, and see a land of opportunity but are denied access. From those figures we saw earlier, it seems they will be denied access more and more. Apart from general dissatisfaction—such as, ‘He’s got a better life than me,’ or ‘He’s got more than me,’—do you put it any higher than that? Do you forecast untoward consequences from that level of dissatisfaction?

**Mr Murphy**—I would say they have already happened. I outlined the fact that the people of one village burnt down another village in 2004 as an instance of that.

**Senator MARK BISHOP**—Have you identified, since that time, growth in the expression of dissatisfaction?

**Mr Murphy**—No, I would not say growth. I think it was pretty significant then and it still is now.

**Senator MARK BISHOP**—Equally, it could be characterised as an aberration—just one instance six years ago.

**Mr Murphy**—I do not think it would be accurately characterised as an aberration. I think it is a manifestation of the tensions that are pre-existing. It takes a small catalyst to set off those kinds of events.

**Senator MARK BISHOP**—But it has not been set off since.

**Mr Murphy**—Not as far as I am aware.

**CHAIR**—While we are on that theme, the critical thing from our perspective is the extent to which these treaty arrangements might be feeding in to any traditional or long-lasting animosity that might exist between villages or tribal groups. Obviously we Australians cannot take responsibility for what is going on there, except insofar as the treaty arrangements might be a

source of tension between these villages. What is your assessment of the extent to which the arrangements that exist between the two countries are a source of friction amongst these groups?

**Mr Murphy**—I would say they are a significant source. I think you are going to have Mr Sawabbari give evidence by telephone after us. He is likely to outline some of the grievances that people from the village of Masingara—where he is from—have. I travelled widely through the region, both through treaty villages and talking to people who believe they should be part of the treaty but are no longer. It was very clear to me—they made it very clear—that they are not happy and they want to see things changed. They do not know how to go about doing it. Mr Sawabbari is making a career of trying to influence politicians in Papua New Guinea and in Australia. They joined as parties to the Torres Strait sea claim primarily to have their voice heard over the issue of the treaty rather than anything else. It is not just the village of Masingara; there are several other villages as well. They talk from time to time about just going anyway, and some people have actually done that, but when they are confronted by the Australian border enforcement officials they realise that physical force is not on their side so they submit.

**Senator MARK BISHOP**—Senator Trood was trying to pin you down to the causal feature.

**Mr Murphy**—The cultural feature?

**Senator MARK BISHOP**—No, ‘causal’—the cause that might have generated that instance of violence and perhaps will generate others in the future. You were saying that the treaty itself causes dissatisfaction, particularly amongst those on the outer—those who do not have the benefit of the concessions in it. But equally, if there were no treaty and you had a bunch of very poor people up there, looking down the road and seeing an extraordinarily wealthy community three miles down the road, with or without a treaty they would be aggrieved and be saying to themselves, ‘We’d like a part of that—and why shouldn’t we have it,’ wouldn’t they? There is no difference.

**Mr Murphy**—I think you are confusing two questions there, with respect. I am talking about the tensions between villages on the Papua New Guinea side—

**Senator MARK BISHOP**—Yes.

**Mr Murphy**—not the grievance that Papua New Guineans, whether from treaty villages or non-treaty villages, have towards the Torres Strait. I do not think that they hold Torres Strait Islanders personally responsible for their plight. They do not blame the fact that islanders are lucky enough to be within Australia and they are not on Torres Strait Islanders.

The treaty now excludes some and includes others—on what turned out to be basically an ethnic basis—with its administrative application. However, there are a whole lot of other so-called causes, if you like use that terminology, or associated factors. It is not just about the treaty. But by having the treaty use this concept of ‘traditional inhabitant’, in the way it is defined, all of those other disputes—over land ownership, because people have migrated from the east towards the west onto land that others say is not theirs; over the history of colonialism, such as who was first to encounter missionaries, for example, which is a source of tension, dispute and anger between some groups; and over status within the region on Papua New Guinea—become implicated in the definition of the treaty. So you cannot separate it out and say, ‘It’s because we

are excluded from the treaty; that's the cause.' Likewise, you cannot just say, 'It's about land ownership; that's the cause,' because all of these things are interconnected.

**Senator MARK BISHOP**—But in the 14 traditional villages that are included in the treaty, all of those people and their families have a set of benefits—

**Mr Murphy**—Yes.

**Dr Lawrence**—Yes.

**Senator MARK BISHOP**—which involve crossing over to Australia and all those sorts of things. Do people who are—either incorrectly or correctly—not of those 14 villages seek access to the same set of benefits that the treaty villages have?

**Dr Lawrence**—Yes.

**Mr Murphy**—Yes.

**Senator MARK BISHOP**—Let us follow your line of thought. What does that mean? There is a population shift in PNG from east to west. There is huge population growth in any event. There are people from inland shifting south and wanting access to coastal areas. From the perspective of the Australian government I ask: do we just open the doors and every five years renegotiate the treaty and include more and more villages and villagers? Do we cut off those in the 14 villages who you say were incorrectly identified and arguably should not have had access to that set of benefits?

**Dr Lawrence**—It is also a question of development prospects and lack of development in the western province.

**Mr Murphy**—That is exactly what I was going to say. My written submission tries to make the point most forcefully that it is the desirability of getting access to Australia because of poverty on the other side. That is the fundamental cause of all this.

**Dr Lawrence**—Dr Hitchcock worked extensively near the West Papuan border, Mr Murphy in the centre and my area was the east. So we cover that whole south-west coast. You would be surprised. Where I worked a village of 1,000 people is not unusual. They are very poor by normal standards. 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. Parents have to go almost every day to feed their children who live in the high school. The whole system is breaking down. It is not Australia's responsibility to build up the western province, but 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. That is why we are here.

**Senator MARK BISHOP**—Dr Hitchcock, you talk in the second paragraph of your submission about population growth.

**Dr Hitchcock**—Yes.

**Senator MARK BISHOP**—You might go on the record and discuss the size of it, the significance of it and try and relate that to the opportunities or lack thereof that leads into the comments your two colleagues were making.

**Dr Hitchcock**—Thank you. If I might just begin by very briefly stating, as I do in my submission, that I think this highlights the lack of input from social scientists, such as ourselves, into research, policy and administration. The example with the 14 villages is classic. The three of us together, as Dr Lawrence and Mr Murphy have pointed out, know this area. The three of us together know the area better than anyone. We have lived and worked on both sides of the border. It has not often been the case that we have been asked to have input into these sorts of matters.

Moving on to the demographic issue, yes, at the 2000 census, the population of Daru was 13,000. There will be a census this year—2010—and we can expect the Daru population to be far greater. At the 2006 census the population of Torres Strait Indigenous and non-Indigenous was in the vicinity of 7,000, so Daru itself is twice the population of all the Torres Strait islands. Then, of course, the 14 treaty villages were about 5,000 strong as at the 2000 PNG census.

As I point out, I see this as a major issue in terms of resource use in the Torres Strait generally. As you mentioned, 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. I participated last year in a joint awareness visit funded by DEWHA and the PNG Department of Environment and Conservation. 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.

As well, we have developments in West Papua. I worked on the Bensbach River, which is the last river to the west in the Western Province. The mouth of that river forms part of the international boundary with Indonesia. Merauke is a city of at least 80,000 people. If you do Google Earth and have a look, you will see just how enormous it is. Altogether the Merauke regency or district has about 200,000, at least, including the town of Merauke. There has recently been a discussion about having large farming developments there, making it a rice bowl for the Papua province and that the population could go up to 80,000. It has been mentioned in the media. I do not have the full facts about those proposals. Suffice to say that is an issue as well.

My PhD thesis examined issues to do with the porous border. Papua New Guinea and Indonesia have a similar treaty arrangement that allows for traditional visits. Again, there is a lot of commercial activity taking place as well as people movements and poaching. So the demographic issue is one thing I would like to highlight, which I have also done in my submission. I think it is a real cause for concern and feeds into these issues. 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. Everywhere people try to make some sort of surplus by catching dugong or turtle or fish or deer or wallaby or what have you and trying to sell that.

Most villages have markets where that is a cash-generating activity, as well as across the border with West Papua for those people in Western Province who live close to the border and in the Torres Straits. A lot of people are often selling things, as we often see on Saibai and Boigu in particular. All up I would suggest the demographic issues with the population rates I cite are cause for concern for both states.

**CHAIR**—Dr Hitchcock, are the population growth rates largely a consequence of internal migration or are they a consequence of high birth rates?

**Dr Hitchcock**—High birth rate. There is enough limited medical care that has reduced infant mortality. I do not think life spans have improved that much, but basically you have more children being born and more children are surviving despite very limited health care. In terms of migration, that is particularly the case at Daru where you are getting movements of people to the bright lights of Daru, if you like. Daru is not the pearl of the Pacific; it is probably the worst provincial capital in Papua New Guinea in terms of a range of measures. It is not a particularly safe, clean or pleasant place to live and raise a family, but people from the Fly River estuary and the coast across the Fly River, on the eastern side of the Fly, as well as from the lower Fly continue to move to Daru in search of the limited opportunities that Daru presents as the urban centre for the southern part of Western Province.

**Dr Lawrence**—Senator, may I make an explanation. One of the characteristics of population in Melanesia, particularly Papua New Guinea and the Solomon Islands where I have done a national survey of 300 communities, is that you have an enormous youth bulge. So people die at an early age, but there is a huge population of young people and young people are very reproductive. Teenage pregnancy, for instance, is quite a major issue in villages. Young men and young women are basically underemployed and undereducated and a consequence of that is they have children very young. So this youth bulge is moving slowly up and there is nothing for people to do. There is no work and there is no education for them, and so you have an idle population and it is a source of great problem.

**Senator MARK BISHOP**—Those comments you make are entirely correct. Our issue is the Torres Strait Regional Authority and the treaty. Whilst you properly raise those legitimate humanitarian concerns, as did Dr Hitchcock, our primary concern is the implications for the authority, the treaty and our border areas. So you might, having identified those humanitarian concerns, care to do a little bit of forecasting in terms of implications for us, whether it be in immigration, border control or whatever. That is our particular interest.

**Mr Murphy**—It can be said very simply the implications are 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.

**Dr Hitchcock**—And that immediately adjoins another borderland, the border with Papua province, which is porous. There are many pest species that have come across as a result of transmigration from other parts of Indonesia to that area. I make mention of this in my thesis, and there have been other people who have written on the subject. This is all feeds into the security and stability of the Torres Strait region. The mouth of the Bensbach River is technically the north-west corner of Torres Strait. It is where Asia meets the Pacific politically.

**Dr Lawrence**—When I was doing my research in the Fly estuary, which is a long way away from the Fly crossing the border with Indonesia, villagers were bringing anabas, a small fish they call walking fish. It is a little tilapia that is grown in fishponds in Merauke. People have dumped it in swamps and places like that. It has actually migrated right down the Fly River into the Fly estuary. You can find people collecting and frying this Indonesian tilapia fish. It is very spiny—it is quite a nice fish to eat, actually—and when the bigger fish like barramundi eat it chokes them, and you see a lot of dead barramundi around. That is just a single case of pest intrusion into that area.

**Dr Hitchcock**—That species is now being found on Saibai and Boigu in the Torres Strait—*Anabas testudineus*, the climbing perch.

**CHAIR**—Are you of the view that the Australian agencies that have responsibility for managing the range of policy matters that are of concern to us are fully conscious of the kinds of challenges that you are referring to?

**Mr Murphy**—It is very hard to generalise about them. There are so many of them it is hard to work out who is responsible for what and what exactly they are doing.

**CHAIR**—Yes, we have had that problem.

**Mr Murphy**—If it is hard for us, imagine how hard it is for people from Papua New Guinea who just come across and are confronted by the various agencies. It seems to me that some of them are quite paranoid about the threat of invasive species and put in place all sorts of processes to try and prevent those spreads. Various human infectious diseases are a case in point: Japanese encephalitis, dengue fever and various others. They are very vigilant and put a lot of time and effort into trying to prevent the spread of those things. In terms of the politics on the ground across the border, I think that they are not very well known among bureaucrats at all.

**CHAIR**—Dr Hitchcock, in relation to your demographic work, do you have a percentage figure at which the population along that coast is growing? You said you are waiting for the census to come out this year.

**Dr Hitchcock**—In my PhD for communities on the Bensbach I provide that data. Again there is a rich load, if you like, of information given that it was Australian territory. We find with reference to some of these Torres Strait matters, who is in and who is out and what have you, that people have not delved into that store of data that the colonial administration gathered in a very accurate way. I am happy to supply some figures for you at a later date. Dr Lawrence as well has done some work on the census data and from the fifties and sixties we could certainly provide you with some figures.

**CHAIR**—I would be interested if you have those readily available.

**Dr Hitchcock**—My understanding is that, as I say I cannot recall now, it is 2.6 or 2.9 per cent nationally. That would be in keeping with the sorts of trends that we see when we look at those figures over the last three to four decades for which we have data. Some of that data comes from patrols by kiaps or patrol officers in the colonial period as well as the national census in PNG,



which really gets underway in 1970 or thereabouts. We do have some earlier figures. I would be happy to provide something to the committee if that is appropriate.

**CHAIR**—We are obviously interested in the more contemporary material and the projections.

**Dr Hitchcock**—I certainly have with me here something that was submitted as part of the Torres Strait sea claim which I would need to amend slightly but it has the 2000 PNG census figures as well as the figures for Torres Strait in 2006.

**CHAIR**—We would be grateful for any information you can provide. The impression that I am receiving from your evidence is that this is a more underdeveloped part of Papua New Guinea than perhaps other provinces and that in the time that you have been researching there, there has not been any significant increase in the delivery of services from Port Moresby into this province. In fact I am not sure whether it is a supplicant province or whether it is the poorest province in Papua New Guinea, but you all seem to be saying to us that we cannot expect that there is likely to be any significant improvement in the kinds of services which the Papua New Guinea government will provide to this province and these villages. There is unlikely to be any significant improvement for example in relation to health arrangements, work schemes or economic development. Is that a fair statement?

**Dr Lawrence**—That is a very correct statement. It is the most marginalised province in Papua New Guinea and basically in Port Moresby it is seen as rubbish country. It is not considered to be terribly useful, productive or important.

**Dr Hitchcock**—There are no resources there that anyone wants basically. There are no great stands of timber, there have been no great oil, gas or mineral discoveries. It is off the beaten path and it is very peripheral. People will do whatever they can to try to improve their standard of living as well as their health care as I made mention of to try and do their best, as we would for our children, and they are looking elsewhere. At Morehead, which is the major centre in the western part of the South Fly district, they now have a Chinese built primary school. I was up there last year and it was a great surprise to me to see at least a dozen new buildings built by the Chinese which were organised by the member for South Fly, the honourable Sali Subam. This is the backblocks and I was surprised to see this development.

**Mr Murphy**—The town of Daru is almost universally recognised across Papua New Guinea as just about the worst place to live. It is a very impoverished and difficult town.

**CHAIR**—Parts of these communities have a closer connection to Torres Strait and the communities of the Torres Strait than they have to parts of PNG. Is that a fair statement?

**Mr Murphy**—Yes.

**Dr Lawrence**—In the villages that I worked in people actually spoke much better Australian English than Tok Pisin. They listen to Australian radio and have that sort of contact. They are very much associated with the south.

**Mr Murphy**—Many people, particularly some of those Kiwai-speaking villagers, identify themselves first and foremost with Torres Strait. They do not say they are Islanders, necessarily

but they will say, 'I'm from Torres Strait.' They are from the coast on the PNG side of Torres Strait. A large part of the sense of where they fit in in the world is in the Torres Strait.

**CHAIR**—Finally, because we have to move on, it has been suggested to us on several occasions, that any issue regarding the admission of further villages as treaty villages is really a matter for the PNG government, and that if villages are aggrieved by their omission from the process then they ought to be petitioning Port Moresby to act to include them in the arrangements. From one perspective one can see the virtue of that; it is none of our business, in a way, for the Australian government to be telling Papua New Guinea who should be included. I would be interested in your response to that as a solution to the problem.

**Mr Murphy**—In effect that is what has been happening since before I wrote that report in 2004. It has been Australia's response to people who say we should be in the treaty. The reason I was commissioned to write that report was to help the Australian Department of Foreign Affairs people and the people in the TSRA to understand these stories that people were telling them about why they felt they should be part of the treaty. But the response has always been that if Papua New Guinea comes to us with a request to change the existing arrangement then we will consider it on its merits and in consultation with Islanders, but it is not up to us to tell PNG that they have it wrong in the first place. The effect of all of that is that nothing happens, because the people from the excluded villages have been attempting to lobby their own bureaucrats and politicians for 10 years, without success.

**Dr Lawrence**—Perhaps you may end up with a similar situation to the current identification, where the message goes to Port Moresby, Port Moresby sends it to Daru, and the person on Daru, with links to other villages, says this, that and another thing and, 'Take the other ones off.' I think perhaps some identification from this side would go a long way in pushing the case for other villages to be—

**Dr Hitchcock**—It requires that historical and ethnographic expertise that we have, in my view.

**CHAIR**—But on the face of it, gentlemen, the proposition that has been put to the committee—that this is essentially a PNG issue—has a certain international logic to it, if I can put it that way. Australia may have a wide range of interests in Papua New Guinea but does it actually want to prosecute an issue of this kind when there are so many other matters of concern?

**Mr Murphy**—That is perfectly reasonable and a consequence of the fact that we have two nation states trying to respect each others sovereignty.

**CHAIR**—I have just one more thing I wanted to ask you about. As I understand it, Dr Hitchcock has some views on the treaty consultative mechanisms, as I understand it. Do you have any observations about how well they work and how you might improve them?

**Dr Hitchcock**—There is a cycle of bureaucrats and treaty liaison officers coming and going. I have known the last four who have been working in the Thursday Island office. They were all very good officers but in terms of corporate knowledge and those sorts of issues—not to mention the wider things we are talking about today including the history, cultures and traditions—

managing things like turtle and dugong is ultimately about managing people and their behaviours. We are talking about cross-cultural issues and long-term historical matters. It is my view that the three of us have something to contribute, particularly to the consultative mechanisms—the traditional inhabitants meetings and the JAC, for example—as I have pointed out. You cannot fully appreciate what is happening in the Torres Strait and the region unless you address these issues of history, people and ethnicity. I think we have something to add.

**Mr Murphy**—Could I just say one more thing about the question of any potential for change to the list of treaty villages. I agree with Garrick that we do have something useful to contribute, but I think Torres Strait Islanders themselves have a right to be consulted about who they understand themselves to have traditional relationships with as well, which did not happen in the past. Many Islanders who I have spoken to acknowledge many generations of relationships with people who are now excluded.

**CHAIR**—Thank you very much, gentlemen, for coming along and giving the committee the benefit of your knowledge. It has been most interesting and indeed most helpful. We are very grateful to you. We may have some questions that we might choose to ask you on notice. If we do then I would be grateful if you could provide answers to them. Dr Hitchcock, if you could provide those population figures, that would also be very helpful to us.

**Dr Hitchcock**—Certainly—if I could do that by Monday or Tuesday next week?

**CHAIR**—As soon as you can do it. That would be helpful. Thank you.

[12.46 pm]

**BUIE, Mr Paul Giwei, Agent and Facilitator, Masaingle Association Inc.**

**KEMPTON, Mr David, Solicitor, Preston Law**

**KERR, Mr Andrew, Consultant, Preston Law**

**PENA, Mr Peter, Principal, Peter Pena and Associates Lawyers and Attorneys**

**SAWABARRI, Mr Peter Niwia, Chairman, Masaingle Association Inc.**

*Evidence was taken via teleconference—*

**CHAIR**—Thank you very much for joining the committee this afternoon. Do you have any comments to make on the capacity in which you appear?

**Mr Sawabarri**—I appear for and on behalf of the people of Masingara village, Western Province, Papua New Guinea. I am the chairman. I was duly elected through the processes of the electoral commission laws of Papua New Guinea to hold this position as the chairman and I am the tribal leader of my people.

**Mr Pena**—I am a solicitor for Mr Sawabarri and the Masaingle Association, from Port Moresby, Papua New Guinea.

**Mr Kerr**—I am a solicitor of Preston Law in Cairns and I have been assisting the Masaingle Association and Mr Sawabarri as a party to the Torres Strait regional sea claim. I have assisted in the preparation of the submission of the association, which was primarily prepared by Mr Pena and on the instructions of Mr Sawabarri. I do not actually propose to give any evidence to the Senate committee hearing this afternoon.

**Mr Buie**—I am from Cairns and I am the elder of the Mlobo tribe from Papua New Guinea. Mr Sawabarri will talk on behalf of me and my people.

**CHAIR**—A copy of the committee's opening statement has been provided to you. Do you have any questions about that document?

**Mr Pena**—No questions.

**CHAIR**—The Masaingle Association has made a submission. We have numbered it no. 8 of the submissions to the inquiry. It is now a public document. Do you wish to make any amendments to that document?

**Mr Pena**—We do not wish to make any amendments to the document, but I think Mr Sawabarri has a very short remark to make to put the association in context.

**CHAIR**—We are happy to hear that in just a moment but before he proceeds I will just confirm to you that your evidence is protected from any adverse treatment within Australia but of course Australian law cannot protect witnesses in another country. Therefore, you should not say anything in public proceedings which you think may penalise you in your country. Having said that, we would be very happy to receive an opening statement if you have one to make to the committee. Please proceed.

**Mr Sawabarri**—I greet you today on behalf of my family, my extended family, my tribal family and the Masaingle people spread throughout the Torres Strait and Papua New Guinea. We come from the main village of Masingara on the estuary of the Binaturi River on the Papuan coast. We speak the Bine language. Anthropology has it that we originated from these parts of Papua and have migrated and settled on the islands of the Torres Strait over 40,000 years ago. I greet the committee today as a Melanesian leader of my people and as the leader of the original people of the islands of the Torres Strait.

Today we are here to talk about the Melanesian islands of the Torres Strait—my islands, my sea and my territory. Let me therefore state the premise of this meeting for your official records. My address to this Australian federal Senate committee and my original submission of 29 October 2009 does not mean I recognise or legitimise any legal rights of ownership or assertion of occupation by the Commonwealth of Australia or the state of Queensland over the territories that I claim are the traditional belongings of the original people of the Torres Strait whom I represent.

You know the history of these Aboriginal lands called Australia and of European occupation only 200 years ago. Australia came about as the jails in England were full and America was off-limits due to the war of independence. Forgive me for being straightforward or perhaps simplistic but your English ancestors took the land of Australia that was not theirs to take. Some people describe this as stealing. The land, as we know, belonged to many hundreds of nations of Aboriginal people who freely inhabited this great continent and the island of Tasmania. The early colonies of Tasmania and New South Wales grew, extended and prospered and you became a Federation known as the Commonwealth Australia in 1901.

As your need for land and resources grew you took more from the Aboriginal lands. You discarded the Aboriginal people as an afterthought of your plunder. You passed laws to legitimise taking and using what was not yours. You disregarded the Indigenous people and their rights, granted to them by the Creator since time immemorial. In some cases, they were hunted and massacred like animals. I am speaking to your general history because it is necessary to give proper historical context and perspective to this occasion. What I have to say may be a little uncomfortable but please bear with me.

Your history reveals that the unlawful annexation and taking of the Torres Strait islands by the colony of Queensland on behalf of the British monarchy was an afterthought to the taking of the Aboriginal mainland. The Melanesian islands of the Torres Strait were never a part of the original colonisation of Australia. When the Melanesian islands of the Torres Strait were eventually annexed and declared crown land of the British monarchy, you took something that was sacred from us. When you took our lands and our seas, you took our birthright, you took our life, you took our past and our heritage and you denied us a future. You never asked us what we thought or explained the meaning of your actions. This became your first act of dispossession.

Your second act of dispossession took place immediately after the High Court decision in 1993 on the Mabo case, recognising and restoring my people's traditional and continuous ownership of our islands and restoring it to us. You passed native title legislation at both federal and state levels to deny us our birthright once more. My uncle Eddie Mabo may come from the island of Mer, but his roots are deeply set on the banks of the Binaturi River. The legal myth of dispossession called 'terra nullius' has been discredited and debunked. He is dead, but his sons are very much alive on both sides of your artificial line.

In the period between 1973 and 1974, the Australian government drew up territorial boundaries for what was to become the independent state of Papua New Guinea. As the colonial master, Australia was literally instrumental in the process of separating our people on the mainland from those on the islands, depriving us of our land and sea tenure in the Torres Strait. It destroyed our society and way of life as one people and one society. You cannot begin to imagine how much we have suffered all these years from your enforced act of separation. You have suffocated us as seafaring people.

Today your newspapers and television media and your government publications brand us illegal border crossers, overstayers, disease bearers and unnecessary dependants coming to rob your welfare system. You have used welfare colonialism to call up the island leaders to create fear and suspicion among our people. You paint a picture of the evil hordes of Genghis Khan—of the north invading the islands of the Torres Strait to steal, rape, pillage and destroy. You treat me as a stranger and lawbreaker on my own seas and my own lands.

Despite the social problems caused in the Torres Strait by your deliberate, prohibitive and restrictive laws, I stand here on this great land of the Yidinji and Tjungundji people a free man before your committee to declare for the record that I am not a thief. I only want what is mine and what belongs to my people returned to me. I do not recognise the Australian-PNG border and the border treaty. The territorial boundary is an evil line of dispossession. The treaty has its origins in the mark and mind of sovereign trickery, a breach of trust on the part of the Commonwealth of Australia in 1973 and 1974, leading up to Papua New Guinea independence.

Mr Chairman, I do not want to visit you and your committee with the generational sins of your forefathers and your predecessors in the offices you hold. We are all generational men and women of our time, and I am respectful of you and your colleagues. It seems to me that you and your committee, on behalf of the Commonwealth of Australia, have a unique opportunity here today to do the right thing: to correct a historical wrong and give me and my people back what is rightfully ours—our birthright, our life, our past and our future.

Mr Chairman, today you are hearing from me—one man speaking to you about my Melanesian islands of the Torres Strait. Tomorrow you will hear several thousand voices, more educated, more eloquent, screaming and demanding what is theirs. My sons and daughters already know their lands and seas. You will not deny them. This place will not deny them. History will not deny them. We will not rest until the God of Abraham, the God of Jacob, the God of David, the God who created the heavens and the earth and planted the stars in space, the God who created our Melanesian islands of the Torres Strait and placed my people on them hears our cries and answers us from his holy hill. Thank you Mr Chairman and senators. May God bless you all.

**CHAIR**—Thank you Mr Sawabarri. Before we proceed, I would just like to let you know that I am here with my colleague the Deputy Chair of the committee, Senator Mark Bishop from Western Australia. Unfortunately, the other committee members have had to leave us. We will ask you some questions. We are a committee of the Senate and we are inquiring into the administration of the Torres Strait Treaty arrangements. What we are able to do constitutionally is make recommendations to the Australian government as to possible changes or reforms we think might be necessary. We have absolutely no capacity to be able to force the Australian government to make the changes we might recommend. The best we can do is to listen to the evidence we have heard over the period of time we have been conducting this inquiry and make some suggestions. The Australian government may or may not accept those suggestions, so our capacity here is somewhat limited. I would like to begin our questions by asking you about the extent to which you have made representations to the Papua New Guinea government about your situation with regard to the Torres Strait.

**Mr Sawabarri**—We have not, but we will. This will be a follow-up to the submission that we have made to the Senate inquiry. We have circulated our submission and they are very much aware that we are backing that up at today's hearing.

**CHAIR**—So you have not made any representations to the Papua New Guinea government at this stage?

**Mr Sawabarri**—Not formally; that is correct.

**CHAIR**—But you are intending to do so?

**Mr Sawabarri**—That is correct.

**CHAIR**—Have you taken any legal proceedings with regard to the claims that you make?

**Mr Sawabarri**—Not as yet. But back in 2009 because of the failure of Papua New Guinea national foreign affairs and political leaders to attend to the issues we have raised in light of the flaws that were discovered—and, for your benefit, Kevin Murphy's research begins from our efforts and our work—we have registered a case against the state of Papua New Guinea. That is on hold and we will revisit it in due course.

**CHAIR**—How large is your association? How many people does the Masaingle Association speak for?

**Mr Sawabarri**—There are seven Bine-speaking villages between the Gizra and the Gidra, of which Masingara is the biggest. We alone represent about 4½ thousand people. For the whole Binaturi we represent in the vicinity of 7,000 to 10,000 people. We cover as well the families and people in the Torres Strait.

**CHAIR**—Your villages are currently excluded from being among the traditional villages. Is that correct?

**CHAIR**—Your association, your villages, are currently excluded from being among the traditional villages. Is that correct?

**Mr Sawabarri**—That is correct.

**CHAIR**—So you have no particular rights under the treaty, no rights of movement back and forth under the traditional rights of the treaty.

**Mr Sawabarri**—That is correct.

**CHAIR**—Do I take it from your submission that you are not seeking those rights, that you actually have a rather more radical proposal to put to us?

**Mr Sawabarri**—It may appear radical to you but it seems natural to us. We are not seeking those rights.

**CHAIR**—When we have discussed this with the Australian Department of Foreign Affairs and Trade in particular or more broadly the Australian government with regard to claims for villages to be included under the treaty scheme which are currently excluded, the response that they make to our inquiries is that the Australian government would be prepared to entertain a request from the Papua New Guinea government were a request to be made from them to include other villages. What is your response to that proposal?

**Mr Sawabarri**—Naturally we do not recognise the treaty. We have reasons. When you see the actual notes that are written, and it is binding, in the practical essence it has not been what is written. When it came into force and for Mr Murphy's latest in-confidence report there was a lot of awakening. Though we started on record, and there will be Australian records because it dates back to 2003, prior to Murphy's report, it is more like the deeper meaning of our course. Mr Murphy's presence only encouraged others who I believe should not be included if someone was to say they should, and that is the Papua New Guinea government. On record the border liaison office and the Papua New Guinea Foreign Affairs really do not know what they are to do in this situation because we identify our identity and our representation. We have participated in the sea claim at our own expense and in the absence of government support. On record I have been maintaining to the Native Title Tribunal and the federal courts that there will not be any better determination on the sea case which was brought about by the parties in the federal courts and our involvement now. I maintain that the treaty really has got nothing as far as its initial purpose of what it was supposed to deliver. The current situation that has developed and what we are trying to address at the political level is the misdoings of the past. That is why we do not at all recognise that treaty. Up till now our approaches to the Papua New Guinea government have fallen on deaf ears, so there is no point for us to become a treaty village when our own system has not understood the suffering and the pain that we have come through.

**CHAIR**—Mr Sawabarri, I think we have a fairly clear understanding of your position from your written submission to the committee, your opening statement and the oral evidence that you have given us today. I do not have any further questions for you and I do not think the other committee member here, Senator Bishop, has any questions for you, so we will conclude this part of the inquiry, unless you have anything briefly you want to say to us.

**Mr Pena**—Mr Chairman, sorry to interrupt. Would you like a copy of Mr Sawabarri's opening statement? We would be happy to make it available to you as part of the evidence.



**CHAIR**—It will have been recorded on *Hansard*, so we will have a copy of the statement.

**Mr Pena**—His pronunciation of the words may not necessarily be accurate. I thought you might want it for accuracy, that is all.

**CHAIR**—That is probably a good idea. Perhaps you could forward a copy to the committee secretariat, would you?

**Mr Pena**—Yes, it would be a pleasure.

**CHAIR**—That will help us with the spelling and the names.

**Mr Pena**—Yes.

**CHAIR**—Thank you for your attendance today. We are very grateful to you for assisting the committee with this inquiry. If we have any further questions we will submit them to you. In the meantime, thank you very much.

**Mr Sawabarri**—Mr Chairman, when do you intend to report to the Senate on this matter?

**CHAIR**—We are hoping to conclude the inquiry reasonably quickly now, perhaps in a month or so.

**Mr Sawabarri**—We would still kindly, if you wish to back up on what we have submitted, make a kind gesture of invitation. I believe, at the opening of the hearings, you went to find out about the people of the Torres Strait. If one or two of the members can travel to Masaingle we are willing, because ‘seeing is believing’, for you to see our location and who we are. That will give a better understanding that we are not bush people but we are positioned right near everything that has been defined in the treaty documents. May that humble request be left with you today.

**CHAIR**—Thank you for the invitation. I think it is probably not going to be practical for us to accept that invitation at this stage because I think we have a fairly clear understanding of your position and we can deal with the proposals you are putting in the context of that information. But thank you for the invitation, Mr Sawabarri.

**Mr Sawabarri**—Thank you, Chairman.

**CHAIR**—That concludes our proceedings and I declare the committee adjourned.

**Committee adjourned at 1.12 pm**