

# Chapter 6

## Law and order

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

### Movements across the border

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

These [treaty] provisions, and the geographical proximity to PNG, have led to the adoption of entry arrangements for traditional visitors that are tailored to the unique circumstances of the Treaty zone and recognise the important role that local Island Councils play.<sup>4</sup>

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

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

---

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

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

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

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

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

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

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

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



*Visitors from PNG arriving at the designated entry point, Saibai*

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

---

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

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

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

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



*Visitors from PNG coming ashore to trade, Saibai*

---

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

12 TSIRC, *Submission 9*, pp. 2–3.

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

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

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



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

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

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

---

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

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

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

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

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

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

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

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

## Overstayers

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

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

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

---

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

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

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

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

22 *The Guidelines for Traditional Visitors*.

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

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

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

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

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

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

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

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

---

24 *Submission 2*, p. 1.

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

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

27 *Submission 2*, p. 1.

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

### ***Committee view***

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

### **Disorderly behaviour**

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

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

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

---

37 *Submission 18*, executive summary.

38 *Submission 2*, p. 2.

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

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

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

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



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

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

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

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

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

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

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

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

---

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

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

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

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

47 *Submission 2*, p. 1.

protection from violence place additional pressure on the resources of the outer islands.<sup>48</sup>

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

#### *Committee view*

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

---

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

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

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