

Chapter 17

Support for the Treaty

17.1 In its submission, DFAT noted that the Treaty's inherent strength and effectiveness derives from its 'high level of support from traditional inhabitants'. It stated, however, that continuing support is 'arguably the Treaty's most fragile dimension'. In its view, as long as traditional inhabitants regard the Treaty as upholding and protecting their rights and privileges, it would remain effective but without that conviction, the Treaty would become 'increasingly difficult to sustain'.¹ In this chapter, the committee considers how government departments and agencies working in the Torres Strait manage community expectations. It is particularly interested in the level of support for the Treaty and the factors that have the potential to either undermine or strengthen that support.

Views on the Treaty

17.2 DFAT is of the view that the Treaty had 'operated pretty well over time: that it was very flexible and adaptable'.² The Commonwealth Attorney-General's Department and Queensland Government also believe that the Treaty works well.³ According to Australia's Treaty Liaison Officer, Mr Young, while the Treaty has overwhelming support, there remain issues and continuing pressures. He told the committee:

We have a lot of work to do to manage what is a complex treaty and a complex border. We try to do that as effectively as we can. As I say, there are ongoing management issues that I confront every day—and my colleagues from other agencies do too—but generally speaking there is support for the treaty's existence.⁴

17.3 Even though government agencies are satisfied with the implementation of the Treaty, representatives of the local Torres Strait communities identified a number of problems that, in their view, relate directly to arrangements under the terms of the Treaty. In this report, the committee has provided detailed accounts of many of these concerns that relate to specific matters—health, law and order, the strain on communities' limited resources such as water, illegal fishing and poaching, biosecurity and border control. In brief, local community leaders expressed disquiet about:

1 *Submission 23*, p. [5].

2 *Committee Hansard*, 18 December 2009, p. 3 and *Submission 23*, p. [5].

3 Mr William Campbell, *Committee Hansard*, 17 December 2009, p. 3 and Mr Wade Lewis, *Committee Hansard*, 25 March 2010, p. 2.

4 *Committee Hansard*, 18 December 2009, p. 8.

- unregulated visits by PNG residents, that place 'a silent burden' on Torres Strait communities through their use of island infrastructure, scarce resources such as water and health and welfare services;⁵
- the number and nature of visits under the provisions of the Treaty. For example, the TSIRC noted that on many occasions more than 500 PNG nationals have turned up in a community without prior advice, at times landing on any part of an island and staying in the community, sometimes for days before they are noticed by Commonwealth authorities;⁶
- the conduct of some visiting PNG nationals including drunkenness and threatening behaviour when disputes arise.⁷ The TSIRC noted that it could not express its concerns strongly enough regarding the security of its people due to the behaviour of PNG nationals, citing the movement of mentholated spirits from the Torres Strait communities to PNG; major theft, and PNG nationals walking the streets of communities in the Torres Strait brandishing weapons (machetes, knives);⁸
- the lack of commitment or the wherewithal by PNG nationals to support communities in the Torres Strait in their endeavours to maintain healthy stocks of vulnerable marine species and to promote sustainable development, citing the failure to observe conservation measures, trading in protected species or illegal fishing and poaching.

17.4 Moreover, the committee heard from local inhabitants of their fears that changes in climate could exacerbate problems in the region, with the possibility of inhabitants of villages along the southern PNG border being forced to seek food, water, shelter or access to land in the Torres Strait.

17.5 DFAT acknowledged that 'Abuses of the Treaty's free movement provisions could lead to tensions between traditional visitors from Papua New Guinea and Torres Strait Islander communities, and exacerbate pressure on local infrastructure and

5 The Torres Strait Island Regional Council (TSIRC) similarly noted the drain on the communities' social welfare system because of PNG nationals access to services. It claimed that cross-border relationships are formed with the longer term aim to resettle families in Australia, which burdens Australian social welfare system, with PNG nationals accessing Centrelink, Austudy etc. TSIRC, *Submission 9*, pp. 2–3 and also *Submission 2*, p. 1. Kevin Murphy claimed that Torres Strait Islanders employ Papuans to undertake 'various menial and domestic tasks at the standard rate of \$10 per day'. *Submission 15*, p. 5.

6 TSIRC, *Submission 9*, pp. 2–3. The TSIRC argued strongly for a designated entry and exit point that would allow those on the ground administering the treaty access to everybody. A submitter proposed that a thorough investigation needs to be carried out on all the islands to identify illegal Papua New Guineans and to make arrangements to 'either send them back or provide support for them and their families on Mainland Australia', *Submission 2*, name withheld, p. 2.

7 TSIRA, *Submission 18*, p. 15.

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

resources, thereby eroding support for the Treaty among traditional inhabitants'.⁹ Even so, some local leaders believed that government agencies were not addressing their concerns adequately. For example, the TSIRC asserted that 'Immigration turns a blind eye to the fact that "overstayers" are on the island'. In its view, this inaction 'makes a mockery of the treaty' as it is commonly known that nothing would happen if a person overstayed their permit or arrived without one.¹⁰ Mayor Gela stated:

The treaty is inconsistently operated throughout the entire region, with those charged with the responsibility of enforcing the treaty sitting on their hands because that is the easy solution, preferring not to rock the boat, while it is the people of the Torres Strait and the Western Province who ultimately suffer.¹¹

The Torres Strait people are called upon every day to work within a system that is broken. The Torres Strait treaty is only broken; it can be fixed, for the benefit of all.¹²

17.6 During the committee's visit to the northernmost islands of the Torres Strait, local community leaders gave added substance to accounts of people contravening Treaty provisions with impunity. As noted previously in this report, they referred to villagers coming over from PNG to escape from their own law enforcement agencies, to fish or trade illegally or seek medical services. In their view, the law needs to stand firm and because agencies 'close their eyes they remain blind to what is going on so that nothing will get done'.¹³

17.7 At the committee's open forum on Thursday Island, Mr David referred to illegal fishers who are active in the region and the failure to police PNG nationals crossing the border to 'sell anything'. In his view, 'if we are interested in ensuring that this treaty is working as it should then these sorts of things should be reviewed and some real changes made'.¹⁴ Indeed, the TSIRC requested a full review of the Torres Strait Treaty 'as our local Islanders have a different concept of the original treaty, than what is carried out today'.¹⁵ It informed the committee that the communities are '100% behind the Treaty being upgraded'.¹⁶

9 DFAT, *Submission 23*, p. 5.

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

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

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

13 As noted in numerous places in this report, local leaders have expressed concerns about the influx of people arriving from PNG, sometime under cover of darkness, creating a drain on scarce resources particularly water, causing wear and tear on infrastructure, giving rise to security concerns or placing their people at risk from infectious diseases.

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

15 TSIRC, *Submission 9*, p. 1.

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

17.8 Although the TSRA was of the view that the Treaty was 'sound', Mr Kris acknowledged that, in discussions with local members and communities throughout the region, some expressed dissatisfaction with the operation of the Treaty. In their view, there should be at some time a review of the treaty:

...to look at how the practices have changed and in particular how the changes have happened throughout the life of the treaty that has moved from a barter system to a cash flow system as has happened in the later years.¹⁷

17.9 In this regard, the concerns raised by local communities about breaches of, or disregard for, Treaty arrangements are not trivial: they go to the heart of their way of life. Any deep-seated and sustained dissatisfaction with the handling of such important matters will clearly influence their attitude toward the Treaty and undermine the support that DFAT identified as so important.

Differing interpretations

17.10 Even though DFAT was of the view that the Treaty had a high level of support from traditional inhabitants, it also noted that the Treaty's two important roles—defining the border and protecting the traditional way of life—had 'sometimes led to confusion and poor understanding' by stakeholders and the general public.¹⁸ Noting that the Treaty is 'a legal document, and people can read it but not always understand the detail', Mr Young explained:

The detail is often decided at local level and it is not always understood beyond that local level. So one of our roles is to explain what those obligations and expectations are.¹⁹

17.11 Mr Bruer reinforced the view that the Treaty was a complex document with dual purposes that provides scope for confusion between what is and is not permitted.²⁰ He later clarified this statement by informing the committee that the role of the treaty was 'reasonably well-defined and...fulfils its roles reasonably well' and there was 'great support to the treaty'.²¹ He thought that the potential for confusion generally was among people outside the region: that people within the region understood it.

17.12 In his view, DFAT's role was to continue 'to work closely with the communities that are in the region and affected by it'.²² In this regard, Mr Bruer

17 See *Submission 18*, covering letter and *Committee Hansard*, 24 March 2010, p. 5.

18 *Submission 23*, p. [5].

19 *Committee Hansard*, 18 December 2009, p. 12.

20 *Committee Hansard*, 18 December 2009, p. 9.

21 *Committee Hansard*, 18 December 2009, p. 10.

22 *Committee Hansard*, 18 December 2009, pp. 10–11.

informed the committee that DFAT consults with 'stakeholders on a day-to-day basis about all aspects of the treaty'.²³ He added:

At the working level we try to minimise that confusion by continual work, through...liaising and negotiating and talking to and with outreach efforts to the various communities on both sides of the border to make sure that the requirements and obligations and responsibilities of people under the treaty are all understood well.²⁴

17.13 According to Mr Bruer, the 'various aspects of the treaty and the ways in which they are implemented are subject to constant review in many ways and we always review and monitor the way in which those things work'.²⁵ Mr Young also pointed out that the rules for, the obligations on, and the expectations of traditional inhabitant communities change from time to time, as pressures change, as issues change.²⁶ He informed the committee that differences in interpretation were dealt with at the TIMs. Citing the confusion over the definition of barter and market trade, Mr Young explained:

Issues like this pop up every year and are workshopped and dealt with at the Traditional Inhabitants Meeting, and this will be one of the issues that I have already taken, on a consultative process, through all of the treaty communities on both sides of the border. We will deal with it, one way or the other, at the local level at the Traditional Inhabitants Meeting.²⁷

17.14 In the previous chapter, the committee described the cycle of Treaty meetings, including the TIMs, and noted that some local leaders were disappointed with the lack of action that follows such meetings. The committee, however, is particularly concerned about what appears to be persistent differences in perception regarding what is happening on the ground in the Torres Strait. This disparity was particularly evident in views on overstayers, misbehaviour or even criminal behaviour of some PNG visitors, and government responses to requests by local councillors for the border to be closed when island resources are under stress. This difference in perception then leads to a sense that the Australian Government is not attending adequately to local concerns. Again, this is evident across many areas but particularly with the free movement provisions and reflected in comments made by local leaders.

17.15 Notably, Mr Rodney Scarce, CEO TSIRC, observed that even in past conversations with the local DFAT representatives and Immigration, 'it has been their interpretation of the treaty as opposed to our interpretation of the treaty that has put us at loggerheads'.²⁸ As an example, he used the differences in interpretation about the

23 *Committee Hansard*, 18 December 2009, p. 10

24 *Committee Hansard*, 18 December 2009, p. 9.

25 *Committee Hansard*, 18 December 2009, pp. 2–3.

26 *Committee Hansard*, 18 December 2009, p. 12.

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

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

term barter and whether the handing over of cash for the exchange of goods was in line with the Treaty. According to Mr Scarce, while DFAT and Immigration allow this level of cash transaction, the literal interpretation of barter does not. He told the committee:

That is something that has evolved over time. I do not believe council cares either way, but it needs to be enforced as it stands on that one particular thing.²⁹

17.16 This idea that government agencies are not responding adequately to local concerns is not confined to PNG visitors to Torres Strait communities. Local people also highlighted what they believe is the lack of attention given to their fears about the adverse effects of climate change in the region.

17.17 The committee is also concerned about the view that PNG does not have the capacity to work alongside Australia as partners in making the Treaty a success. Local leaders from communities in the Torres Strait are disappointed with the effort on the PNG side of the border to support and adhere to arrangements made under the Treaty. The TSRA summed up this view when it stated that the problems associated with the Treaty's operation 'lie with the poor socio-economic circumstances of PNG and the resources that are needed on the Australian side of the border to "carry" the resultant burden'.³⁰ Furthermore, in the previous chapter, the committee noted local community views that 'every time an issue crops up, with the ways things are clarified, more preference is given to the need of people on the PNG side of the border rather than the communities on our side'.³¹

17.18 In this context, the committee considered the inadequate delivery of health services on the PNG side of the border and the failure of PNG to police or enforce Treaty arrangements, for example in the harvesting and trading of dugong and turtle. The committee also presented evidence about the poor attendance of PNG representatives at JAC meetings, with observations about resourcing issues and PNG's limited capacity to act on agreements reached between both countries under the Treaty.

17.19 Local leaders in the Torres Strait recognise the poor living standards in the villages in the South Fly District and their lack of resources and access to essential services. The leaders do not believe, however, that their communities in the Torres Strait should bear an unfair burden in supporting these villagers or in their efforts to make the Treaty a success.

29 *Committee Hansard*, 18 June 2010, pp. 10–11.

30 *Submission 18*, covering letter.

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

Committee view

17.20 There is no doubt that some local leaders feel let down by the way certain aspects of the Treaty are administered and at times believe that their concerns are not listened to or acted upon. In some instances, their perceptions of a problem differ significantly from that of government officials. Even though, there are opportunities to air and resolve these concerns and to reconcile differences in perceptions, notably through the cycle of Treaty Meetings and Treaty awareness visits, a level of discontent remains. This sense of frustration and disappointment extends to PNG's contribution to ensuring that arrangements under the Treaty work effectively.

Recommendation 35

17.21 The committee recommends that DFAT explore the reasons for the different perceptions held by traditional inhabitants and state and Commonwealth authorities on the effectiveness of arrangements under the Treaty and report on its findings. This report to include suggestions on ways to reconcile these differences.