

Coordination Arrangements of Australian Government Entities Operating in Torres Strait

[Across Entities](#)

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Canberra ACT
29 May 2019

Dear Mr President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit across entities titled *Coordination Arrangements of Australian Government Entities Operating in Torres Strait*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, reading 'Grant Hehir', is positioned below the 'Yours sincerely' text.

Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Summary and recommendations

Background

1. Torres Strait is located between the tip of Cape York in northern Australia and Papua New Guinea (PNG). It contains over one hundred islands and reefs, 17 of which are inhabited. The population consists of approximately 4,500 people, over 90 per cent of whom are of Torres Strait Islander and/or Aboriginal background.
2. The region is characterised by the operation of the Torres Strait Treaty (the Treaty), which defines the border between Australia and PNG and provides a framework for the management of the common border area. The Treaty establishes a Protected Zone (delimited in green on the map in Figure S.1), the main purpose of which is to protect the traditional way of life of Torres Strait Islanders and the coastal peoples of PNG. Within the Protected Zone, Torres Strait Islanders and the inhabitants of 13 defined PNG villages are able to move freely (without passports or visas) for the purpose of conducting traditional activities.¹ The Treaty also prescribes a set of principles to protect the fisheries and sea environment of Torres Strait, including that commercial fisheries should be administered in the Protected Zone so as not to prejudice traditional fishing.²
3. In 2017–18 traditional inhabitants from PNG made approximately 27,300 visits to the Protected Zone under the provisions of the Treaty. In comparison, the number of visits made by traditional inhabitants of the Protected Zone to PNG Treaty villages is significantly lower, with approximately 1,000 visits during the same period.
4. A large number of government entities operate in Torres Strait, at Australian, state and local government levels. At the Australian Government level, the Torres Strait Regional Authority (TSRA), which is part of the Prime Minister and Cabinet portfolio, has responsibility for the development and implementation of programs aimed at supporting: economic development; health and wellbeing; culture; land and sea management; and native title rights of Torres Strait Islander and Aboriginal peoples living in the region. Four other key Australian Government entities operate in Torres Strait:
 - Department of Foreign Affairs and Trade (DFAT): DFAT has overall responsibility for the Torres Strait Treaty.
 - Department of Agriculture and Water Resources (DAWR): Through the Northern Australia Quarantine Strategy, DAWR conducts operations to address biosecurity risks associated with southward movements of people, cargo, aircraft and vessels.
 - Department of Home Affairs (Home Affairs), represented by the Australian Border Force (ABF): The ABF's purpose in Torres Strait is to manage the movement of people across the

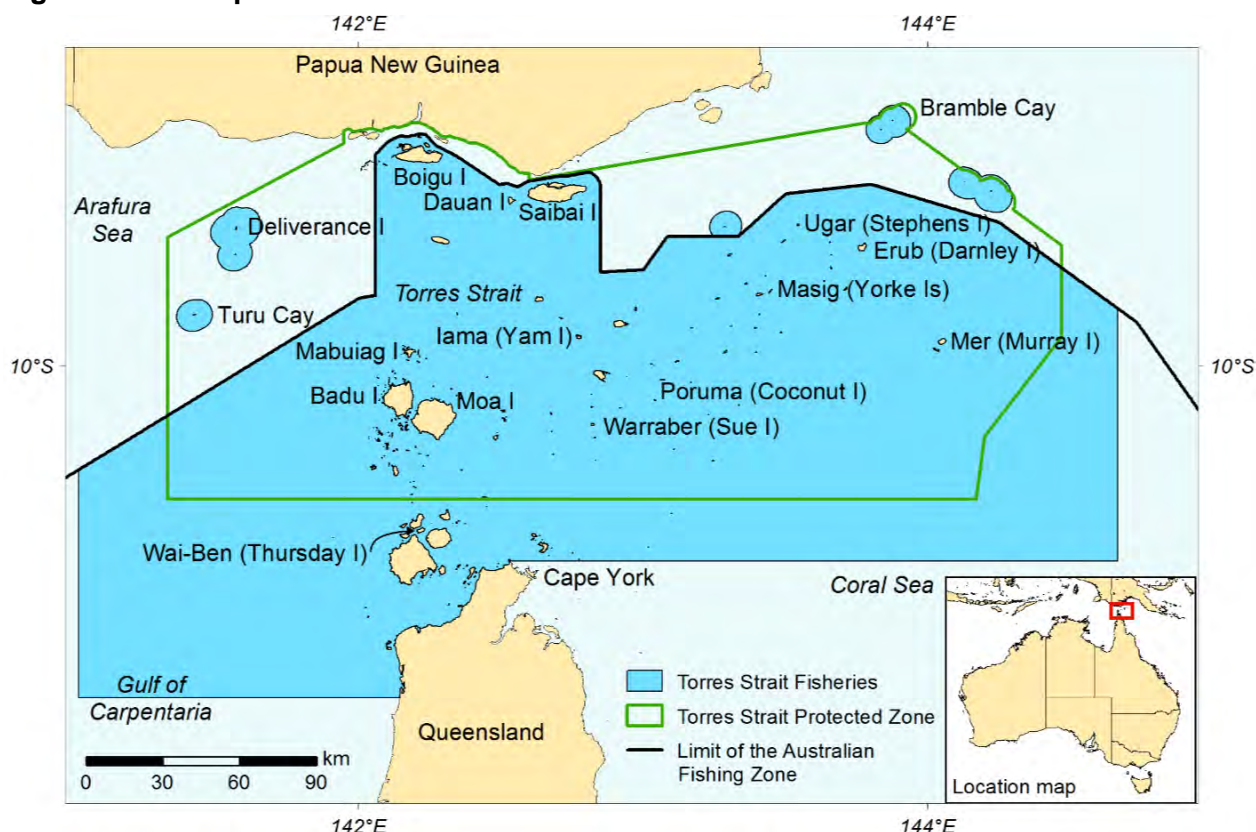
1 Traditional activities are defined in the Treaty as 'activities performed by the traditional inhabitants in accordance with local tradition', and include gardening, collection of food, hunting, traditional fishing, religious and secular ceremonies or gatherings for social purposes (for example, marriage celebrations and settlement of disputes), and barter and market trade.

2 Traditional fishing is defined as 'the taking by traditional inhabitants for their own or their dependants' consumption or for use in the course of other traditional activities, of the living natural resources of the sea, seabed, estuaries and coastal tidal areas, including dugong and turtle'.

border, including the flow of people throughout the Protected Zone in accordance with the free movement provisions of the Treaty.

- Australian Fisheries Management Authority (AFMA): AFMA is responsible for the management and sustainable use of Commonwealth fish resources.

Figure S.1: Map of Torres Strait



Source: Department of Agriculture and Water Resources.

Rationale for undertaking the audit

5. Australia recognises Torres Strait region as a sensitive and important zone because:
 - the scattered islands represent stepping stones between PNG and Australia and is often referred to as ‘the closest thing Australia has to a land border’³. The close distance of PNG has immigration, customs and biosecurity implications;
 - the region supports critical fisheries habitats and ecosystem resources; and
 - the region is an international shipping route with difficult waters.
6. A 2010 Senate Inquiry into Torres Strait by the Foreign Affairs, Defence and Trade Reference Committee⁴ documented key issues associated with health, biosecurity, law and order

3 Australian Government, Department of Foreign Affairs and Trade, *2017 Foreign Policy White Paper – Opportunity Security Strength*, p. 100, available from <https://www.fpwhitepaper.gov.au/> [accessed 19 March 2019].

4 Foreign Affairs, Defence and Trade References Committee, Parliament of Australia, *The Torres Strait: Bridge and Border*, 2010, available from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed_inquiries/2010-13/torresstrait/report/index [accessed 9 August 2018].

and border protection, relating primarily to the shared border with PNG and the operation of the Treaty. The committee's report stressed the importance of achieving effective whole-of-government cooperation and coordination between government entities. The audit examines the coordination arrangements of five Australian Government entities operating in Torres Strait.

Audit objective and criteria

7. The objective of the audit is to assess the effectiveness of the coordination arrangements of key Australian Government entities operating in Torres Strait. To form a conclusion against this objective, the following high level criteria have been adopted:

- Do Australian Government entities operating in Torres Strait have appropriate governance arrangements to support the coordination of their activities?
- Are the coordination arrangements effective in supporting Australian Government activities in Torres Strait?

Conclusion

8. The coordination arrangements of key Australian Government entities operating in Torres Strait are largely effective in supporting Australian Government activities.

9. The business rules are effective for the implementation of biosecurity and fisheries legislation, and support the application of the Treaty provisions and the coordination of activities in Torres Strait. The business rules are not fully effective for the implementation of immigration and customs legislation in the context of the Treaty. This impacts on the capacity of entities to coordinate their activities and to develop a shared understanding of immigration and customs rules applicable in the region.

10. The governance structures and joint activities are largely effective to support cross-entity coordination. However, key policy decisions made by the Torres Strait Joint Advisory Council (JAC)⁵ are not adequately documented, and the risks associated with the impacts of a changing strategic and operational environment on the Treaty operation have not been analysed. The Protected Zone Joint Authority (PZJA)⁶ annual reports and website are not up-to-date.

11. The key systems and assets support the coordination of Australian Government entities' operations in Torres Strait. An important project to improve telecommunications in Torres Strait is progressing.

Business rules

12. Immigration and customs business rules do not fully support the implementation of legislation and the coordination of activities in Torres Strait. There is insufficient guidance to implement the Treaty provisions, which has impacted on the consistency and lawfulness of some of immigration and customs decisions and has contributed to long-term immigration issues.

5 The Torres Strait Joint Advisory Council is the central bilateral (Australia and PNG) body overseeing the implementation of the Treaty provisions. It is supported by four bilateral advisory committees and reports to the Foreign Ministers for Australia and PNG.

6 The Protected Zone Joint Authority is responsible for the administration of the Torres Strait Fisheries Act and comprises the Commonwealth minister responsible for fisheries, the chair of the Torres Strait Regional Authority and the Queensland minister responsible for Fisheries.

13. Biosecurity business rules are comprehensive and up-to-date, and support the implementation of the biosecurity legislation in Torres Strait.

14. The business rules, combined with the legislation, applying to fisheries in Torres Strait are comprehensive and fit-for-purpose, but some key governance documents are not up-to-date.

Governance Structures and Joint Activities

15. The governance structures provide an effective framework to support the operation of the Treaty, but could be improved by the establishment of a central register to record key decisions reached by the JAC. Also, issues relating to the changing strategic and operational environment represent a risk to the enduring operation of the Treaty.

16. Effective governance structures and joint activities support the control of cross-border movements and related law enforcement activities.

17. The governance structures and joint activities that support the management of biosecurity in Torres Strait are effective.

18. Through the PZJA, the consultative framework is largely effective to support and coordinate the decision making process of the range of entities involved in Torres Strait fisheries. Some of the actions agreed following the 2009 review of the PZJA's administrative arrangements are still to be completed, and the PZJA's annual reports and website are not up-to-date.

Systems and assets

19. Systems supporting the monitoring and recording of traditional inhabitant visits are fit for purpose. However there are some issues with: the data quality of the IT system used to record traditional inhabitants' visits; and the controls applied to verify that traditional visits are conducted for the purpose for which they are authorised.

20. Robust arrangements are in place to optimise the use of vessels and aircraft across government entities operating in Torres Strait. Home Affairs could further engage with local stakeholders to assess and, as appropriate, address concerns that the ABF's utilisation of assets is not always sufficiently timely or effective to respond to law enforcement issues of local relevance, in particular in the northern part of the Protected Zone.

21. The TSRA, in partnership with other entities including DAWR, is coordinating a project to improve telecommunications across the islands of Torres Strait.

Recommendations

Recommendation no.1
Paragraph 2.18 Noting the complexities in Torres Strait and the need for a degree of flexibility and discretion, the Department of Home Affairs develop comprehensive business rules to guide the implementation of immigration and customs legislation in Torres Strait and ensure consistent application of Treaty and legislative provisions.

Department of Home Affairs: Agreed.

Recommendation no.2
Paragraph 3.12 Department of Foreign Affairs and Trade establish and maintain a central register of policy decisions made by the Torres Strait Joint Advisory Council and ensure that the register is accessible to stakeholders, including Australian Government entities, operating in Torres Strait.

Department of Foreign Affairs and Trade: Agreed.

Recommendation no.3
Paragraph 3.16 Department of Foreign Affairs and Trade conduct an analysis of the risks associated with the impacts of a changing strategic and operational environment on the enduring implementation of the Torres Strait Treaty.

Department of Foreign Affairs and Trade: Agreed.

Recommendation no.4
Paragraph 3.68 Australian Fisheries Management Authority work with the Protected Zone Joint Authority's other member entities, the Torres Strait Regional Authority and Queensland Department of Agriculture and Fisheries, to:

- (a) finalise the Protected Zone Joint Authority annual reports for the 2015–16, 2016–17 and 2017–18 financial years and implement a process to ensure that future annual reports are published in a timely manner; and
- (b) keep the Authority's website up-to-date.

Australian Fisheries Management Authority: Agreed.

Summary of entity responses

22. Summary responses from the entities are provided below. The full responses are provided at Appendix 1.

Department of Agriculture and Water Resources

The department welcomes the audit's overall conclusions and findings.

The department is pleased the audit recognises that the business rules, governance structures and joint activities supporting biosecurity in Torres Strait are comprehensive, up-to-date and effective.

The department is also pleased the audit illustrates its strategic and collaborative approach to working with Australian Government entities and other agencies in Torres Strait and the Northern Peninsula Area (NPA). By way of update, the Exchange of Letters with the Australian Border Force has now been finalised by both parties and formalises current and future operational arrangements.

The department notes the audit's recommendations and, while it is not directly responsible for any of the recommendations, will maintain awareness of initiatives to address the audit findings and will participate where appropriate.

The department remains committed to working in partnership with Australian Government entities, other agencies and communities in Torres Strait and NPA, to manage biosecurity risk and to support the ongoing implementation of the Torres Strait Treaty.

Department of Foreign Affairs and Trade

The Department of Foreign Affairs and Trade [DFAT] welcomes the Australian National Audit Office [ANAO] findings that the governance structure and coordination arrangements of key Australian Government entities operating in the Torres Strait area are largely effective. The report's acknowledgement of the complex and challenging environment in which agencies operate is also welcomed.

DFAT remains committed to ensuring the enduring integrity of the Torres Strait Treaty and the traditional way of life for Torres Strait Islanders and the coastal people of Papua New Guinea, which the Treaty protects. We are pleased that ANAO recognises DFAT's efforts including: coordinating governance arrangements supporting the Treaty's operation; Treaty Awareness Visits and joint multi-agency cross-border compliance activities; and extensive stakeholder engagement with traditional inhabitants.

We welcome the recommendations that support improvements in the Torres Strait area. The ANAO has noted some key areas requiring improvement, particularly in identifying risks associated with a changing strategic and operational environment on the implementation of Treaty arrangements and documenting key policy decisions made by the Torres Strait Treaty Joint Advisory Council. DFAT agrees to implement the relevant recommendations to strengthen the effectiveness of our cooperative arrangements and to ensure the relevance of the Treaty in a modern setting.

Department of Home Affairs

The Department of Home Affairs (the Department) and the Australian Border Force (ABF) acknowledge the value of the ANAO providing independent analysis of and insights into the coordination arrangements in the Torres Strait. We are pleased that the report found that the coordination arrangements in place optimise the use of vessels and aircraft for planned surveillance and intelligence activities, and that the governance structure and joint activities that support the management of biosecurity in the Torres Strait are effective.

The Torres Strait is a particularly unique and complex operating environment involving the collaboration of multiple Government entities, the operation of the Torres Strait Treaty aimed at protecting the traditional way of life of Torres Strait Islanders and the coastal peoples of PNG, and application of legislation including the Migration Act 1958. Operations are conducted and powers are exercised in the context of appropriately regulating the jurisdiction sympathetic to the normal activities and traditions of the indigenous people.

The Department and the ABF note the findings, conclusions and the recommendation made in the report. We agree with the recommendation regarding the need for comprehensive business rules to guide the implementation of immigration and customs legislation in the Torres Strait, which should have regard as the report notes, to the complexities of operating in the Torres Strait and the need for a degree of flexibility and discretion in applying legislative and Treaty provisions. The Department agrees that good governance is essential in any operating environment and is actively

addressing relevant policies and procedural instructions to guide the implementation of immigration and customs legislation in Torres Strait, and the consistent application of the relevant Treaty and legislation.

On 10 May 2019, the Department finalised a Policy Statement relating to allowed inhabitants of the Protected Zone. This Statement broadly satisfies the recommendation and will facilitate the ABF to enhance Procedural Instructions and Standard Operating Procedures to provide further guidance around the exercise of discretionary detention powers. A Procedural Instruction for detaining an unlawful non-citizen in an excised offshore place and a Standard Operating Procedure providing further guidance border monitoring officers on the importation of goods used in connection with traditional activities, have been reviewed and are currently in the final stages of drafting. We expect to finalise these two documents soon. Further, on 18 April 2019, the ABF and the Department of Agriculture and Water Resources (DAWR) signed a Letter of Exchange which articulates roles, responsibilities and work instructions, and reflects the amendments to the Biosecurity Act 2015.

In relation to the suggested areas of improvement, we note that IT connectivity in the Torres Strait will continue to impact operations in the region until it is more generally improved in the region and the ABF will continue to assist with local law enforcement matters based on a holistic consideration and prioritisation of threat and risk to the Australian border. The ABF has a standing Concept of Operations and command, control and coordination (C3) doctrine to deliver operational effect and outcomes. Under this operating model the Australian Border Operations Centre as the centralised and unified operations centre plays a critical role in the provision of a single source of truth or situational awareness to ensure decision making on the acceptance of tasks and any redirection or allocation of resources and capability is undertaken based on a holistic consideration and prioritisation of threat and risk to the Australian border.

Australian Fisheries Management Authority

AFMA has extensive responsibilities in managing Commonwealth fisheries resources in the Torres Strait and works to deliver on these in cooperation with a number of Commonwealth and other agencies.

AFMA has considered the proposed audit report and accepts that timely finalisation of Protected Zone Joint Authority annual reports and regular updating of the Authority's website will enable stakeholders to be better informed about fisheries management issues and actions. Together with other PZJA member agencies, AFMA will also continue to work towards further integration and coordination of fisheries in the Torres Strait.

Torres Strait Regional Authority

The Torres Strait Regional Authority provided a letter of response to the audit. The letter is provided at Appendix 1.

Key messages from this audit for all Australian Government entities

23. Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

Governance and risk management

- Entities should ensure that the governance framework and business rules established to support their operations at the enterprise level are adapted to the requirements specific to local contexts. For example, the Australian Border Force implements an operational framework based on its enterprise-wide purpose (protecting Australia's border and enabling legitimate travel and trade). In Torres Strait, this purpose needs to be adapted to comply with the provisions of Torres Strait Treaty, which prescribe a unique set of requirements. Business rules (such as procedures and guidance), articulating how the national operational framework applies to the local circumstances, need to be developed.

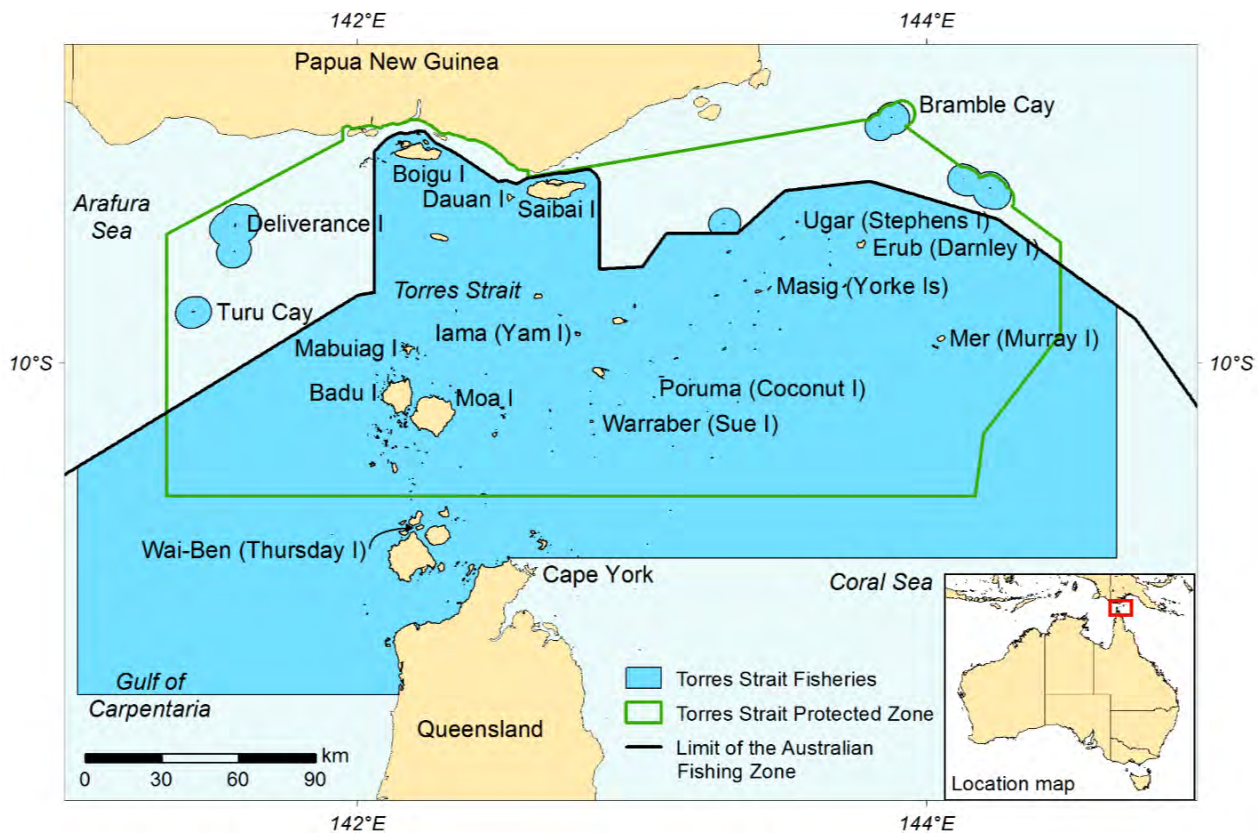
Audit findings

1. Background

Torres Strait

1.1 Torres Strait is located between the tip of Cape York in northern Australia and Papua New Guinea (PNG) (Figure 1.1). It contains over one hundred islands and reefs, 17 of which are inhabited. The population consists of approximately 4,500 people, over 90 per cent of whom are of Torres Strait Islander and/or Aboriginal background. Thursday Island, with approximately 3,000 inhabitants, is the administrative centre of Torres Strait. The key sources of employment in the region are public administration, health care and education services; commercial fishing also plays an important role in the local economy.

Figure 1.1: Map of Torres Strait



Source: Department of Agriculture and Water Resources.

1.2 Torres Strait is characterised by its close proximity to PNG. Western Province, the largest province in PNG, is about four kilometres, or ten minutes by boat, from the Australian islands closest to PNG (Saibai, Boigu and Dauan). In 2017, PNG had a population of approximately 8.3 million and a gross domestic product per capita of US\$2,401 (Australia's gross domestic product per capita was US\$56,692). Eighty per cent of Papua New Guineans reside in traditional rural communities, relying on subsistence farming and small-scale cash cropping.

The Torres Strait Treaty

1.3 The region is also characterised by the operation of the Torres Strait Treaty (the Treaty). The Treaty and associated documents, signed in 1978 and coming into effect in 1985, define the border

between Australia and PNG and provide a framework for the management of the common border area. The Treaty establishes a Protected Zone (delimited in green on the map in Figure 1.1), the main purpose of which is to protect the traditional way of life of Torres Strait Islanders and the coastal peoples of PNG.

1.4 The Treaty also prescribes a set of principles to protect the fisheries and sea environment of Torres Strait. It establishes the principle that commercial fisheries should be administered in the Protected Zone so as not to prejudice traditional fishing.⁷

1.5 Within the Protected Zone, inhabitants of the Torres Strait Islands and of 13 defined PNG villages are able to move freely (without passports or visas) for the purpose of conducting traditional activities. Traditional activities are defined in the Treaty as 'activities performed by the traditional inhabitants in accordance with local tradition', and include gardening, collection of food, hunting, traditional fishing, religious and secular ceremonies or gatherings for social purposes (for example, marriage celebrations and settlement of disputes), and barter and market trade.⁸ The Treaty villages are shown on Figure 1.2.

1.6 In 2017–18 traditional inhabitants from PNG made approximately 27,300 visits to the Protected Zone under the provisions of the Treaty.⁹ Approximately 98 per cent of these visits were to the Islands of Saibai, Boigu or Dauan, and the main declared purpose for visiting was 'barter and trade' (approximately 85 per cent of visits in 2017–18). The Treaty does not provide for commercial activities, seeking health or medical treatment, business dealings and working for money during traditional visits. However, selling goods and traditional artefacts to other traditional inhabitants for money is permitted. These trading activities primarily take place at markets organised weekly on set days on Saibai, Boigu or Dauan.

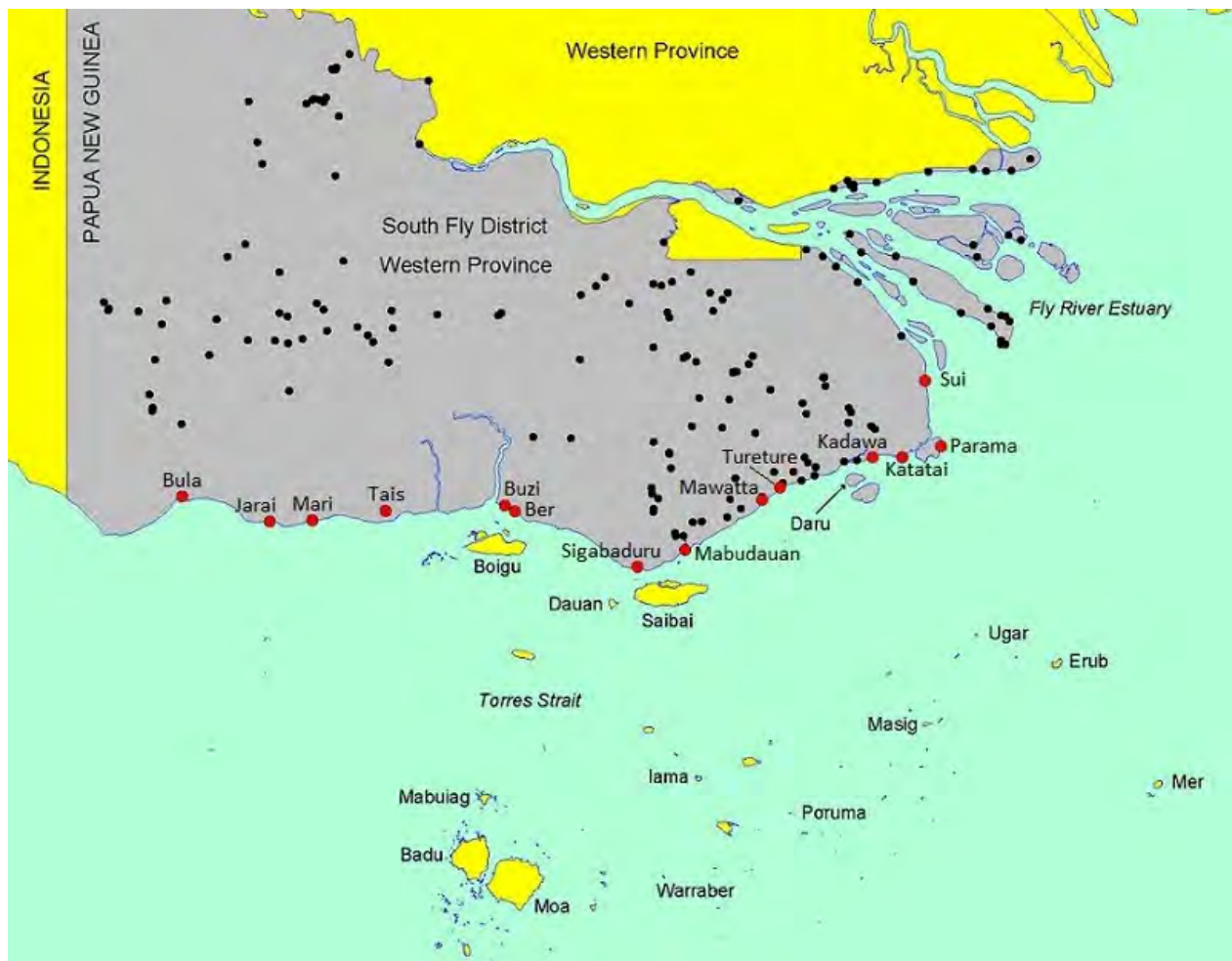
1.7 In comparison, the number of visits made by Torres Strait Islanders living in the Protected Zone to PNG Treaty villages is significantly lower, with approximately 1,000 visits during the same period.

7 Traditional fishing is defined as 'the taking by traditional inhabitants for their own or their dependants' consumption or for use in the course of other traditional activities, of the living natural resources of the sea, seabed, estuaries and coastal tidal areas, including dugong and turtle'.

8 Traditional inhabitants are defined in Article 1 of the Treaty as persons who: a) for Australia, are Torres Strait Islanders living in the Protected Zone or the adjacent coastal area of Australia and are Australian citizens; b) for PNG, are living in the Protected Zone or the adjacent coastal area of PNG and are PNG citizens; and c) 'maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities'.

9 Statistics for Paragraphs 1.6 and 1.7 were extracted by ANAO from Home Affairs data collection system (Traditional Inhabitants Movement Monitoring System) on 31 January 2019.

Figure 1.2: Map of the Torres Strait Islands and PNG villages covered by the Torres Strait Treaty Provisions



Note: The red dots represent PNG villages included in the Treaty. The black dots represent other PNG villages in South Fly District.

The PNG villages of Buzi and Ber are treated as one village under the Treaty provisions.

Source: Map courtesy of Dr Garrick Hitchcock, The Australian National University.

Australian Government entities operating in Torres Strait

1.8 A large number of government entities operate in Torres Strait, at local, state and federal government levels. The three local councils are: the Torres Strait Island Regional Council, which covers all the land and sea territory included in the Protected Zone (plus Hammond Island, which is outside the Protected Zone); the Torres Shire Council, which represents Thursday Island, Prince of Wales Island, Horn Island and immediate surrounding islands; and the Northern Peninsula Area Regional Council, which represents five communities situated on the northern part of Cape York on the Australian mainland.

1.9 At the Australian Government level, the Torres Strait Regional Authority (TSRA), which is part of the Prime Minister and Cabinet portfolio, has responsibility for the development and implementation of programs aimed at supporting: economic development; health and wellbeing; culture; land and sea management; and native title rights of Torres Strait Islander and Aboriginal peoples living in the region. As at 30 June 2018 the TSRA employed 162 staff, of whom 122 are

Torres Strait Islander and Aboriginal people. In 2017–18 the TSRA received \$53.3 million from a range of Australian Government agencies, including \$36 million in appropriation from the Department of the Prime Minister and Cabinet.

1.10 Four other key Australian Government entities operate in Torres Strait.

- Department of Foreign Affairs and Trade (DFAT): DFAT has overall responsibility for the implementation of the Torres Strait Treaty. It has established a Liaison Office on Thursday Island, staffed as at 28 February 2019 by two officers at the Executive Level 1 and Australian Public Service Level 5. The role of the Treaty Liaison Officer is prescribed in the Treaty and aims to facilitate the practical operation of the Treaty provisions, including through the implementation of local arrangements developed in consultation with representatives of traditional inhabitants. Their role is also to escalate nationally any issue that cannot be resolved at the local level.
- Department of Agriculture and Water Resources (DAWR): Through the Northern Australia Quarantine Strategy,¹⁰ DAWR conducts operations to address biosecurity risks associated with southward movements of people, cargo, aircraft and vessels into and between defined biosecurity zones in Torres Strait (which encompass the Protected Zone), and from these zones to mainland Australia. As at 28 February 2019, DAWR employed 27 staff across Torres Strait and the Northern Peninsula Area, all of whom were locally engaged and identified as being from Aboriginal and/or Torres Strait Islander backgrounds, and 13 of whom were based on the islands of the Protected Zone.
- Department of Home Affairs, represented by the Australian Border Force (ABF): The ABF is Australia's frontline border law enforcement agency and Australia's customs service. Its purpose in Torres Strait is to protect Australia's border and enable legitimate travel and trade, including the flow of people throughout the Protected Zone in accordance with the free movement provisions of the Treaty. The ABF office located on Thursday Island comprised, as at 28 February 2019, 13 funded positions (four vacant). The highest ranking officer is an inspector (Executive Level 1). In addition, the ABF has ten funded positions (one vacant) for Border Monitoring Officers. Border Monitoring Officers are locally engaged officers employed to monitor and record the movements of traditional inhabitants across the border, including refusing immigration clearance to people not meeting the provisions of the Treaty. Border Monitoring Officers are employed at the Australian Public Service Levels 1 and 2.
- Australian Fisheries Management Authority (AFMA): AFMA is responsible for the management and sustainable use of Commonwealth fish resources. To discharge its responsibilities in Torres Strait, AFMA employed 12 staff as at 28 February 2019, which included nine officers in fisheries management and three in compliance. Of these 12 officers, eight officers are based on Thursday Island, and four officers are based in Canberra.

1.11 Other Australian Government entities operating in Torres Strait include the following.

10 See Auditor-General Report No.23 of 2018–19, *Northern Australia Quarantine Strategy – Follow-on Audit* [Internet], January 2019, available from <https://www.anao.gov.au/work/performance-audit/northern-australia-quarantine-strategy-follow-audit> [accessed 25 March 2019].

- Australian Federal Police (AFP): The AFP carries out an intelligence function in Torres Strait, and has two permanent officers based on Thursday Island.
- Australian Defence Force: The 51st Battalion, Far North Queensland Regiment, primarily carries out reconnaissance and surveillance tasks in support of border security operations. One of the Battalion's companies is headquartered on Thursday Island. Approximately 30 per cent of the 51st Battalion is reported by the Department of Defence as being from Torres Strait Islander and mainland Aboriginal backgrounds.
- Australian Maritime Safety Authority (AMSA): AMSA aims to improve and promote boat safety in Torres Strait and reduce the number of search and rescue operations in the area. As at March 2019, AMSA has two employees servicing Torres Strait and the Northern Peninsula Area, both based on Thursday Island.

Rationale for undertaking the audit

1.12 Australia recognises the Torres Strait region as a sensitive and important zone because:

- the scattered islands represent stepping stones between PNG and Australia and is often referred to as 'the closest thing Australia has to a land border'.¹¹ The close distance of PNG has immigration, customs and biosecurity implications;
- the region supports critical fisheries habitats and ecosystem resources; and
- the region is an international shipping route with difficult waters.

1.13 A 2010 Senate Inquiry into Torres Strait by the Foreign Affairs, Defence and Trade Reference Committee¹² documented key issues associated with health, biosecurity, law and order and border protection, relating primarily to the shared border with PNG and the operation of the Torres Strait Treaty. The committee's report stressed the importance of achieving effective whole-of-government cooperation and coordination between government entities. The audit examines the coordination arrangements of five Australian Government entities operating in Torres Strait.

Audit objective and criteria

1.14 The objective of the audit is to assess the effectiveness of the coordination arrangements of key Australian Government entities operating in Torres Strait. To form a conclusion against this objective, the following high level criteria have been adopted:

- Do Australian Government entities operating in Torres Strait have appropriate governance arrangements to support the coordination of their activities?
- Are the coordination arrangements effective in supporting Australian Government activities in Torres Strait?

11 Australian Government, Department of Foreign Affairs and Trade, *2017 Foreign Policy White Paper – Opportunity Security Strength*, p. 100. Available from <https://www.fpwhitepaper.gov.au/> [accessed 19 March 2019].

12 Foreign Affairs, Defence and Trade References Committee, Parliament of Australia, *The Torres Strait: Bridge and Border*, 2010, available from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed_inquiries/2010-13/torresstrait/report/index [accessed 9 August 2018].

1.15 The report examines:

- the business rules (such as procedures and guidance) that Australian Government entities use to deliver their functions in accordance with their legislation and the provisions of the Torres Strait Treaty (Chapter 2);
- the governance structures and joint activities that Australian Government entities have established to support the coordination of their activities, and the activities that they are conducting jointly (Chapter 3); and
- the systems and assets (permits and IT systems monitoring cross-border movements, arrangements to deploy and share vessels and aircraft, and telecommunications) that support the coordination of Australian Government entities' operations in Torres Strait (Chapter 4).

Audit methodology

1.16 The audit methodology included the following.

- Fieldwork in Torres Strait and the Northern Peninsula Area, and some PNG Treaty villages adjacent to Torres Strait. Fieldwork included observing activities conducted by individual entities and those conducted jointly by multiple entities.
- Review of relevant departmental documents.
- Interviews and meetings with representatives of the Australian Government, Queensland Government and local Councils on Thursday Island, in Cairns and in Canberra.
- Interviews with, and submissions from, community members and organisations based or operating in Torres Strait.

1.17 The audit was conducted in accordance with the ANAO auditing standards at a cost to the ANAO of approximately \$450,000.

1.18 The team members for the audit were Dr Isabelle Favre, Hugh Balgarnie, Yvonne Buresch and Deborah Jackson.

2. Business rules

Areas examined

This chapter examines the business rules that Australian Government entities use to deliver their functions in accordance with their legislation and the provisions of the Torres Strait Treaty (the Treaty) relating to immigration and customs, biosecurity and fisheries. The chapter also assesses whether these business rules are effective in supporting the coordination of activities in Torres Strait.

Conclusion

The business rules are effective for the implementation of biosecurity and fisheries legislation, and support the application of the Treaty provisions and the coordination of activities in Torres Strait. The business rules are not fully effective for the implementation of immigration and customs legislation in the context of the Treaty. This impacts on the capacity of entities to coordinate their activities and to develop a shared understanding of immigration and customs rules applicable in the region.

Area for improvement

The ANAO made one recommendation aimed at improving immigration and customs business rules.

2.1 The Treaty prescribes a set of rules and principles that provides a framework for the management of the common border area between Papua New Guinea (PNG) and Australia. With the establishment of the Protected Zone, the requirements and procedures that normally apply at other Australian borders to deal with immigration, customs, biosecurity and fisheries, are interpreted or adapted to comply with the provisions of the Treaty.

2.2 A set of business rules (such as procedures and guidance) consistent with the provisions prescribed in the Treaty is instrumental for entities to operate effectively and lawfully in Torres Strait, and to support the coordination of their activities with other entities. Given the different rules in place in the Protected Zone, it is important that officers operating in Torres Strait are provided with practical guidance on how to exercise their functions, relative to Treaty provisions.

2.3 Box 1 outlines the key provisions prescribed in the Treaty in relation to immigration, customs, biosecurity and fisheries.

Box 1: Torres Strait Treaty's provisions on immigration, customs, biosecurity and fisheries

Immigration, customs and biosecurity

The provisions to be applied for immigration, customs and biosecurity are briefly described in Article 16 of the Treaty. The article establishes that, as a principle:

... each Party shall apply immigration, customs, quarantine and health procedures in such a way as not to prevent or hinder free movement or the performance of traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other Party.

The article also prescribes that:

- traditional inhabitants visiting for purposes other than traditional activities are to be subject to the same immigration, customs and biosecurity requirements as non-traditional inhabitants;
- each party (that is, PNG and Australia) is able to limit free movement to control illegal entry or evasion of justice; and
- each party is able to apply immigration, customs or biosecurity measures that it 'considers necessary to meet problems which may arise'.

Fisheries

The Treaty is considerably more detailed in relation to the management of fisheries in the Protected Zone, to which it dedicates nine articles (Articles 20 to 28). In particular, it establishes the principle that commercial fisheries should be administered in the Protected Zone so as not to prejudice traditional fishing.

The Treaty also:

- establishes the conditions for commercial fishing by both Australia and Papua New Guinea (PNG);
- includes arrangements for the sharing of commercial catch; and
- allows both countries to work together in licencing, inspection and enforcement as well as in the preservation, protection and management of fisheries.

In the case of a suspected offence committed in or in the vicinity of the Protected Zone in the course of traditional fishing, corrective actions should be taken by the country of which the alleged offender is a citizen and, if detained, the alleged offender and their vessel should be released or handed over to the authorities of their country of origin (Article 28).

Do immigration and customs business rules support the implementation of legislation and coordination of activities?

Immigration and customs business rules do not fully support the implementation of legislation and the coordination of activities in Torres Strait. There is insufficient guidance to implement the Treaty provisions, which has impacted on the consistency and lawfulness of some of immigration and customs decisions and has contributed to long-term immigration issues.

2.4 Home Affairs is responsible for administering migration and customs legislation, including in Torres Strait.

Immigration legislation

2.5 In reference to the Treaty, the *Migration Act 1958* establishes three key points:

- PNG traditional inhabitants who are in the Protected Zone to perform traditional activities do not need to travel with a passport or a visa and are referred to as lawful non-citizens;
- an officer 'may' detain a person in the Protected Area if the officer 'knows or reasonably suspects' that the person is a PNG citizen and an unlawful non-citizen (Migration Act subsection 189(3A)); and

- PNG traditional visitors may have their right to enter Australia (including the Protected Zone) removed by the responsible Minister (Migration Act section 16).

2.6 Subsection 189(3A) of the Act was introduced as part of the *Migration Legislation Amendment (Offshore Processing and Other Measures) Act 2012* to allow for the discretionary detention of a PNG citizen found to be an unlawful non-citizen in the Protected Zone, whether that person is a traditional visitor (that is, from one of the Treaty Villages) or not. Elsewhere in Australia, subsection 189(1) prescribes that ‘if an officer knows or reasonably suspects that a person in the migration zone ... is an unlawful non-citizen, the officer must detain the person’.

2.7 The Migration Act refers to the Torres Strait Treaty for the definition of traditional activities, and to the *Torres Strait Fisheries Act 1984* for the definition of traditional inhabitant.¹³ The *Migration Reform Act 1994* further specifies that an ‘allowed’ PNG traditional inhabitant must not be a ‘behaviour concern’ or ‘health concern’.

Immigration business rules

2.8 Home Affairs’ database for policies, procedures, delegations and authorisations (the Policy and Procedure Control Register) contains two instructions of relevance to the implementation of the Torres Strait Treaty:

- Instruction TT-2987 *Allowed inhabitants of the Protected Zone* was last updated in November 2013. The instruction defines the key terms and provisions of the Treaty and provides some information on the role of the department in the Protected Zone and on the migration status and clearance process for allowed and non-allowed visitors. It provides detailed guidance on how to use a ban under section 16 of the Migration Act (section 16 ban), indicating that the decision to issue a section 16 ban should be made with great care given the impact on the rights of the traditional visitors, and in consultation with local, state and federal government representatives.
- Procedural Instruction BC-536 *Arrival, immigration clearance and entry – Immigration Clearance at airports and seaports* (September 2018) specifies that if a traditional visitor is in the Protected Zone for activities other than traditional, they become unlawful non-citizens. In line with Migration Regulation 1994, the instruction prescribes that traditional visitors leaving the Protected Zone must comply within five days with immigration clearance requirements (including holding a visa and identity documents) at a departmental office or at any place where there is a clearance officer. The instruction takes into consideration the fact that traditional visitors may leave the Protected Zone inadvertently and should also be given the option to return to the Protected Zone immediately.

Implications for immigration decisions

2.9 In summary:

- a PNG citizen in the Protected Zone who conducts any non-traditional activities becomes an unlawful non-citizen who *may* be detained. For example, a PNG traditional inhabitant who visits the Protected Zone to work for money (such as doing some gardening or fishing

13 The Torres Strait Fisheries Act refers to the Treaty for the definition of traditional inhabitant.

for an Australian operator) or to sell goods to non-traditional inhabitants; or who, during a traditional visit, commits a criminal offence; becomes an unlawful non-citizen who *may* be detained; and

- a PNG citizen outside the Protected Zone becomes an unlawful non-citizen who *must* be detained (or given the option to apply for a visa or return to the Protected Zone). For example, a PNG traditional inhabitant whose boat inadvertently lands on an island outside the Protected Zone because of poor weather, *must* be detained unless they obtain a visa and identity documents within five days or agree to return to the Protected Zone immediately.

2.10 The two instructions available to ABF officers (see paragraph 2.8) do not provide any guidance on how to implement the discretionary power (*'may be detained'*) to detain a PNG citizen found to be an unlawful non-citizen in the Protected Zone. Apart from limited situations (which include, since late 2018, PNG citizens accessing health care in the Protected Zone and the Australian mainland — see Case Study 1 below), there is also insufficient guidance about how to resolve situations where PNG citizens find themselves outside the Protected Zone and cannot be practically detained¹⁴, and the options that can be used as an alternative to detention.

2.11 The two case studies below illustrate the range of complex situations that can arise from the operation of the Treaty and the difficulties generated by an inconsistent interpretation of the migration legislation.

Case study 1. PNG health visitors in the Protected Zone and the Australian mainland

While seeking health care is not a traditional activity under the Treaty, Queensland Health provides health services to PNG nationals who travel to Torres Strait and require health treatment.^a Emergency treatment is provided at local clinics and non-emergency presentations are referred back to clinicians in PNG for ongoing care. If patients require emergency inpatient care they may be transported to other Queensland Health facilities, generally on Thursday Island but sometimes on the mainland, or referred to the PNG health system, depending on the severity of presentation. Queensland Health estimates that every year, approximately 100 PNG patients are admitted to Thursday Island and other hospitals on the mainland, and 2000 PNG out-patients visit health care facilities of Torres Strait (inside and outside of the Protected Zone).

The immigration status and treatment of PNG citizens transferred to a health care facility inside and outside the Protected Zone has been inconsistent over the years. Inside the Protected Zone, the department's instructions to Border Monitoring Officers assessing PNG health visitors and their escorts have been to record them as 'refused immigration clearance' and, as much as practicable, accompany them to and from the health clinic. This enables the department to act consistently and lawfully.

However, when PNG citizens are medically transferred to a health care facility outside the Protected Zone, they are not covered by the Treaty provisions and become unlawful non-citizens who, by law (subsection 189(1)), must be detained. The department has not applied a consistent policy to address these situations. Until March 2018, departmental documents

14 For instance ABF is not always able to verify that individuals presumed to be PNG citizens, are not in fact Australian citizens.

indicate that PNG patients transferred to Thursday Island or mainland Australia were in most cases not detained. From March 2018, the department commenced detaining PNG patients and their escorts on the mainland (mostly Brisbane, Cairns or Townsville), but not patients and escorts transferred to Thursday Island.

In December 2018 the ABF developed an interim standard operating procedure^b to clarify the immigration status of PNG citizens transferred to a health care facility outside the Protected Zone. The procedure states that PNG patients and their escorts are not to be detained within health care facilities in the Protected Zone and Thursday Island hospital, but they must be detained if they arrive on the Australian mainland (including Brisbane, Cairns or Townsville).

The Migration Act prescribes that unlawful non-citizens must be detained when outside the Protected Zone, including on Thursday Island, if an officer has a reasonable suspicion that the person is an unlawful non-citizen (subsection 189(1)). In May 2019, Home Affairs advised that the decision to detain a PNG national in Torres Strait can be complicated, particularly where the person has no travel document or is unclear about their parentage/heritage. Home Affairs also advised that it is working on options to regularise the status of PNG nationals who travel outside the Protected Zone (for instance, Thursday Island or the Australian mainland) for medical treatment through the grant of an appropriate visa.

The procedure also prescribes that patients and their escorts must be returned to the Protected Zone where they are not to be detained, but are to be accompanied to the waterfront where their departure can be monitored by ABF officers.

Note a: An agreement between the Commonwealth Department of Health and Queensland Health provides funding to Queensland Health to support the delivery of healthcare and disease prevention projects in the Torres Strait Islands. Under the current agreement, the Commonwealth is providing an estimated total financial contribution to Queensland of \$26.5 million over four years (2016–17 to 2019–20). Three projects are funded: Management of cross-border health issues, including treatment of PNG visitors (\$19m); Testing, treatment and prevention of blood-borne viruses and sexually transmissible infections (\$4.5m); and Mosquito control and cross-border liaison in regard to communicable diseases and other health issues (\$3m).

Note b: Australian Border Force, *Interim process for the arrival, detention and return of PNG nationals originating from the Torres Strait in Australia for medical Treatment*, December 2018.

Case study 2. Migration status of children residing in Australia through the process of customary adoptions

In some areas of Torres Strait, a number of Australians are raising children of PNG citizens (that is, parents who are not Australian citizens or Australian visa holders), based on family linkages within the region. These customary adoptions are not formalised in PNG or recognised by the Australian Government. Additionally, a number of children born in Australia to PNG citizens reside in Torres Strait. As children do not automatically acquire Australian citizenship or an Australian visa when they are born in or brought to Australia, these children do not have a lawful migration status in Australia.

Two Home Affairs internal information reports dated January 2018 indicate that ‘several hundred’ PNG minors are living in Torres Strait, based on an arrangement between PNG parents and Australian hosts to care for the children. Another internal report, dated December 2017, indicates that ‘thousands’ of PNG citizens are living in Torres Strait and

mainland Australia without a visa as a result of either customary adoption practices or being born in Australia by PNG parents.

Customary adoptions among Torres Strait Islander peoples are a long-standing practice^a that has extended to children from PNG in the Protected Zone. Until 2016 Home Affairs had not addressed the migration issues related to customary adoptions. In 2016 a decision was made to require that Australian carers register PNG minors by 31 March 2017 so the department could consider whether these minors are eligible for Australian citizenship or a visa. Past this date, customary adoptions would have to be undertaken through normal migration channels. However, the department has not addressed the situation of adult children living in Australia.^b

Note a: In October 2018 the Queensland Government announced its intention to develop new legislation that officially recognises Torres Strait People's 'ancient and enduring cultural' child rearing practices. Queensland Government, 'Torres Strait child rearing practices to be enshrined in law', media release, 12 October 2018, Available from <http://statements.qld.gov.au/Statement/2018/10/12/torres-strait-child-rearing-practices-to-be-enshrined-in-law> [accessed 4 March 2019].

Note b: Home Affairs advised that the measures established to resolve the status of PNG children residing in Torres Strait could apply to individuals aged up to 24 years (noting that individuals over 18 years were required to meet additional dependency criteria).

2.12 Having insufficient business rules about how to manage the situations arising from the Treaty provisions increases the risk that the Home Affairs' officers will act inconsistently, inappropriately or unlawfully.¹⁵ This can lead to the creation of long-term immigration issues (as demonstrated by the legacy of the department's historical management of customary adoptions documented in Case Study 2). It can also adversely impact on: communities' expectations and perceptions of ABF's role; and other government entities' capacity to coordinate their activities with the ABF and fully understand ABF's role and responsibilities.

Customs legislation

2.13 The *Customs Act 1901* includes one section that refers to the Treaty, section 30A, which establishes that certain ships and goods may be exempt from some of the provisions of the Customs Act, as long as these ships or goods are associated with traditional inhabitants and traditional activities in the Protected Zone.¹⁶ Ships are defined as having on board 'at least one traditional inhabitant who is undertaking that voyage in connection with the performance of traditional activities in the Protected Zone'. Goods are defined as being goods that are 'owned by, or under the control of, a traditional inhabitant who is on board that ship and ... used by him or her in connection with the performance of traditional activities in the Protected Zone'.

2.14 The provisions of the Customs Act from which ships and goods may be exempt are to be published in the Gazette. Two Notices of Exemption were published in the Gazette in July 1986, listing the different sections of the Customs Act from which traditional inhabitants' ships and goods

15 For the purpose of this report: inconsistent is defined as making decisions on similar cases that differ from one another or from internal policy; unlawful, as operating outside the legal framework; and inappropriate, as exercising a power lawfully but in breach of internal policy requirements.

16 The Customs Regulation 2015 (Part 2, section 5) specifies the information that must be provided by the master of a vessel that does not meet the conditions of a traditional vessel but intends to request an exemption from the provisions of the Act.

were exempted. On 7 March 2019, the two Notices were revoked and a new Notice of Exemption, reflecting the amendments to the Customs Act since 1986, was gazetted.

Customs business rules

2.15 While the definition of traditional inhabitants and traditional activities are established in other legislation and guidance documents¹⁷, the concept of goods used in connection with traditional activities from a customs perspective has not been defined¹⁸. For instance, PNG traditional inhabitants invited to a wedding in the Protected Zone may want to bring alcohol or tobacco ‘in connection with the performance of traditional activities’ (Customs Act subsection 30A(3)). The Customs Act and associated prohibited import regulations would apply to these goods. However, Border Monitoring Officers have not been provided with guidance on how to recognise and authorise the importation of goods used in connection with traditional activities.¹⁹

2.16 Home Affairs’ Policy and Procedure Control Register does not include any guidance related to the application of customs legislation in Torres Strait. Home Affairs advised on 25 March 2019 that ABF officers based in Torres Strait District Command on Thursday Island provide advice or instruction to Border Monitoring Officers over the phone. Nevertheless, providing written guidance on the implementation of customs legislation in the context of the Protected Zone will assist ABF officers, including Border Monitoring Officers, to make decisions that are consistent with legislation and the Treaty. Consistent implementation of customs decisions also contributes to more effective coordination of entities activities as it facilitates a shared understanding of the rules applicable in the Protected Zone.

2.17 On 28 March 2019, Home Affairs advised that the Department and the ABF are working towards developing updated and additional guidance for officers working in Torres Strait. Home Affairs also noted that whilst good governance is essential in any operating environment, the particular complexities in Torres Strait, including the interaction of Treaty and legislative provisions, require a degree of flexibility and discretion.

Recommendation no.1

2.18 Noting the complexities in Torres Strait and the need for a degree of flexibility and discretion, the Department of Home Affairs develop comprehensive business rules to guide the implementation of immigration and customs legislation in Torres Strait and ensure consistent application of Treaty and legislative provisions.

Department of Home Affairs response: *Agreed.*

2.19 *The Department agrees with this recommendation noting the need for comprehensive business rules to guide the implementation of immigration and customs legislation in the Torres*

17 These include the *Torres Strait Fisheries Act 1984* and the Torres Strait Treaty and guidelines.

18 Guidance is provided by the Department of Agriculture and Water resources for goods allowed under the Treaty provisions from a biosecurity perspective – see next section.

19 The Border Monitoring Officers Standard Operating Procedure, last updated in March 2017, describes the situations where immigration clearance can be granted and refused. In particular, clearance can be refused when: the purpose of the visit is not a lawful traditional activity as defined in the Treaty; the visitor is not from a Treaty Village; or the visitor does not carry an authorised pass. It does not include any reference to customs matters.

Strait, which should have regard as the report notes, to the complexities of operating in the Torres Strait and the need for a degree of flexibility and discretion in applying legislative and Treaty provisions. The Department agrees that good governance is essential in any operating environment and is actively addressing relevant policies and procedural instructions to guide the implementation of immigration and customs legislation in Torres Strait, and the consistent application of the relevant Treaty and legislation.

2.20 On 10 May 2019 the Department finalised a Policy Statement relating to allowed inhabitants of the Protected Zone. This Statement broadly satisfies the recommendation and will facilitate the ABF to enhance Procedural Instructions and Standard Operating Procedures to provide further guidance around the exercise of discretionary detention powers. A Procedural Instruction for detaining an unlawful non-citizen in an excised offshore place and a Standard Operating Procedure providing further guidance border monitoring officers on the importation of goods used in connection with traditional activities, have been reviewed and are currently in the final stages of drafting. We expect to finalise these two documents soon.

2.21 Further, on 18 April 2019, the ABF and the Department of Agriculture and Water Resources (DAWR) signed a Letter of Exchange which articulates roles, responsibilities and work instructions, and reflects the amendments to the Biosecurity Act 2015. The ABF and DAWR have a long productive working relationship in this unique operating environment that relies on cooperation to provide border security and deliver services to the Commonwealth, including the administration of immigration, customs and biosecurity regulations. A copy of this Letter of Exchange has been provided to the ANAO.

Do biosecurity business rules support the implementation of legislation and coordination of activities?

Biosecurity business rules are comprehensive and up-to-date, and support the implementation of the biosecurity legislation in Torres Strait.

2.22 The *Biosecurity Act 2015* provides the legislative framework relating to diseases and pests that may affect human, animal and/or plant health. The framework is administered jointly by the Department of Agriculture and Water Resources (DAWR) and the Department of Health.²⁰

Biosecurity legislation

2.23 Section 617 of the Biosecurity Act relates to the Treaty and allows regulations to be made in order to implement the Treaty, by exempting Protected Zone vessels (and persons and goods on

20 This audit focused on animal and plant biosecurity risks managed by DAWR, and does not cover the human biosecurity risk administered by the Department of Health.

board these vessels) from all or any provisions of the Act while in the Protected Zone.²¹ Goods may be exempt from the provisions of the Biosecurity Act if they are:

- owned by, or are under the control of, a traditional inhabitant who is on board that vessel and have been used, are being used or are intended to be used by him or her in connection with the performance of traditional activities in a Protected Zone area; or
- the personal belongings of a traditional inhabitant.

2.24 Several instruments of the biosecurity legislation further define the provisions of the Biosecurity Act from which Protected Zone vessels are exempt.²² This includes section 49 of the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016*, which defines the classes of goods that can be brought into the Protected Zone. These exemptions aim to enable free movement of traditional inhabitants and the performance of lawful traditional activities within the Protected Zone, in line with the Treaty provisions.

2.25 The Biosecurity Regulation 2016 also determines the Torres Strait Permanent Biosecurity Monitoring Zone, which includes the area south of the Protected Zone to mainland Australia (Figure 2.1). Permanent Biosecurity Monitoring Zones are established in places that are assessed as presenting a higher biosecurity risk. They are used to:

... monitor whether pests or diseases that may pose an unacceptable level of biosecurity risk have entered, or are likely to enter, emerge, establish or spread from places that are known to be subject to high traffic of goods or conveyances that are subject to biosecurity control.²³

2.26 The Biosecurity Act outlines the powers that may be exercised in the zone to manage this elevated risk, as well as civil penalty provisions.

21 Protected Zone vessels are vessels meeting the following conditions: owned and operated by a traditional inhabitant; entering the Protected Zone; with on board at least one traditional inhabitant entering the Protected Zone in connection with the performance of traditional activities. A vessel with an employee of the Australian, Queensland or PNG governments on board entering the Protected Zone in connection with the performance of their functions or duties, or the exercise of their powers, is also a Protected Zone vessel. *Biosecurity Act 2015*, section 617.

22 These instruments are the Biosecurity Regulation 2016, the *Biosecurity (Prohibited and Conditionally Non-Prohibited goods) Declaration 2016* and the *Biosecurity (Movement between Parts of the Australian Territory) Determination 2016*.

23 *Biosecurity Bill 2014*, Explanatory Memorandum, Clause 9 Definitions 'permanent biosecurity monitoring zone' [Internet], available from <https://www.legislation.gov.au/Details/C2014B00245/Explanatory%20Memorandum/Text> [accessed 25 March 2019]. Permanent Biosecurity Monitoring Zones include airports, seaports and international mail centres.

Figure 2.1: Torres Strait Biosecurity Zones



Source: Department of Agriculture and Water Resources.

2.27 By determining a Permanent Biosecurity Monitoring Zone between the Protected Zone and the mainland which, in practice, acts as a 'buffer zone', DAWR has recognised the heightened risk posed by movements allowable under the Treaty.

Biosecurity business rules

2.28 DAWR has developed a range of business rules to assist biosecurity officers operating in the Protected Zone. These include work instructions on:

- the clearance of traditional vessels;
- the inspection of goods transported between the Protected Zone to the Permanent Biosecurity Monitoring Zone or from either of these zones to the mainland; and the delivery of permits for goods that require them;
- the assessment and management of aircrafts and larger vessels departing from Torres Strait; and
- the interim procedures for ABF Border Monitoring Officers to follow when conducting biosecurity inspections of PNG traditional visitors.

2.29 DAWR has also developed a reference guide outlining the conditions to be applied to the movement of goods from PNG treaty villages to the Protected Zone or the Permanent Biosecurity Monitoring Zone and from the zones to the mainland. The guide includes, for each good, a description and photograph.

2.30 The rules provide detailed instructions and guidance on how to implement the elements of the biosecurity legislation that are relevant to the application of the Treaty provisions. All the documents were updated to reflect the changes introduced by the *Biosecurity Act 2015*. All the documents include evidence of amendments and a version history. All but one, the work instruction *Clearance of Torres Strait traditional vessels*, notes the date of the next review. DAWR advised that this work instruction should be reviewed at least every three years in accordance with its internal policy.

Do fisheries business rules support the implementation of legislation and coordination of activities?

The business rules, combined with the legislation, applying to fisheries in Torres Strait are comprehensive and fit-for-purpose, but some key governance documents are not up-to-date.

2.31 The management of commercial and traditional fishing in the Protected Zone is governed by the provisions of the Treaty which, as previously noted (Box 1, page 23), dedicates nine of its 32 articles to issues related to fisheries.

Fisheries legislation

2.32 The *Torres Strait Fisheries Act 1984* came into force in February 1985, shortly after the Treaty. The purpose of the Torres Strait Fisheries Act is to give effect, in Australian law, to the fisheries elements of the Treaty. In particular, the Act prescribes as management priorities:

- the acknowledgment and protection of the traditional way of life and livelihood of traditional inhabitants;
- the protection and preservation of the marine environment and indigenous fauna and flora (in such a way as to minimise any restrictive effects of the measures on traditional fishing);
- the management of commercial fisheries for optimum utilisation, but so as not to prejudice the provisions of the Treaty in regard to traditional fishing;
- the sharing of the commercial fish harvest with PNG in accordance with the Treaty; and
- the promotion of economic development in the Torres Strait area and employment opportunities for traditional inhabitants.

2.33 The Torres Strait Protected Zone Joint Authority (PZJA) is established by Part V of the Torres Strait Fisheries Act. The PZJA comprises the Commonwealth minister responsible for fisheries, the chair of the Torres Strait Regional Authority (TSRA) and the Queensland minister responsible for Fisheries. Its key functions are to '[keep] constantly under consideration the condition of the fishery; formulate policies and plans for the good management of the fishery', while 'cooperating and consulting with other authorities'.

2.34 The PZJA is responsible for the administration of the Torres Strait Fisheries Act. Its members are supported by the Australian Fisheries Management Authority (AFMA), DAWR, the TSRA and Queensland Department of Agriculture and Fisheries (Queensland Fisheries). Currently AFMA and Queensland Fisheries have the delegation to undertake day-to-day administrative decisions related to the operation of the Torres Strait Fisheries Act.²⁴

2.35 The instruments related to the operationalisation of the Torres Strait Fisheries Act include the *Torres Strait Fisheries Regulation 1985* as well as:

- two Proclamations;
- four Declarations;

24 Protected Zone Joint Authority, *Annual Report 2014–15*, p. 3 [Internet], available from <https://pzja.govcms.gov.au/sites/g/files/net4491/f/afma-pzja-annual-report-2014-15.pdf> [accessed 25 March 2019].

- one Determination; and
- three Management Plans (for tropical rock lobsters, finfish and prawns).

2.36 In addition, fisheries management instruments and fisheries management notices, prescribing the conditions surrounding the taking of specific types of fish, are issued from time to time by the Commonwealth Minister responsible for fisheries on behalf of the PZJA.

Fisheries business rules

2.37 In addition to guidance developed to support fisheries officers when undertaking their duties in Australian waters in general, AFMA has developed a range of documents related to the management of fisheries in the Protected Zone which take account of obligations under the Torres Strait Treaty and supporting arrangements. These documents include the *Guideline to assist officers dealing with PNG fishermen operating in Australian waters of the Torres Strait Protected Zone* (published October 2017), which provides guidance on the conduct of investigations and apprehensions in the context of the Protected Zone.

2.38 AFMA has also contributed to the development of policy and guidelines for the operation of the PZJA. In particular, *Fisheries Management Paper No.1* (May 2008) sets out the PZJA's policy for the operation and administration of the consultative groups supporting its operation; and *Fisheries Management Paper No.2* (April 2006) provides guidance for the formation of advisory panels for the allocation of fishing concessions in the Protected Zone.

2.39 AFMA advised that it also uses guidance developed by other entities, including:

- guidelines to address biosecurity risks associated with illegal foreign fishing boats, developed by the then Department of Agriculture, Fisheries and Forestry (September 2011); and
- guidelines developed by the Department of Home Affairs (Maritime Border Command) describing the procedures to be followed when participating in operations leading to the apprehension of PNG nationals for illegal fishing in the Protected Zone (June 2018).

2.40 While a range of business rules exist, some of them were developed a number of years ago (in one instance, 2004), and it is difficult to establish whether the documents are up-to-date, due to the absence of a version history and date of next review. For example, a number of changes to the consultative structure of the PZJA have occurred since *Fisheries Management Paper No. 1*, which plays a key role in the administration of the Torres Strait fisheries, was endorsed in 2008. The Standing Committee, which has been presiding over and providing recommendations to the PZJA since 2010, is not included in prescribed arrangements set out in *Fisheries Management Paper No 1*. A revised Paper was developed by AFMA in 2015, but was not endorsed by the PZJA (See also paragraph 3.64).

2.41 AFMA should review its guidance documents to verify that they are up-to-date, and include the document version history and date of next review.

2.42 The large body of documents that supports the regulation of fisheries, in particular fisheries management instruments and notices, also guides the work of entities involved in Torres Strait fisheries, including fishers. Over the years, a large number of these documents have been issued, with, in most cases, the most recent revoking a previous one. The PZJA website includes a list of the

notices and instruments, however the list available as at March 2019 had not been updated since October 2013, and included legislative instruments that are no longer current.²⁵

2.43 AFMA, as the Commonwealth entity responsible for the day-to-day administration of the PZJA, should ensure that the list of the current fisheries management notices and instruments effective in Torres Strait on the PZJA website is up-to-date. Recommendation no.4 in Chapter 3 recommends that the information on the PZJA's website is kept current. Up-to-date information would assist stakeholders, such as fishers and communities, to operate more effectively in Torres Strait.

25 For example, *Fisheries Management Instrument No. 15* dated March 2017 revokes *Fisheries Management Notice No. 64* dated December 2002 and prohibits the taking, processing or carrying of sea cucumber in the area of the Torres Strait Sea Cucumber Fishery. However *Fisheries Management Notice No. 64* is still accessible from the PZJA website and marked as 'current'.

3. Governance structures and joint activities

Areas examined

This chapter examines the governance structures and joint activities used to support cross-entity coordination and whether these structures and activities are effective in facilitating the administration of the Torres Strait Treaty (the Treaty), the monitoring of cross-border movements, and management of biosecurity and fisheries.

Conclusion

The governance structures and joint activities are largely effective to support cross-entity coordination. However, key policy decisions made by the Torres Strait Joint Advisory Council (JAC) are not adequately documented, and the risks associated with the impacts of a changing strategic and operational environment on the Treaty operation have not been analysed. The Protected Zone Joint Authority (PZJA) annual reports and website are not up-to-date.

Areas for improvement

The ANAO made three recommendations aimed at: documenting key JAC decisions; analysing risks to the operation of the Treaty relating to the changing strategic and operational environment; and ensuring that the PZJA's annual reports and website are up-to-date.

Do governance structures support the operation of the Treaty and the coordination of activities?

The governance structures provide an effective framework to support the operation of the Treaty, but could be improved by the establishment of a central register to record key decisions reached by the JAC. Also, issues relating to the changing strategic and operational environment represent a risk to the enduring operation of the Treaty.

3.1 The Treaty establishes the governance structures supporting the implementation of the Protected Zone provisions (see Box 2).

Box 2: Torres Strait Treaty's governance provisions for the Protected Zone

Articles describing the governance structure to facilitate the implementation of the Treaty provisions relating to the Protected Zone include:

- Article 17 establishes, as a principle, that each party (Papua New Guinea (PNG) and Australia) will share information on their legislation and policies relating to immigration, customs, biosecurity, fisheries and other matters, and will consult with each other to resolve any issues arising from the implementation of the legislation and policies.
- Article 18 prescribes that each party is to designate a Treaty Liaison Officer, based in Daru (PNG) and on Thursday Island, whose role is to facilitate the practical operation at the local level of the provisions of the Treaty and to resolve any problems arising from the Treaty operation. The Treaty Liaison Officers' duties are to be conducted through exchange of information and consultation with each other; with traditional inhabitants' representatives; and with local, regional and national authorities. Treaty Liaison Officers must also escalate to their government any matter that cannot be resolved at the local level.^a

- Article 19 determines the functions and mode of operation of the JAC. The JAC is a consultative and advisory body whose role is to seek solutions to problems that cannot be resolved by the Treaty Liaison Officers. This role includes reviewing and making recommendations (including to the Foreign Ministers) on any matters that may affect the effective implementation of the Treaty provisions, in particular the free movement of traditional inhabitants and their performance of traditional activities. The JAC should ensure that traditional inhabitants are adequately consulted and their views conveyed in reports and recommendations.

Note a: DFAT advised that the PNG Treaty Liaison Officer position has been vacant since 2016.

3.2 The Department of Foreign Affairs and Trade (DFAT), as the entity responsible for the administration of the Treaty, coordinates the governance structure supporting the Treaty's operation. The Australian Treaty Liaison Officer, a DFAT officer, is supported by an office manager and is in regular communication with all entities to facilitate the implementation of the Treaty provisions.

3.3 The JAC is the central consultative body overseeing the implementation of the Treaty provisions and comprises representatives from Australian and PNG Government, Queensland Government and PNG Western Province Administration, and traditional inhabitants from Torres Strait and PNG treaty village communities. It is supported by four bilateral (PNG and Australia) advisory committees:

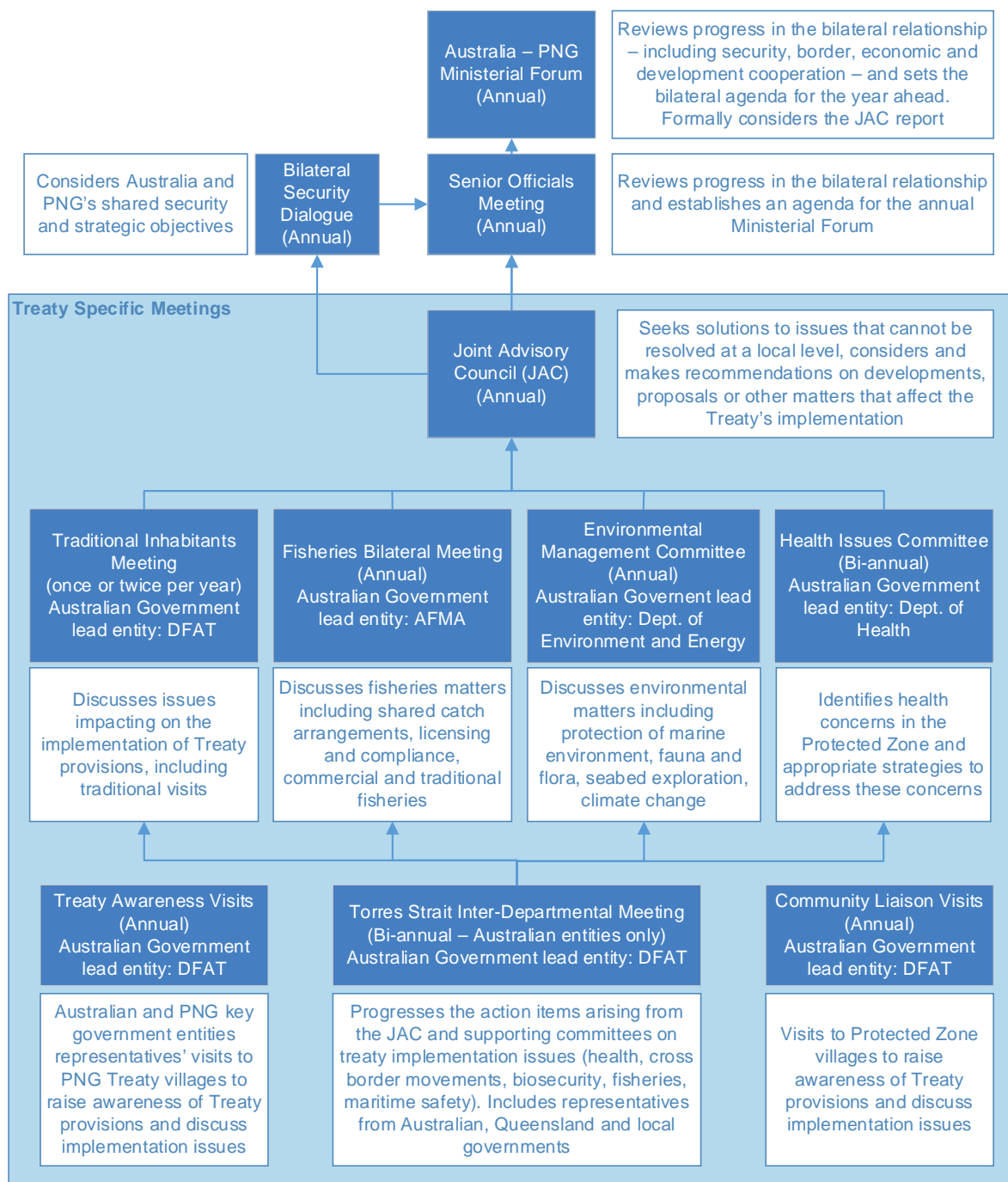
- the Traditional Inhabitants Meeting;
- the Fisheries Bilateral Meeting;
- the Environmental Management Committee; and
- the Health Issues Committee.

3.4 Each of these committees includes stakeholders from relevant Australian and PNG government entities. For the Australian side, DFAT coordinates the Torres Strait Inter-departmental Meeting, which aims to progress the action items arising from the JAC and the four advisory committees. The Inter-departmental Meeting includes representatives from the Australian, Queensland and local governments.

3.5 The JAC reports to the Foreign Ministers of Australia and PNG (Australia-PNG Ministerial Forum) through the Senior Officials Meeting, co-chaired by the relevant DFAT Deputy Secretary and PNG counterpart, and also provides input to the Bilateral Security Dialogue, co-chaired by the DFAT Secretary and PNG counterpart. The Senior Officials Meeting includes representatives from a range of Australian and PNG Governments' law enforcement, immigration, customs, biosecurity and health entities. The Bilateral Security Dialogue comprises representatives from Australian and PNG Governments' law enforcement and defence entities.

3.6 Additionally, DFAT coordinates two cycles of annual visits aimed at raising awareness of the Treaty provisions and at discussing relevant issues encountered by traditional inhabitants. These visits are known as Treaty Awareness Visits (when conducted in PNG); and Community Liaison Visits (when conducted in Australia). A range of Australian and PNG government entities participate in these visits, representing traditional inhabitants, immigration, law enforcement, environment, biosecurity, health and fisheries entities (see photograph at Figure 3.2).

3.7 Figure 3.1 provides a schematic overview of the Treaty governance structure.

Figure 3.1: Torres Strait Treaty governance structure

Source: ANAO.

3.8 ANAO's review of the minutes and supporting papers available for the Treaty meetings for the period July 2014–June 2018 demonstrate that, overall:

- the meetings were conducted on a regular basis and according to schedule;
- attendance was sufficient to represent the key parties involved;
- documentation (minutes, supporting papers, agendas) was fit-for-purpose; and
- actions arising were recorded and followed up.

3.9 The JAC and bi-lateral advisory meetings involved a large number of participants from PNG and Australia (between 30 and 50) and were normally scheduled consecutively over one or more days to optimise participation and minimise expense. Many participants attended several meetings, which contributed to the sharing of information on matters that have relevance across more than one area (such as fisheries and environmental matters). Actions arising were generally recorded and tracked, in some cases using a traffic light system. Given the large number of parties involved, the complexity of some of the issues and the bilateral nature of the meetings, issues were often discussed and progressed across several meeting cycles.

Figure 3.2: DFAT-led Treaty Awareness Visit to one of the PNG Treaty Villages



Source: ANAO

3.10 An important function of the JAC, as prescribed by the Treaty, is to seek solutions to issues arising at the local level from the operation of the Treaty. JAC decisions have important implications for all parties involved in the operation of the Treaty provisions. For example, in 2003 the JAC endorsed a recommendation from the Traditional Inhabitants Meeting to allow a female spouse who was not born in a Treaty village but resided permanently in one of the Treaty villages through marriage to a male from that village, to be included in the free movement provisions of the Treaty. The reverse however (a male spouse who was not born in a Treaty village but resided permanently in one of the Treaty villages through marriage to a female from that village) was not agreed by the Traditional Inhabitants Meeting nor the JAC.

3.11 These decisions, which in effect become policy, are documented in the proceedings of the JAC, but are not recorded in a separate location accessible to all the entities who may need them. This means that, in time, these decisions can be hard to locate and parties are not always clear about which specific situations have been agreed to. For example, some PNG nationals living in Daru, the capital of Western Province (see map at Figure 1.2), have been allowed to travel in the Protected Zone because they used to live in the Treaty villages. However, Daru is not one of the 13 villages covered by the Treaty provisions. DFAT was not able to confirm how this decision was made and where it is recorded. A decisions register would increase the clarity and certainty of policy decisions made by the JAC about the operationalisation of the Treaty.

Recommendation no.2

3.12 Department of Foreign Affairs and Trade establish and maintain a central register of policy decisions made by the Torres Strait Joint Advisory Council and ensure that the register is accessible to stakeholders, including Australian Government entities, operating in Torres Strait.

Department of Foreign Affairs and Trade response: *Agreed.*

3.13 *DFAT has created a central register to capture key policy decisions made by the Joint Advisory Council. The register is held on the DFAT electronic filing system and will be available to stakeholders on request. In addition, DFAT is currently consulting with stakeholders including, Australian Government entities, traditional inhabitants and Papua New Guinea, to consider the publication of the Joint Advisory Council Meeting Summary Outcomes on the DFAT website. This would allow key policy decisions to be publically accessible and in a suitable format. DFAT is proposing to publish the outcomes following the last Joint Advisory Council meeting, conducted in March 2019.*

3.14 The JAC meeting papers examined by the ANAO demonstrate that a number of issues have been regularly raised by JAC members over the years. These issues include:

- the impact of climate change on the islands of the Protected Zone and PNG Treaty villages, and the growing problem of drinking water availability;
- the changes in PNG demographics, including the increasing population in the PNG Treaty villages²⁶, and the ensuing pressure on the Torres Strait Islands communities who receive their visits; and
- the difficulty of identifying which traditional inhabitants are covered by the Treaty provisions, given the increasing population in PNG Treaty villages and the ageing of the people who are able to identify them (Border Monitoring Officers, Australian Councillors and PNG village chairpersons).

3.15 DFAT, in the *2017 Foreign Policy White Paper*²⁷, reaffirmed its commitment to preserving the integrity of the Treaty as a foundation to the border arrangements between Australia and PNG. To support this commitment, DFAT should conduct an analysis of the impact that the issues associated with the changing strategic and operational environment are having, or will have, on the Treaty and its enduring implementation.

26 Between 2000 and 2015 (dates of the two latest census) the population of PNG had increased by 40 per cent. The population of the Treaty villages combined had increased by 76 per cent during the same period.

27 Australian Government, Department of Foreign Affairs and Trade, *2017 Foreign Policy White Paper – Opportunity Security Strength*, p. 100.

Recommendation no.3

3.16 Department of Foreign Affairs and Trade conduct an analysis of the risks associated with the impacts of a changing strategic and operational environment on the enduring implementation of the Torres Strait Treaty.

Department of Foreign Affairs and Trade response: *Agreed.*

3.17 *DFAT is currently developing a framework for such an analysis. We are in discussions with stakeholders, including working with relevant areas of DFAT, other Australian Government entities, traditional inhabitants and academic experts as to how to best resource and fund this analysis, to meet the intent of the recommendation.*

Do governance structures and joint activities support the control of cross-border movements?

Effective governance structures and joint activities support the control of cross-border movements and related law enforcement activities.

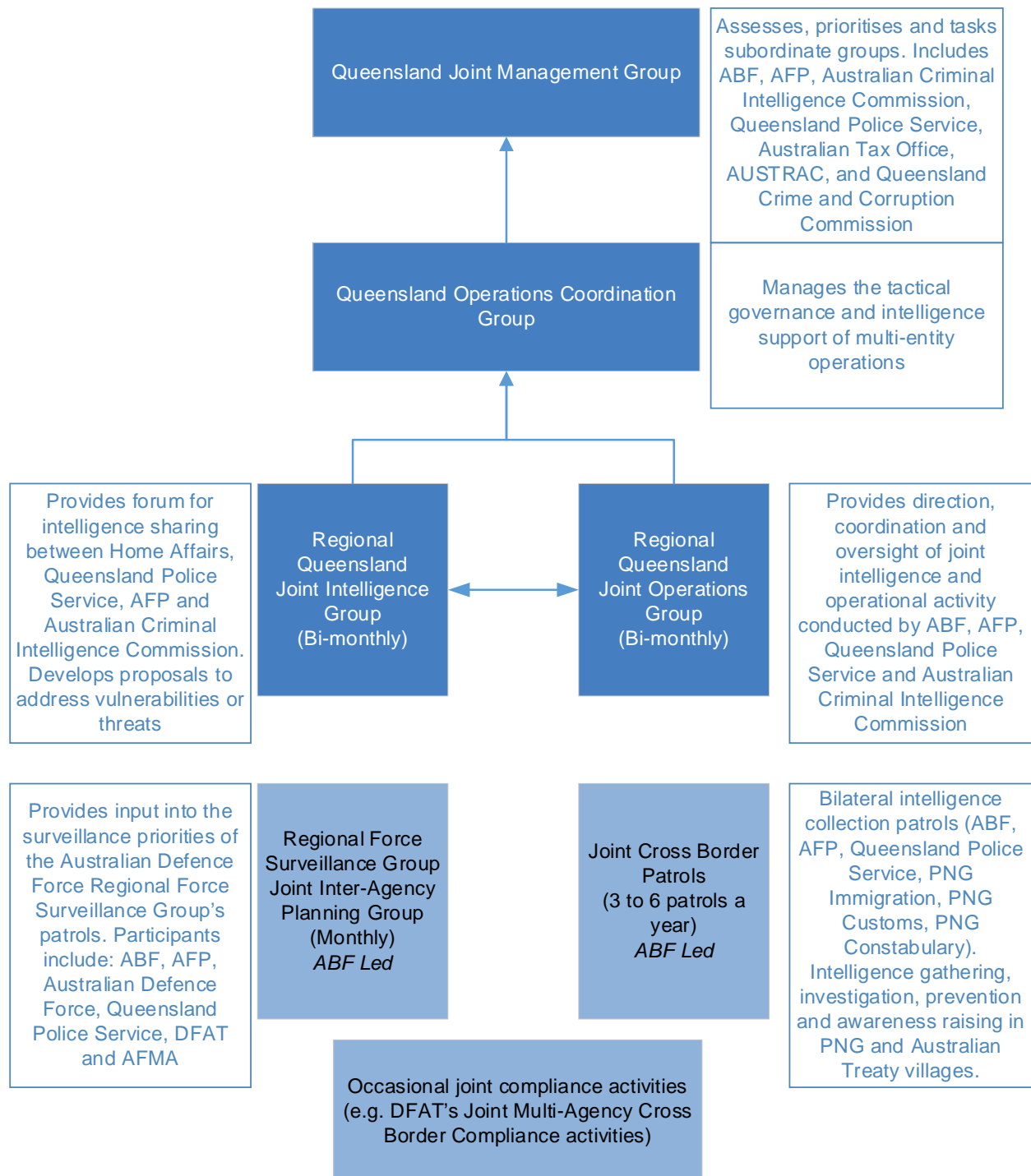
3.18 The key entities involved in law enforcement in Torres Strait are the Australian Border Force (ABF), Australian Federal Police (AFP) and Queensland Police Service. The ABF is responsible for the control of cross-border movements in Torres Strait and for law enforcement activities associated with these movements.²⁸ The AFP's role in Torres Strait is focused on the delivery of intelligence functions.²⁹ The three entities recognise the importance of cooperation and partnership to address law enforcement issues in Torres Strait and participate in a range of governance groups that aim to support the prioritisation, coordination and management of joint agencies operations.

3.19 Figure 3.3 provides an overview of the governance arrangements and joint activities supporting the control of cross-border movements.

28 Within ABF, Northern Command is charged with the geographical area spanning from Broome in Western Australia through to Cardwell in North Queensland and includes Torres Strait, where ABF operates a District Command. The Inspector Torres Strait District Command reports to Superintendent Port Operations and District Command, who in turns reports to the Commander Northern Command, both based in Darwin. The Commander reports to both the Assistant Commissioner Border Patrol and Coordination Command and the Assistant Commissioner Port Operation Command in Canberra. Northern Command was established in February 2018 to strengthen ABF's capability to address a range of border-related threats (including unauthorised maritime and air movement and serious organised crime).

29 The AFP has two officers located on Thursday Island.

Figure 3.3: Governance structures and joint activities supporting the control of cross-border movements



Source: ANAO.

3.20 For Torres Strait, the ABF-led Regional Queensland Joint Intelligence Group and Regional Queensland Joint Operations Group aim to share information on key vulnerabilities and threats to cross-border movements and law enforcement and to conduct operations to address these vulnerabilities and threats. The groups are scheduled to meet every two months in locations alternating between Cairns, Mount Isa, Townsville and Thursday Island.

3.21 The ABF-led Joint Inter-Agency Planning Group, which has operated since early 2018, meets monthly and aims to ensure that stakeholders in Torres Strait have an opportunity to provide input into the surveillance priorities of the Australian Defence Force Regional Force Surveillance Group's patrols.³⁰ Entities invited to participate in the Joint Inter-Agency Planning Group include the ADF, AFP, Australian Fisheries Management Authority (AFMA), Queensland Police Service and DFAT.

3.22 The ABF also organises bilateral Joint Cross-border Patrols between three to six times a year. These are described as collaborative intelligence collection activities between Australia and PNG border authorities. The Patrols are conducted under the terms of a memorandum of understanding between Australia and PNG³¹ and aim to gather information of interest to the participating entities, undertake measures that assist prevention and investigation of offences as well as raise awareness of each entity's functions. The Patrols, which include participation from the AFP, Queensland Police Service, the PNG Immigration and Citizenship Authority, the PNG Customs Service and the Royal PNG Constabulary, take place over three to eight days during which a range of Treaty villages in PNG and Australian islands in the Protected Zone are visited.

3.23 These formal governance structures and activities are complemented by occasional joint operations by a range of relevant entities to address identified threats and risks to the border, and by every-day communication and sharing of information between entities. Examples of such collaboration includes ABF officers being included on Queensland Police Service patrol vessels; occasional joint operations between the ABF, AFP and Queensland Police Service to address attempted illegal border crossings; and Joint Multi-Agency Cross-border Treaty Compliance activities. Conducted since late 2017 and coordinated by DFAT, the Treaty Compliance activities are cross-entity bilateral activities aimed at increasing awareness of and compliance with Treaty requirements and strengthening relationships with PNG law enforcement representatives. The activities are normally scheduled to coincide with a major cultural event taking place on one of the Islands of the Protected Zone and involving a large number of visitors from PNG Treaty villages.

Multi-agency facility on Saibai

3.24 In October 2018, the Australian Government announced the construction of a new Community Safety and Security Facility on Saibai. The facility, which will be the first purpose-built multi-agency facility in Torres Strait, is expected to be 'a base for federal and state policing, community safety, security and community agencies'. The facility is intended to support 'increased police services and close collaboration between agencies in the region to ensure communities are safe in Torres Strait.'³²

3.25 Construction of the facility is expected to commence in June 2019 and be completed in February 2020. Responsibility for project-managing construction and the ongoing management of

30 The Regional Force Surveillance Group formalises command and control arrangements and knowledge sharing between the three Australian Defence Force Regional Force Surveillance Units – the 51st Far-north Queensland Regiment, Norforce and the Pilbara Regiment. The three Regional Force Surveillance Units are specialised infantry units of the Australian Army Reserve responsible for patrolling northern Australia. The Regional Force Surveillance Group provides 80 patrol days per year, consisting of eight ten-day periods called Rotations.

31 *Memorandum of Understanding between Commonwealth of Australia, as represented by the Department of Immigration and Border Protection (DIBP) and the Independent State of Papua New Guinea, as represented by the Papua New Guinea Customs Service (PNGCS)*, 2016.

32 N Scullion & W Entsch, 'Commonwealth Government investment to boost safety and security in the Torres Strait', joint media release, 12 October 2018.

the facility lies with the Queensland Department of Aboriginal and Torres Strait Islander Partnerships, with oversight of a steering committee comprising the following Australian and state government entities: Department of the Prime Minister and Cabinet (PM&C); Queensland Premier and Cabinet; Queensland Department of Aboriginal and Torres Strait Islander Partnerships; and Queensland Police Service.

3.26 Through PM&C, \$13 million of federal funding has been allocated to the construction of the facility as part of the Indigenous Advancement Strategy. The entities who will share the facility will be expected to meet ongoing maintenance costs on a user-pays basis. As at March 2019, in addition to Queensland Police Service, the Department of Agriculture and Water Resources (DAWR), the Australian Defence Force and the ABF had expressed interest in using the facility, on a permanent or casual basis.

3.27 Once completed, the facility has the potential to enhance the operations of, and collaboration between, the entities involved.

Do governance structures and joint activities support the management of biosecurity?

The governance structures and joint activities that support the management of biosecurity in Torres Strait are effective.

3.28 DAWR is the key Australian Government agency responsible for biosecurity in Torres Strait. Through the Northern Australia Quarantine Strategy, DAWR undertakes a range of activities including: surveillance of targeted pests, diseases and weeds; compliance and enforcement operations to regulate the movement of people, cargo and vessels; and public awareness and stakeholder engagement, particularly with Aboriginal and Torres Strait Islander groups.

3.29 The Torres Strait Regional Authority (TSRA) supports biosecurity management through the Environmental Management Program that administers projects to control weeds and feral animal populations.

3.30 DAWR and TSRA cooperate with a range of stakeholders to meet their biosecurity management commitments in Torres Strait. Within the Torres Strait Treaty's (the Treaty) consultative framework, DAWR and the TSRA participate in the Environmental Management Committee, the Inter-departmental Committee and the Treaty Awareness Visits (reviewed at paragraphs 3.3 to 3.7). The TSRA also participate in some of the joint cross-border patrols organised by the ABF and DFAT (reviewed at paragraph 3.22). Other key relationships and coordination activities for which DAWR or TSRA are lead entities include:

- DAWR's agreement with Queensland Department of Agriculture and Fisheries to deliver the fruit fly monitoring and response program;
- DAWR's agreement with the TSRA for the provision of Ranger services to support biosecurity surveillance;
- participation in two consultative biosecurity forums: the Torres Strait and Northern Peninsula Area Biosecurity Working Group and the Torres Strait Invasive Species Advisory Group; and
- DAWR's arrangement with the ABF to manage border monitoring responsibilities.

Mitigating the risk of exotic fruit fly

3.31 Torres Strait provides a potential pathway for exotic fruit flies that pose a high risk to Australia's agricultural industries. DAWR has a permanent fruit fly monitoring and diagnostic service program to identify exotic fruit fly incursions and cooperates with the Queensland Department of Agriculture and Fisheries to respond to those incursions. The response arrangements are specified in the *Exotic Fruit Fly in the Torres Strait Response Plan (July 2018 – June 2021)*, which was jointly developed by both departments.

3.32 The Response Plan is managed by the Queensland Department of Agriculture and Fisheries and operates under the Emergency Plant Pest Response Deed. The Deed is a legally binding agreement between the Australian Government, states and industry to share the cost and management of responses to pest incidents. Approximately 80 per cent of the cost is shared between the Australian and Queensland governments and the remaining 20 per cent is met by the affected industries.

3.33 The key components of the plan include: bait spraying and installation of response traps on designated islands where fruit fly traps have met a prescribed threshold; and a pre-emptive male annihilation technique (MAT blocking) where a higher threshold has been met. The Queensland Department of Agriculture and Fisheries does not have permanent staff in Torres Strait and contracts DAWR to deliver the bait spraying and response trap components.

3.34 The Response Plan establishes a Technical Advisory Group that oversees the operational delivery of the program and is comprised of representatives from DAWR and Queensland Department of Agriculture and Fisheries who meet annually to review the results of the previous season's activities. ANAO reviewed the meeting records from August 2016 to October 2018 and found that meetings were convened after each season as planned and were attended by several representatives from both parties. In addition to discussing the results, the parties have used the forum to share information about staffing changes, arrange for the sharing of equipment and participation in joint educational activities and provide comment on draft policy documents. Operational issues were also discussed and resolved. For example, DAWR have leveraged its relationships with traditional inhabitants to organise access to remote islands for visiting by Queensland biosecurity staff.

Providing ranger services

3.35 In April 2016, DAWR entered into a three year agreement with the TSRA for the provision of ranger services to support biosecurity surveillance activities in Torres Strait. Activities that are conducted by the TSRA under the terms of the agreement include:

- gaining permission to access properties and uninhabited islands for surveillance;
- conducting specimen and data collection; and
- sharing information on the movement of people and goods across the Australia/PNG border.

The parties also share survey results and, if relevant, share equipment and facilities.

3.36 In June 2018, DAWR entered into another agreement with the TSRA to provide \$1.73 million in grant funding to expand TSRA ranger groups' capacity to undertake biosecurity monitoring and response activities. Under the agreement the funding is to be used for:

- providing rangers with training;

- working with schools to build biosecurity awareness; and
- improving telecommunication capacity to allow rangers to use online biosecurity reporting platforms.

Participating in forums

Torres Strait and Northern Peninsula Area Biosecurity Working Group

3.37 The Torres Strait and Northern Peninsula Area Biosecurity Working Group was established in December 2016 with the objective of protecting the environment of Torres Strait and the Northern Peninsula Area through practical, integrated and culturally sensitive biosecurity risk management.

3.38 The Working Group is scheduled to meet on a quarterly basis and is co-chaired by DAWR and Queensland Department of Agriculture and Fisheries. Other representatives include the TSRA and the three local councils in Torres Strait.³³ Representatives from other entities and organisations, such as DFAT and Queensland Department of Environment, are invited to participate on issues of relevance to them.

3.39 ANAO's review of the minutes and supporting papers for Working Group meetings, for the period December 2016 – June 2018, demonstrate that overall:

- the meetings were conducted on a regular basis and records show that the Working Group met more regularly than proposed, convening for ten meetings in a 19-month period (December 2016 – August 2018).
- attendance was consistently high — the Working Group was attended by several senior program and scientific staff from DAWR and Queensland Department of Agriculture and Fisheries. Representatives from DFAT and Queensland Department of Health also attended.
- documentation was fit-for-purpose — the Working Group provided an agenda and supporting papers for each meeting. Minutes provided an overview of the discussion that took place at each agenda item and specified the outcome of the discussion, and the minutes were endorsed during the subsequent meeting.
- actions arising were delegated and followed up — the Working Group maintained a table of action items to monitor progress.

3.40 The Working Group proposed to meet its objectives by developing a regional biosecurity strategy through a partnership approach that emphasised engagement with a wide range of stakeholders. Accordingly, the Working Group's *Torres Strait and Northern Peninsula Area Biosecurity Strategy* was launched in November 2018. Findings from a previous research project were used to develop a draft outline that was circulated among members for review. An Engagement Plan was developed to advance the Strategy and ensure that it complemented existing strategies, was culturally sensitive and had the support of traditional owners. Engagement included a number of external meetings and workshops with various levels of government, industry, Indigenous representative bodies and communities. The Working Group also coordinated with the

33 The Torres Strait Island Regional Council, the Torres Shire Council and the Northern Peninsular Regional Council.

TSRA-led Invasive Species Advisory Group to launch the strategy (discussed at paragraphs 3.43 to 3.46).

3.41 The Working Group developed a comprehensive guide to support biosecurity governance and coordination arrangements: the *Guidelines for Establishing a Biosecurity Response within a Torres Strait or Northern Peninsula Area Community*, presented to the Working Group in February 2017. The Guidelines were prepared to assist biosecurity agencies responsible for establishing a response to a pest or disease incursion and outline the governance arrangements in the region.

3.42 In summary, between its establishment, in December 2016, and June 2018, the Torres Strait and Northern Peninsula Area Biosecurity Working Group has delivered on commitments and produced two key outputs: the *Torres Strait and Northern Peninsula Area Biosecurity Strategy* and the *Guidelines for Establishing a Biosecurity Response within a Torres Strait or Northern Peninsula Area Community*. The Group engaged with a range of stakeholders to ensure the outputs were culturally appropriate and widely supported.

Torres Strait Invasive Species Advisory Group

3.43 The Torres Strait Invasive Species Advisory Group was established by the TSRA in 2011 to provide a forum for participation by major stakeholders in weed and pest management within the Torres Strait region. The Advisory Group also supports and participates in the development and implementation of the *Torres Strait Regional Biosecurity Plan 2018–19* (see paragraphs 3.45 and 3.46), discusses opportunities for project funding, facilitates co-ordinated approaches for sharing resources and collaborates with research parties.

3.44 The Advisory Group is comprised of representatives from AFMA, DAWR, TSRA, Queensland Department of Agriculture and Fisheries and the three local councils. The draft terms of reference proposes two meetings a year that are hosted by representatives from each stakeholder group on a rotating basis. Between February 2015 and September 2018, the Advisory Group met seven times.

3.45 One of the key recent outcomes for the Advisory Group has been the *Torres Strait Regional Biosecurity Plan 2018–19* that was jointly launched with the *Torres Strait and Northern Peninsula Area Biosecurity Strategy* in November 2018. The Plan was the result of a collaborative effort by the TSRA and the three local councils in Torres Strait, working through the Advisory Group. TSRA documents indicate that approximately 200 community consultations were conducted to solicit feedback on the Plan. The TSRA advised that early outputs against the implementation of the Plan include collaborations with the councils to control a range of invasive species in the islands of Torres Strait (including cane toads, horses, pigs, deer, cats and dogs); and TSRA rangers working with DAWR and councils to manage and raise awareness of biosecurity threats.

3.46 The Plan states that the *Torres Strait and Northern Peninsula Area Biosecurity Strategy* will build on and complement the Plan. The Plan and Strategy both emphasise an approach that empowers communities in decision-making and encourages coordination among stakeholders. The Plan provides detailed implementation information including the specific initiatives, and the parties responsible for those initiatives, that are required to achieve the outcomes. DAWR advised that a workshop is scheduled to be conducted in June 2019 with relevant stakeholders to ensure that the approaches outlined in the Plan and the Strategy align.

Monitoring border activities

3.47 The constant movement of traditional inhabitants between the 13 Treaty villages and the Protected Zone poses a threat to Australia's biosecurity because of the risk presented by goods carried by traditional visitors. There were approximately 27,000 recorded visits in 2017–18. As part of its regulation activities, DAWR's biosecurity officers meet vessels at designated Treaty landing sites to undertake inspections and seize and destroy restricted goods.

3.48 In the Protected Zone Biosecurity officers work alongside ABF officers administering arrivals and departures in accordance with the free movement provisions of the Treaty. The two departments have entered into a number of agreements to authorise their officers to carry out specific functions on behalf of the other entity. The arrangements are intended to provide continuity of service in the event of planned or unplanned staff leave.

3.49 Auditor-General Report No.23 2018–19³⁴ noted that the agreement between the departments to carry out duties on behalf of each other had not been updated following the commencement of the Biosecurity Act in June 2016. As a result, there was a risk that the biosecurity duties that ABF officers are allowed to perform were not clear. A Letter of Exchange documenting the agreement was signed by DAWR and Home Affairs in April 2019. It sets out the conditions and limitations to the cooperation between the two entities, and documents the entities' commitment to finalise, by 30 September 2019, the authorisation of relevant officers, and the definition of the work instructions and training required for the respective entities' officers. Home Affairs has undertaken to complete this work by 30 June 2019.

Do governance structures and joint activities support the management of fisheries?

Through the Protected Zone Joint Authority (PZJA), the consultative framework is largely effective to support and coordinate the decision making process of the range of entities involved in Torres Strait fisheries. Some of the actions agreed following the 2009 review of the PZJA's administrative arrangements are still to be completed, and the PZJA's annual reports and website are not up-to-date.

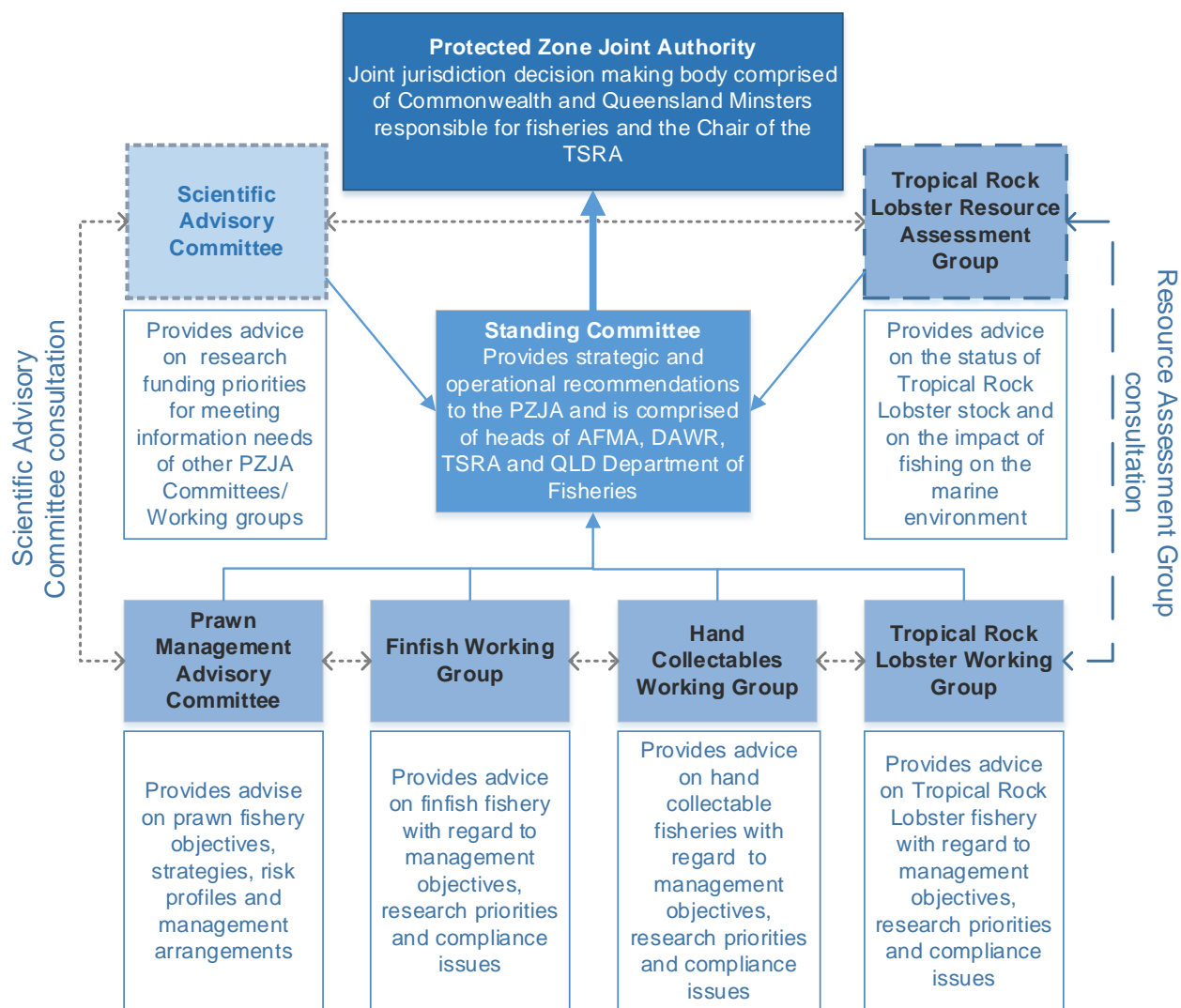
3.50 As noted in Chapter 2, the *Torres Strait Fisheries Act 1984* gives legal effect to the fisheries elements of the Treaty. The Act also establishes the PZJA, which is responsible for monitoring the condition of the fisheries and for the formulation of policies and plans for their management. The Torres Strait Fisheries Act also prescribes the provisions to conduct compliance activities, including licensing.

Fisheries management

3.51 The PZJA operates through a governance structure outlined in *Fisheries Management Paper No. 1* (2008), which includes a range of committees and working groups that deliberate on fisheries matters and provide scientific, economic and technical fisheries advice to the PZJA (Figure 3.4).

34 Auditor-General Report No.23 of 2018–19, *Northern Australia Quarantine Strategy – Follow-on Audit* [Internet], January 2019, available from <https://www.anao.gov.au/work/performance-audit/northern-australia-quarantine-strategy-follow-audit> [accessed 25 March 2019].

Figure 3.4: PZJA consultative framework



Key:

- Strategic Recommendations provided to the Protected Zone Joint Authority —————→
- Advice provided to the Standing Committee —————→
- Scientific Advisory Committee consultation - - - - -→
- Tropical Rock Lobster Resource Assessment Group consultation ———→

Note: Advisory Committees, Working Groups and Assessment Groups meet intermittently (approximately twice a year).

Source: ANAO.

3.52 The committees and working groups are comprised of traditional inhabitant commercial and traditional fishers, non-traditional inhabitant commercial fishers, Australian and Queensland governments' officials and technical experts. A Standing Committee, established in 2009 and comprised of senior representatives from the member entities³⁵, provides strategic and operational recommendations and advice to the PZJA.

³⁵ The member entities are AFMA, DAWR, TSRA and the Queensland Department of Agriculture and Fisheries.

3.53 AFMA is responsible for providing secretariat services to the PZJA, including its consultative groups, and for coordinating and chairing the Standing Committee. The TSRA is responsible for supporting traditional inhabitant representation on the PZJA's committees and working groups.

3.54 The ANAO's review of the minutes and supporting papers for the PZJA committees and working groups for the period July 2015–June 2018 demonstrate that, overall:

- most meetings were conducted between one and three times a year, or as needed. For instance, AFMA advised that the Prawn Management Committee only met twice, in April 2016 and June 2018, because the well-established management framework for this Committee meant that more frequent meetings were not required. The Standing Committee has not met face-to-face since February 2017, and AFMA advised that it has met occasionally via teleconference and has provided advice and recommendations out-of-session to the PZJA on 13 occasions since February 2017;
- attendance was sufficient to represent the key parties involved;
- meeting records were comprehensive and most were available on the PZJA website (approximately 80 per cent); and
- actions arising were recorded and followed up.

3.55 The Scientific Advisory Committee has been effective in identifying research duplication and facilitating synergies between researchers. For example, the Committee:

- reviewed research proposals relating to employment opportunities for traditional inhabitants and recommended that the researcher liaise with the TSRA to build on existing research; and
- recommended principal researchers of three separate but related finfish research proposals collaborate and submit a joint proposal.

3.56 The Scientific Advisory Committee developed a Fisheries Strategic Research Plan in 2018 that emphasises the importance of acknowledging and protecting the way of life and livelihood of traditional inhabitants. For example, the committee prioritises the interests of traditional inhabitants by supporting proposals that demonstrate consultation with, identify employment opportunities for, and are sensitive to the cultural values of traditional inhabitants.

3.57 Fisheries Working Groups have progressed a number of projects that demonstrate a coordinated effort to manage fisheries. Among them, the Hand Collectables Working Group has been an effective forum for community and government to outline their priorities and devise strategies for attaining common goals. For example, AFMA, the TSRA and traditional inhabitants cooperated on implementing reporting systems to collect the data that is required for opening a new fishery. The Tropical Rock Lobster Working Group has provided a forum for different jurisdictions, such as Queensland and PNG, to share information on neighbouring tropical rock lobster management arrangements and monitor the impact of those arrangements on Torres Strait.

3.58 The PZJA governance structure includes a substantive role for traditional inhabitants, who are represented in all committees and working groups. The role of traditional inhabitants, as stated in *Fisheries Management Paper No.1*, is to:

- contribute their expertise of fisheries and their knowledge of communities;

- consult, at least once between PZJA meetings, with other traditional inhabitants in the community on the activities conducted by the committees and working groups, including on the issues and possible solutions being considered; and
- consult with members of the community through local associations and meetings as necessary.

3.59 The TSRA runs the process to select Traditional Inhabitant representatives.³⁶ Research commissioned by the TSRA, and completed in August 2018, indicated traditional inhabitants expected a higher level of support before and after the PZJA meetings, and that their participation could be more effective if technical materials were summarised into an appropriate format for a non-technical audience. The research also noted that additional support was needed for traditional inhabitants to conduct meetings with their communities to discuss these materials.

3.60 In response to the findings from the research, since July 2018 the TSRA has been providing Traditional Inhabitant representatives support through its own fisheries program. In August 2018 the TSRA lead a selection workshop to nominate Traditional Inhabitant representatives on the PZJA committees and working groups for a new three-year term beginning in 2019. The TSRA advised that it is currently developing a program of support for the newly appointed representatives.

3.61 While the consultative framework operates effectively overall to support and coordinate the decision making process of the range of entities involved in Torres Strait fisheries, the ANAO identified two issues, which are discussed below.

Implementation of the recommendations of the 2009 *Review of the Torres Strait PZJA Fisheries Administration Arrangements*

3.62 In 2008 the PZJA participating entities commissioned a review of the PZJA administrative arrangements. The *Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements*³⁷ was completed in 2009 and concluded that the PZJA was unnecessarily process driven, with an insufficient focus on achieving outcomes. The review made 17 recommendations, from which the PZJA developed seven actions to be implemented (Table 3.1).

Table 3.1: Actions agreed by the PZJA following the 2009 review

Action	Description
1. One management agency	<p>a) The TSRA to be responsible for managing the sustainable take of turtle and dugong by traditional inhabitants.</p> <p>b) One agency responsible for the day-to-day administration of Torres Strait commercial fisheries. AFMA to undertake this role in consultation with PZJA agencies.</p> <p>c) AFMA and Fisheries Queensland to work out the timing and resources for the transfer of licensing and compliance functions to AFMA.</p>

36 Between 2015 and 2018 AFMA and TSRA entered into a funding agreement for AFMA to administer traditional inhabitants' representation at the PZJA meetings. Activities undertaken by AFMA included: organising a workshop to select Traditional Inhabitant representatives for each of the PZJA committee and working group; providing briefings and facilitating travel arrangements; and providing remuneration for attending the meetings.

37 Richard Stevens, *Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements*, Discussion Paper, 22 June 2009.

Action	Description
2. Consultation	A revised consultation model to be employed that improves the level of consultation with Torres Strait Islanders at the community level.
3. Decision making and delegations	a) The PZJA to retain (not delegate) the decision making capacity for strategic matters such as new legislation or legislative amendments (including management plans), resource allocation decisions, determining harvest strategies and significant policy amendments. b) AFMA to be delegated with day to day operational decisions consistent with the <i>Torres Strait Fisheries Act 1984</i> . c) AFMA to report annually to the PZJA on delegated responsibilities.
4. Standing Committee	Terms of reference to be developed for the PZJA Standing Committee.
5. PZJA	a) AFMA to provide secretarial services to PZJA. b) The PZJA to meet a minimum of twice every three years.
6. Bi-lateral arrangements with PNG	a) AFMA to be responsible for maintaining bi-lateral relationships with PNG National Fisheries Authority and for organising the annual catch sharing and formal bi-lateral meeting. b) PNG to be invited to attend the annual PZJA meeting as an observer.
7. Long-term	a) Review whether Queensland retains a role in the PZJA including the implications of any withdrawal. b) AFMA to progress legislative amendments to the <i>Torres Strait Fisheries Act</i> that further streamline management arrangements.

Source: ANAO analysis.

3.63 The 2009 review noted that achieving ‘an integrated and coordinated approach to the management of fisheries in Torres Strait is quite a challenge’.³⁸ While the majority of actions have been completed, several items were still in progress as at March 2019:

- The TSRA to be responsible for managing the sustainable take of turtle and dugong by traditional inhabitants (Action 1a): AFMA advised that this action was in progress, and legislative change, subject to cross-jurisdictional agreement, was required.
- AFMA to be delegated with day-to-day operational decisions consistent with the *Torres Strait Fisheries Act 1984* (Action 3b): while delegations to the AFMA CEO are in place, AFMA advised it has chosen not to exercise these delegations in all instances, to ensure decisions are supported by the PZJA. For example, the setting of total allowable catch limits under licence conditions is still approved by the PZJA.
- Terms of reference were drafted in 2015 but not endorsed as at March 2019 (Action 4). As documented at paragraph 2.38, the PZJA Standing Committee is not included in prescribed arrangements set out in *Fisheries Management Paper No 1*. AFMA advised it will continue to seek Standing Committee agreement to Terms of Reference during 2019.
- Action 5, which aimed at achieving improved administrative processes and communication between PZJA committees and working groups, is still in progress. While meetings (face to face or via teleconference) are conducted regularly, improvements are

38 Richard Stevens, *Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements*, Discussion Paper, 22 June 2009, p. 5.

still needed to the PZJA decision-making process and to provide longer lead times for consideration of meeting documents.

- AFMA to progress legislative amendments to the Torres Strait Fisheries Act that further streamline management arrangements (Action 7): AFMA advised that a suite of legislative amendments had been agreed by the PZJA in May 2017 but had yet to be approved by the Minister for Agriculture and Water Resources before introduction to Parliament. Given this parliamentary delay, AFMA advised that the Standing Committee had developed a further tranche of proposed legislative amendments for consideration by the PZJA soon after the Federal election in 2019.

Timely publication of the PZJA annual reports and updating of the PZJA website

3.64 Under the Torres Strait Fisheries Act, the PZJA is required to present an annual report to the Australian Parliament as soon as practicable after 30 June each year. The annual report must document the activities of the PZJA and on the condition of the fisheries. Table 3.2 shows the annual reports published by the PZJA since 2010–11.

Table 3.2: PZJA annual reports, by tabling date

Reporting period	Tabling date
2010–11	November 2014.
2011–12, 2012–13, 2013–14	One combined report in February 2016.
2014–15	September 2017.
2015–16	Not tabled as at March 2019. Expected to be presented to the PZJA for consideration in March 2019.
2016–17	Not tabled as at March 2019. The Australian Parliament granted an extension on 6 September 2017. Expected to be presented to Parliament by the end of 2019.
2017–18	Not tabled as at March 2019. The Australian Parliament granted an extension on 18 October 2018. Expected to be presented to Parliament by the end of 2019.

Source: ANAO analysis.

3.65 In 2014 and 2015, the Senate Rural and Regional Affairs and Transport Legislation Committee noted the time taken between the end of the financial year and the date that the PZJA provided its report to Parliament. On both occasions the Committee encouraged the PZJA to provide reports in a more timely fashion.

3.66 Additionally, as noted in paragraph 2.40, the PZJA's website includes a list of fisheries management instruments and notices. As at March 2019 the list on the website had not been updated since October 2013.

3.67 AFMA, as the PZJA's member responsible for its day to day administration, should work with the PZJA and its member entities to ensure that annual reports are published in a timely manner and up-to-date information is presented on the PZJA website.

Recommendation no.4

3.68 Australian Fisheries Management Authority work with the Protected Zone Joint Authority's other member entities, the Torres Strait Regional Authority and Queensland Department of Agriculture and Fisheries, to:

- (a) finalise the Protected Zone Joint Authority annual reports for the 2015–16, 2016–17 and 2017–18 financial years and implement a process to ensure that future annual reports are published in a timely manner; and
- (b) keep the Authority's website up-to-date.

Australian Fisheries Management Authority response: *Agreed.*

3.69 *AFMA, together with other PZJA member agencies, will work towards timely finalisation of Protected Zone Joint Authority annual reports and regular updating of the Authority's website.*

4. Systems and assets

Areas examined

This chapter examines the key systems and assets (permits and IT systems recording traditional inhabitant visits, arrangements to deploy and share vessels and aircraft, and telecommunications) that support the coordination of Australian Government entities' operations in Torres Strait.

Conclusion

The key systems and assets support the coordination of Australian Government entities' operations in Torres Strait. An important project to improve telecommunications in Torres Strait is progressing.

Areas for improvement

There is scope for the Department of Home Affairs to address:

- issues of data quality with the IT system used to record traditional inhabitants' visits;
- lack of controls applied to verify that traditional visits are conducted for the purpose for which they are authorised; and
- local stakeholders' concerns that the Australian Border Force's (ABF) utilisation of vessels is not always timely or effective to respond to law enforcement issues of local relevance, in particular in the northern part of the Protected Zone.

There would also be merit in the Department of Agriculture and Water Resources (DAWR) and the ABF sharing and comparing available data on Treaty-related cross-border movements, where appropriate.

4.1 The effectiveness of the coordination arrangements between Australian Government entities operating in Torres Strait relies on the establishment and effective operation of systems and sharing of assets. The audit focused on three key areas where mechanisms contribute significantly to entities' operations:

- the monitoring of cross-border movements, which is supported by two key mechanisms: the permit system; and the management of data collected through the permit system;
- the use of vessels and aircraft by entities operating in Torres Strait; and
- the availability of reliable telecommunications.

Do systems support the monitoring of cross-border movements?

Systems supporting the monitoring and recording of traditional inhabitant visits are fit for purpose. However there are some issues with: the data quality of the IT system used to record traditional inhabitants' visits; and the controls applied to verify that traditional visits are conducted for the purpose for which they are authorised.

4.2 A key tenet of the Torres Strait Treaty (the Treaty) is the free movement of traditional inhabitants between designated Papua New Guinea (PNG) villages and Australian islands of the Protected Zone for the purpose of performing traditional activities (Article 11). However, Article 16 of the Treaty also provides that:

- only individuals identified as traditional inhabitants travelling to perform traditional activities are able to benefit from the free movement provisions;
- free movement can be limited to control abuses involving illegal entry or evasion of justice; and
- immigration, customs and biosecurity measures can be applied ‘to meet problems as they arise’.

4.3 These limitations to the free movement provisions have provided the framework for the development of the key system to monitor cross-border movements, the permit system.

Traditional visitors permit system

4.4 The permit system has been developed over time by the Torres Strait Islands Regional Council, in collaboration with the Department of Foreign Affairs (DFAT) and the ABF, and aims to fulfil three key functions:

- verifying that visits are authorised under the Treaty provisions;
- controlling the volume of visits, given the potential impact that a large number of unplanned visits could have on the limited resources (water, fuel, accommodation) of the island villages; and
- collecting statistics to support the planning and management activities of stakeholders operating in the region.

4.5 The permit system applies to traditional inhabitants intending to travel between PNG and the Torres Strait Islands. As a general rule, it involves the steps summarised in Box 3.

Box 3: Traditional Visitors permit system — overview of the process

1. Traditional inhabitants from the host country (for example, an Australian Island in the Protected Zone) apply to their village representative^a for a paper-based Request Letter to allow entry to the visiting party (for example, PNG relatives coming for a wedding).
2. Upon agreement from the host village representative, the Request Letter is presented to the visitors’ village representative, who must also provide their approval to the visit. The visitors’ village representative then issues a paper-based Prior Notice which is attached to the Request Letter (examples of the Request Letter and Prior Notice are provided at Appendix 2 and 3).
3. The Request Letter and the Prior Notice are then provided to the host village representative who approves the Prior Notice and returns both forms to the visitors.
4. The visit can then be conducted, in line with the conditions approved in the Request Letter and Prior Notice (dates, names and number of visitors, purpose, length of visit, provision of food, fuel and accommodation). PNG visitors are required to provide the Prior Notice to the ABF Border Monitoring Officer on arrival.^b

5. The Prior Notice is retained by the Border Monitoring Officer who will use it to counter check visitors as they depart and to electronically record movement data.

Note a: Representatives are, in general, councillors from the Torres Strait Islands Regional Council for Australia and Village Chairpersons for PNG.

Note b: Prior Notices apply only to PNG nationals entering Australia on a traditional visit. Australian visitors use the Request Letter in lieu of a Prior Notice.

4.6 The general process described in Box 3 is subject to many variations depending on, for example:

- the purpose of the visit: PNG traditional inhabitants intending to visit Protected Zone islands for 'barter and trade' (85 per cent of visits in 2017–18) only require a Prior Notice signed by the PNG village Chairman;
- the location of the PNG villages: for example, Treaty villages located on the Eastern side of the PNG coast must also provide the forms to the PNG Immigration and Citizenship Service in Daru for processing; and
- the state of communication services in the PNG villages: for example, the inhabitants of the PNG village of Buzi, located six kilometres from the Australian island of Boigu, are able to gain approval by verbal agreement between the PNG village Chairman and the Australian Councillor because Buzi does not have access to internet, regular mail services, landline telephones or mobile phone reception.

Figure 4.1: PNG traditional inhabitants visiting Saibai for barter and trade



Source: ANAO

4.7 The permit system is presented as a practical solution to the need to monitor Treaty-related cross-border movements. The difficulties in implementing a system to monitor these movements are often discussed at joint entity meetings and were recognised in the Senate's 2010 Inquiry into Torres Strait. These difficulties include:

- the challenges posed by the Treaty not requiring the provision of reliable identification documents³⁹;
- the ability of visitors to arrive at times or locations when there is no monitoring mechanism⁴⁰; and
- the likelihood of visits being conducted for purposes that are not traditional.⁴¹

4.8 As mentioned at paragraph 4.4, one of the objectives of the permit system is to verify that visits are authorised under the Treaty's free movement provisions. Two main conditions must be met for visits to be authorised. Visitors must come: from designated PNG villages and Australian islands of the Protected Zone; and to perform a traditional activity.⁴²

4.9 The immigration legislation provides for the difficulties related to the reliable identification of visitors, by extending the status of lawful non-citizen to all PNG citizens in the Protected Zone, and not only to PNG citizens coming from the 13 designated villages (see paragraph 2.6). However the legislation does not provide for the challenges posed by the verification of the visit purpose, and the ABF has no controls in place to ensure that the purpose of the visit as stated on the permit is aligned with the activities actually conducted. The ABF should work with DFAT and with traditional inhabitants' representatives in Australia and PNG (including the Torres Strait Islands Regional Council and its local councillors) to ensure that the permit system is meeting the requirements of the legislative framework.⁴³

Data collection for cross-border movements

4.10 Collecting reliable data is challenging in an environment where, as noted at paragraph 4.7, it is not possible to accurately identify individuals and to adequately control entries and departures. The border has been described by entities as 'porous' in reference to the movements that occur

39 Australian Government, Foreign Affairs, Defence and Trade References Committee, *The Torres Strait, Bridge and Border*, November 2010, Chapter 13, pp. 198–201.

Solutions have been considered to improve the means of identification for people crossing the border. For example, the ABF has been exploring the possibility of introducing a machine readable form of photo identity. However the risk that a more rigorous identity system could be viewed as being a substitute for a passport (and, therefore, not in keeping with the spirit of the Treaty), in addition to practical implementation issues, have hindered entities' efforts to improve the identification and monitoring of people crossing the border.

40 Border Monitoring Officers' usual working hours are Monday to Friday, 9 am to 5 pm.

41 For instance, the 2010 Senate Inquiry documented the concerns of Torres Strait communities in relation to PNG visitors 'contravening the Treaty provisions with impunity', including to 'escape from their own law enforcement agencies, to fish or trade illegally or seek medical services'. Australian Government, Foreign Affairs, Defence and Trade References Committee, *The Torres Strait, Bridge and Border*, November 2010, Chapter 17, p. 271.

42 Other conditions include: visitors must come by dinghy or canoe, not aircraft; and children must travel with their parent or legal guardian.

43 The work to ensure that the permit system is meeting the requirements of the legislative framework could occur in the context of ABF's activities to develop business rules guiding the implementation of immigration and customs legislation in Torres Strait (Recommendation 1).

outside the hours of employment for Border Monitoring Officers or in locations where there are no Border Monitoring Officers. There are, in addition, practical difficulties associated with the remoteness of the Islands and with frequent issues of deficient electronic equipment and telecommunications (see paragraphs 4.43 to 4.47).

4.11 The 2010 Senate Inquiry, *The Torres Strait, Bridge and Border*, recognised the difficulties associated with operating in this context. It also documented the importance of complete and accurate data on cross-border movements and recommended that the then Department of Immigration and Citizenship improves the completeness and reliability of its statistics on PNG nationals visiting Australia.⁴⁴

4.12 Cross-border movement data is collected primarily by two Australian government entities.

- Upon arrival the ABF collects data from the Prior Notice. Data collected includes the names of visitors, their origin and destination, the purpose of the visit and whether the visit was authorised under the Treaty provisions (that is, whether immigration clearance was granted or refused⁴⁵). The data collected by the ABF is provided after the event, on request, to other entities operating in the region, including the Torres Strait Joint Advisory Council (see Chapter 2).
- DAWR collects data to support its biosecurity activities at the border. Data collected includes information on vessels type, origin and destination, goods carried, date of travel and number of passengers (including the number of visitors travelling for health reasons).

4.13 In addition, Queensland Health collects data on PNG citizens visiting a Torres Strait health care facility. The data includes the number of patients (broken down by admitted and outpatients), the location of the health care facility where service was delivered, and the type of service delivered (such as obstetrics or orthopaedics). Some of the data collected by Queensland Health is reported to the Commonwealth Department of Health, as part of the *Project Agreement on Healthcare and Disease Prevention in the Torres Strait*⁴⁶, and provided to the Torres Strait Bilateral Health Issues Committee.⁴⁷

ABF's cross-border data collection

4.14 Until March 2017 the ABF used a Microsoft Access database to record cross-border movements. Since that date a new system has been used, the Traditional Inhabitants Movement Monitoring System (TIMMS). TIMMS is a bespoke application that aims to manage the movements of traditional inhabitants and vessels. It provides an interface that enables users to enter and search information on individuals and vessels, and produces a limited number of reports.

4.15 The ANAO examined the data recorded on TIMMS between March 2017 and December 2018. While TIMMS represents an improvement on the previous Access database, in particular in relation to the ability to store and retrieve detailed and specific information on vessels

44 Australian Government, Foreign Affairs, Defence and Trade References Committee, *The Torres Strait, Bridge and Border*, November 2010, Chapter 5 Recommendation 8 p. 78; and Chapter 6 Paragraph 6.22 p. 86.

45 Refusing immigration clearance does not entail physically refusing access to Australia. For instance, PNG citizens visiting an island of the Protected Zone to access a health care facility are refused immigration clearance by the Border Monitoring Officer, but are allowed entry and are directed to the health care facility.

46 See Note a to Case Study 1 p. 17.

47 The Health Issues Committee is one of the discussion forums supporting the Joint Advisory Committee (see paragraphs 3.2 to 3.7).

and individuals, a range of issues impact on the quality of the data collected and the statistics extracted from TIMMS (see Table 4.1).

Table 4.1: TIMMS issues impacting on data quality

Issue	Description	Example
Reporting capability is limited or unreliable	The report 'Movements by financial year' can generate the number of PNG arrivals in the Protected Zone as a whole; but no report can generate the number of PNG arrivals at a specific island of the Protected Zone, limiting the quality of the information to the JAC.	The report 'Movement clearance' can generate the number of 'commencements' at specific islands. However, ABF documents indicate that 'arrivals' and 'commencements' are not equivalent: 'commencements' record the location from which the movement was commenced. This means a commencement can be a PNG citizen's arrival in the Protected Zone or an Australian citizen's departure from the Protected Zone.
	The report 'Movement clearance' generates data on PNG visits conducted to access health care facilities. However the report presents contradictory information that cannot be reconciled.	The instruction provided to Border Monitoring Officers is that PNG citizens visiting the Islands of the Protected Zone for health purposes should be refused immigration clearance and directed to the health care facility. Accordingly, the 'Movement Clearance' report includes a category for visitors who have been refused immigration clearance for health reason (352 records for the 2017–18 financial year). Separately, the report also includes another 'health' category, with 125 records. It is not clear how these two categories relate to each other.
Poor quality of the user interface and insufficient data quality assurance processes	Multiple inconsistencies demonstrate that errors are made when entering the data, for reasons including: <ul style="list-style-type: none"> a misleading presentation of the TIMMS application; a lack of application controls; and insufficient processes to quality assure the data. 	Examples of poor data quality include: <ul style="list-style-type: none"> Start dates that occur after end dates; and The "Medivac" report for the period March 2017 to November 2018 generates 196 records, with the main reason provided being "Article 16", which refers to the unrelated section of the Migration Act provisioning for the ban of traditional inhabitants. Notes provided for each record further indicate that rather than a medical evacuation, the Traditional Inhabitant had come to visit a medical facility.

Source: ANAO analysis.

4.16 In addition, TIMMS allows data to be entered only while connected to the Internet. Internet connectivity is limited in Torres Strait, particularly on the most remote Islands.⁴⁸

4.17 Given that the data collected by the ABF is the primary source of statistics for its own planning and to provide information on Treaty cross-border movements to other stakeholders

48 An internal proposal was developed in March 2018 seeking funding to enhance TIMMS, including: developing a capability to record travel in an offline mode and synchronise when network connectivity is available; and developing TIMMS as a mobile application that Border Monitoring Officers can use to record data directly from their mobile phones. The proposal was rejected. A second proposal aimed at implementing system improvement for TIMMS was submitted in November 2018 for the 2019–20 ABF Capital Investment Program, and was also rejected.

including the JAC, there would be merit in the ABF addressing TIMMS' data quality and control issues.

Department of Agriculture and Water Resources' cross-border data collection

4.18 Auditor-General Report No.23 2018–19⁴⁹ identified that, until February 2018, the data collected and managed by DAWR on border activities, including traditional inhabitant's movements, did not exist or was unreliable. From February 2018, DAWR has deployed a new IT application (the Torres Strait Information System), recording activities through a mobile application on hand-held devices or an internet-based application for desktop use. Analysing the Torres Strait Information System's data from April to August 2018, the Auditor-General Report noted that the new application had substantially improved the reliability and completeness of the data. In particular:

- data had been captured in a consistent format, across a more manageable number of variables;
- a number of features were automatically generated, including unique identifiers, inspection time and date stamps, aircraft identification details, and arrival and departure information;
- data was provided in a format that could be read by a range of data analysis software applications; and
- quality control mechanisms were incorporated in the application, such as drop down menus, checkboxes, date selectors and automated data updates, which are intended to minimise the risk of data errors; and quick access references and tips aimed to provide guidance for staff entering data.

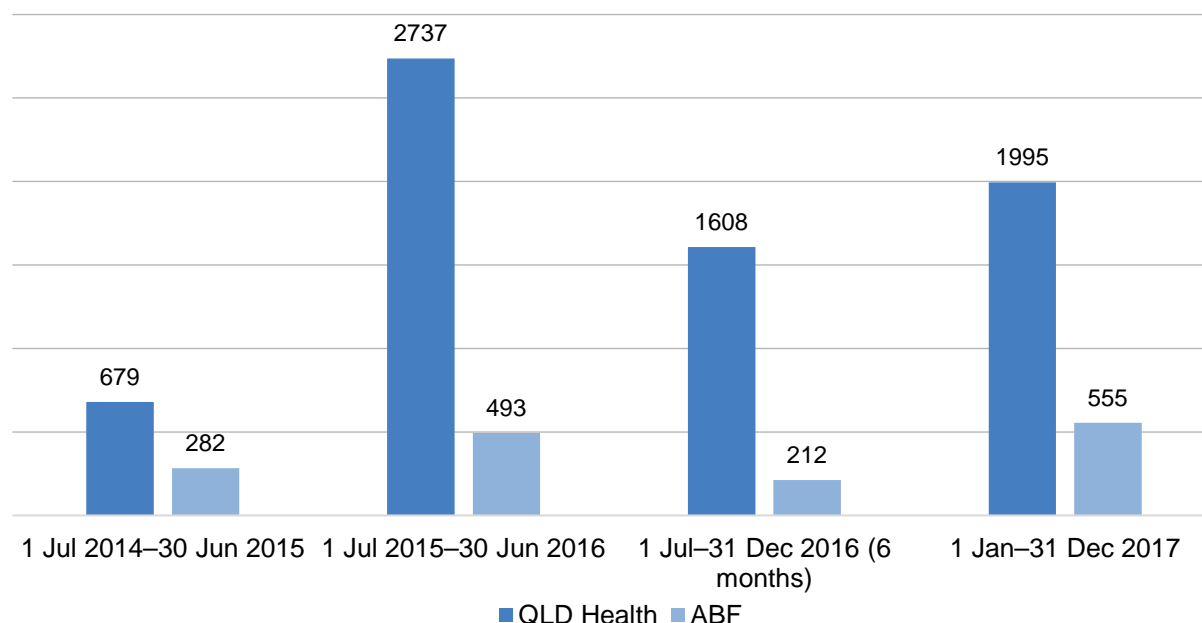
4.19 The report advised that quality assurance processes, including process documentation, audits and reports, should be implemented as soon as practicable. As at March 2019, DAWR advised that the establishment of data quality assurance processes was in progress. Data collected and reports generated through the Torres Strait Information System are reviewed during Operation Manager meetings, which are held regularly since October 2018 (fortnightly since January 2019). Data quality and data gaps are considered as part of the meetings, which has resulted in requests for enhancements from system developers and improvements to procedures for users. The format and nature of reports generated by the Torres Strait Information System are also reviewed during the meetings, to ensure they are relevant.

Complementarity and consistency of cross-border movements data

4.20 As noted previously, data on cross-border movement is collected primarily by the ABF, DAWR and Queensland Health. Given the challenges that entities encounter collecting accurate and complete data (see paragraph 4.10), sharing and comparing available data, where appropriate, would contribute to the entities' efforts to verify the reliability of their data. The ANAO examined the data reported by the ABF and Queensland Health on PNG citizens' accessing health care facilities in Australia; and by the ABF and DAWR on traditional inhabitants' visits.

49 Auditor-General Report No.23 of 2018–19, *Northern Australia Quarantine Strategy – Follow-on Audit* [Internet], January 2019, available from <https://www.anao.gov.au/work/performance-audit/northern-australia-quarantine-strategy-follow-audit> [accessed 25 March 2019], Chapter 3.

Figure 4.2: PNG health visitors, as reported by Queensland Health and the ABF, July 2014 to December 2017



Note: For the ABF, the data represents the number of individuals who were refused immigration clearance for health reason but were allowed entry. For Queensland Health, it represents the number of admitted and non-admitted patients.

The time periods represented are not equal due to changing formats in Queensland Health reports.

Source: ANAO analysis.

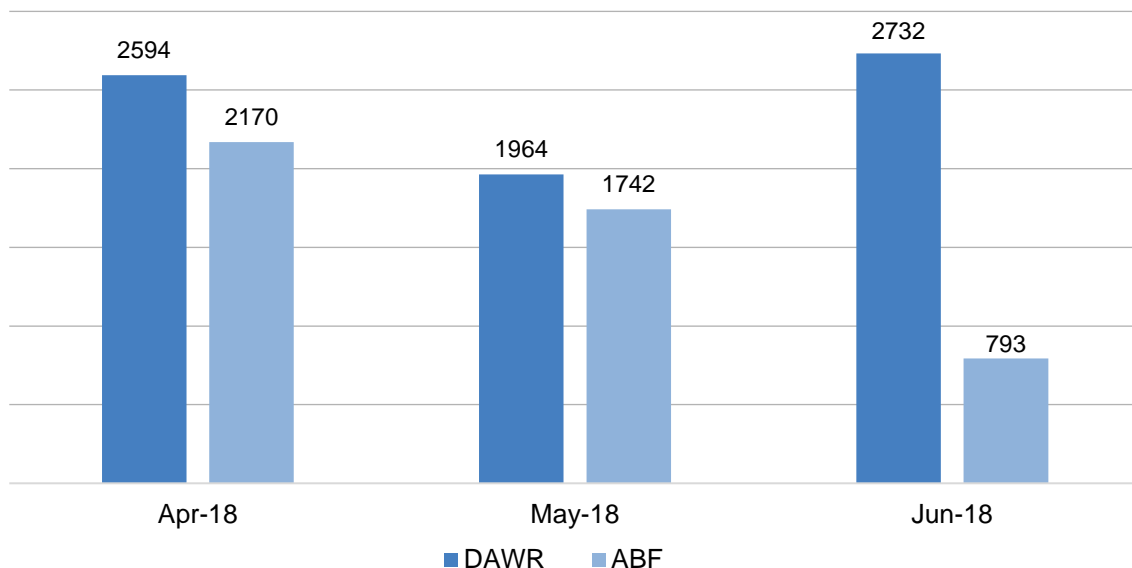
4.21 Figure 4.2 shows that there are large variations over time in the number of PNG citizens accessing health care in the Protected Zone and that ABF statistics are consistently lower than data reported by Queensland Health (between 2.5 and 5.5 times lower). Some of these variations may be explained by the fact that entities use different data sources. For instance, PNG health visitors are recorded by the ABF as they arrive at the border and indicate to the Border Monitoring Officer their intention to access health care facilities. A number of PNG visitors may be recorded by ABF officers at the border as entering the Protected Zone for a purpose other than health, and subsequently present themselves to the health facility.

4.22 Regardless, the ABF could work with Queensland Health to share high-level and de-identified statistics on PNG citizens presenting in health care facilities. This would provide an additional source of information on health visits and would assist the ABF to validate its own data. It would also be in line with the recommendation of the 2010 Senate enquiry into Torres Strait that statistics on PNG visitors, including those seeking medical care, are complete and complement the statistics collected by Queensland Health.⁵⁰

4.23 Figure 4.3, which examines the data on Traditional Inhabitant visits collected by DAWR and the ABF over three months (April–June 2018), shows some variations, especially for June 2018.

50 Australian Government, Foreign Affairs, Defence and Trade References Committee, *The Torres Strait, Bridge and Border*, November 2010, Chapter 5 Recommendation 8, p. 78.

Figure 4.3: PNG visitors to the Protected Zone, as reported by DAWR and the ABF, April to June 2018



Note: For the ABF, the data represents the number of PNG citizen arrivals recorded in the Protected Zone. For DAWR, it represents the recorded number of passengers in traditional vessels inspected in the Protected Zone. The time period was selected for analysis because the ABF and DAWR were using new data management systems, ABF's TIMMS and DAWR's Torres Strait Information System.

Source: ANAO analysis.

4.24 While the purpose for which each entity collects data differs and may explain some of the variations observed, better coordination between the ABF and DAWR to align and make compatible the data collected and share high-level and de-identified results would enable the two entities to more easily identify issues with data quality.

Do coordination arrangements optimise the use of vessels and aircraft?

Robust arrangements are in place to optimise the use of vessels and aircraft across government entities operating in Torres Strait. The Department of Home Affairs could further engage with local stakeholders to assess and, as appropriate, address concerns that the ABF's utilisation of assets is not always sufficiently timely or effective to respond to law enforcement issues of local relevance, in particular in the northern part of the Protected Zone.

Vessels and aircraft available in Torres Strait

4.25 The two Australian Government entities controlling vessels and aircraft in Torres Strait are the Torres Strait Regional Authority and the ABF.⁵¹

⁵¹ The Australian Defence Force also operates some vessels and aircraft, these operations and the collaboration that may exist with other Australian Government entities were not examined as part of this audit.

4.26 TSRA owns nine six-metre vessels located on most of the inhabited islands of Torres Strait. The vessels are used mainly by the TSRA Land and Sea Rangers, primarily to conduct activities related to environmental management.

4.27 The ABF, through the multi-agency Maritime Border Command (MBC)⁵², operates both Defence and ABF vessels and aircraft in Torres Strait to conduct surveillance and response operations. As at March 2019, three categories of vessels are used:

- Two 'inshore' vessels (one 'Coastal Class' vessel and one 'River Class' vessel, both with a capacity of 12 people). The vessels, which can only be operated within short proximity of the port or harbour where they are moored, were positioned on Thursday Island.
- A range of vessels, including an ABF Cutter vessel (Figure 4.4), or an assigned Defence vessel, are deployed in the area according to operational requirements. If needed, they have the ability to launch smaller vessels (tenders) to investigate and intercept suspected illegal activities.

Figure 4.4: Australian Border Force's Cutter Cape Class



Source: Australian Border Force.

- Two 'fast response boats'. Delivered to Torres Strait in February 2018, the fast response boats are expected to assist in maintaining border security in the region by providing an on-water patrol asset to manage suspected border incidents and illegal activity.

52 MBC is a multi-agency taskforce, within ABF, which comprises of a blend of ABF officers and Australian Defence Force officers. MBC is led by a Rear Admiral from the Department of Defence, who is also a sworn Australian Border Force officer, allowing use of both ABF and assigned Defence assets. Its maritime surveillance and response activities are coordinated from its Canberra-based headquarters. Australian Border Force, *Maritime Border Command* [Internet], available from <https://www.abf.gov.au/about-us/what-we-do/border-protection/maritime> [accessed 27 March 2019].

Figure 4.5: Australian Border Force's Fast Response Boat



Source: Special Broadcast Services (SBS).

4.28 Regular aerial surveillance and intelligence tasks are also conducted by two helicopters. A larger 'Dash 8' aeroplane, positioned in Cairns, is also available to be deployed in Torres Strait if required.

Coordination arrangements for the use of vessels and aircraft

4.29 While the vessels and aircraft are operated primarily by the TSRA and the ABF for their respective operational activities, they are also available to other Australian Government entities, in particular in the context of planned joint entity activities described in Chapter 3. For instance:

- ABF's helicopters are used to conduct the two cycles of annual Treaty Awareness Visits, which include representatives from DFAT, AFMA, TSRA, ABF, the Australian Federal Police (AFP), DAWR, Queensland Health and traditional inhabitants;
- ABF's vessels and aircraft are used for ABF's joint cross-border patrols, which include representatives from PNG and Australian law enforcement agencies, and to provide operational and asset support to other law enforcement agencies, including the AFP and Queensland Police Service, to respond to suspected illegal activities; and
- TSRA's boats are used in combination with ABF vessels in support of compliance and surveillance activities, including the Joint Multi-Agency Cross-border Treaty Compliance activities coordinated by DFAT.

4.30 Occasionally, Australian Government officers may also participate in an ABF surveillance, inspection or compliance activity (for instance, DAWR officers may join ABF officers on one of their inshore vessels to conduct the biosecurity inspection of a yacht).

4.31 When a foreign fishing offence is suspected, AFMA officers in Torres Strait liaise with the ABF to determine a response, which may involve dispatch of a vessel. AFMA officers are also able to join ABF surveillance aircraft and response patrol vessels when relevant. To address domestic compliance issues for which an asset is required, AFMA collaborates with the ABF, Queensland Police Service and the TSRA Land and Sea Rangers to determine which entity is best positioned to support AFMA. Since July 2018, when AFMA took responsibility for domestic compliance from the Queensland Department of Agriculture and Fisheries, AFMA advised that it has conducted two cooperative patrols with the TSRA Land and Sea Rangers and utilised the assistance from Queensland Police Service to conduct four sea patrols and to execute search warrants on one occasion. AFMA also advised in March 2019 that it is working with Queensland Police Service and the TSRA Land and Sea Rangers to formalise arrangements to use these two entities' assets in support of AFMA's compliance operations.

4.32 DAWR, as part of its permanent fruit fly monitoring activities (see paragraphs 3.31 to 3.34), uses ABF helicopters to transport its biosecurity officers conducting inspections of fruit fly traps located on the islands of Torres Strait. These inspections are conducted over several days, fortnightly during the wet season and monthly during the dry season.

Figure 4.6: Biosecurity officers conducting fruit fly monitoring activities, using Australian Border Force helicopter



Source: ANAO

4.33 The ABF advised that it does not have any specific agreement with government entities to use its vessels and aircraft. There are, however, procedures that must be followed when non-ABF officers board offshore patrol vessels (including the requirement to obtain a medical questionnaire and a deed of indemnity from passengers). For smaller inshore patrol vessels, the ABF advised that an email exchange between entities is used to formalise the transportation, and safety briefings are provided prior to embarking the vessel. When transporting non-ABF officers on ABF aircraft, a request and authorisation form must be completed, which is approved by MBC and signed by the operating crew and the passenger. The form also states the conditions and limitations under which the transport is conducted.

Tasking of ABF vessels and aircraft

4.34 The deployment of ABF assets is conducted in what the ABF describes as a 'complex operating environment':

The Torres Strait Treaty allows for certain non-citizens to 'freely' move into Australian or PNG migration zones and for traditional inhabitants to continue customary activities such as fishing and trade. The geographic nature of the region adds to this complexity with littoral waters characterised by closely intersecting State, Commonwealth and International jurisdictional boundaries. Movement through the area for operational purposes can be difficult due to tropical climate, limited roads and shallow water, as well as limited inter-island transport options.

Maritime traffic is a mix of international straights transit, regional international and local commercial, recreational, sustenance and transport vessels.⁵³

4.35 One of MBC's key missions is to 'deter, prevent, detect and respond to civil maritime security threats' within Australia's maritime domain. The civil maritime threats documented by MBC are: illegal maritime arrivals, prohibited imports and exports, illegal exploitation of natural resources, marine pollution, illegal access to protected areas, compromises to biosecurity, maritime terrorism, and piracy robbery and violence at sea.

4.36 In Torres Strait, Home Affairs assessed in 2016 the most significant threat as being illegal exploitation of natural resources and maritime people smuggling. The threat of people smuggling (illegal maritime arrivals) was however tempered as it was most likely to be occurring through micro ventures. Prohibited imports and exports were also rated as a low to probable threat. AFMA reported in 2017 the most common offences in relation to illegal fishing in Torres Strait to be PNG citizens from Treaty or non-Treaty villages fishing for commercial purposes; or PNG citizens fishing under the provisions of the Treaty but found to be taking fish or using equipment that is prohibited.

4.37 MBC activities are coordinated from its Canberra-based headquarters, where a centralised tasking system is in place to synchronise MBC-controlled vessels and aircraft, either in support to ABF operations or to facilitate support to other entities' operations. To ensure that there is sufficient expertise and coordination within MBC to identify and respond to issues related to illegal fishing, AFMA's collaborates with MBC through its National Surveillance Response Unit, and an AFMA duty officer is posted at MBC headquarters.

4.38 The use of vessels and aircraft in Torres Strait (except for the smaller inshore patrol vessels) is coordinated through a tasking request submitted to MBC in Canberra. If an illegal activity is suspected, AFMA and ABF officers in Torres Strait submit a task request form to MBC. Based on an assessment of the level of risk presented by the activity and the availability of assets, MBC makes a decision on the response to address the threat. AFMA's National Surveillance Response Unit contributes to the decision-making process for issues relevant to its jurisdiction.

4.39 In recognition of the need for a responsive approach in the context of Torres Strait, where operational flexibility is required to address the 'short transit time and high-speed nature of threats' the ABF and MBC issued a directive in 2018 enabling ABF Northern Command's commanding officer (based in Darwin) to request a response to a threat from MBC 'via the most expedient means', without using the task request form.⁵⁴

4.40 The ABF has also recognised that, while the larger vessels provide a range of capabilities to address security threats in the offshore environment, fast and agile vessels were needed to be able to respond to short notice threats, intercept high-speed vessels suspected of conducting illegal activities and provide support to multi-agency activities. As noted above, two fast response boats were delivered in February 2018. Home Affairs advised in March 2019 that the fast response boats had been conducting patrols in the Protected Zone from August 2018. In December 2018, the two

53 Australian Border Force, Deputy Commissioner Operations, ABF Command Directive 01/2016, *Operations in the Torres Strait*, p. 1.

54 Australian Border Force, Commander Maritime Border Command Directive 01/2018, *Command and Control of Head Quarter Maritime Border Command Assets Operating in the Torres Strait*, p. 1 and 4.

boats were moved to Cairns for mandatory annual survey work, maintenance and repairs, and the ABF advised that the first Fast Response Boat was scheduled to return to Torres Strait in April 2019.

4.41 These measures were taken by the ABF to provide a responsive approach to addressing suspected illegal activities occurring in Torres Strait. Despite these measures, a range of stakeholders operating in Torres Strait, including government entities, raised with the ANAO their concern that ABF's responses and utilisation of assets were not always sufficiently timely or effective to address issues of local relevance, and in particular in the northern part of the Protected Zone at the border with PNG.

4.42 The ABF needs to prioritise the utilisation of assets based on a whole-of-ABF assessment of risk levels and operational requirements, however the Department of Home Affairs could further engage with local stakeholders to assess and, as appropriate, address their concerns.

Do coordination arrangements support the improvement of telecommunications?

The TSRA, in partnership with other entities including DAWR, is coordinating a project to improve telecommunications across the islands of Torres Strait.

4.43 The provision of adequate information and communications infrastructure has been a persistent challenge in Torres Strait. The Queensland Government noted in 2009 that the lack of reliable broadband limits the extent to which Torres Strait island communities can access Queensland Government services.⁵⁵ In 2017 the TSRA stated that the region would continue to experience unreliable mobile telephone and internet access until infrastructure was upgraded. The mobile and internet network is particularly unreliable in the most remote islands of the Protected Zone, including the islands receiving the most visits from PNG traditional inhabitants.

4.44 Several government entities and stakeholders have identified inadequate telecommunication infrastructure as an impediment to their activities in the region. For example:

- DAWR has stated that its ability to access online reporting of biosecurity data and to coordinate local biosecurity activities has been constrained by unreliable network access and slow network speeds;
- ABF Border Monitoring Officers are unable to enter data on cross-border movements on the TIMMS system without online connectivity capability;
- DFAT noted the challenge of communicating with Treaty Villages through an unreliable network in PNG and the Protected Zone⁵⁶ and the difficulty of administering the permit system when documents could not be electronically delivered across the border; and
- the Torres Strait Joint Advisory Council and the Health Issues Committee reported telecommunication issues and stressed the importance of upgrading telecommunications

55 See Queensland Government Submission to the Senate Foreign Affairs, Defence and Trade Committee Inquiry into Matters Relating to the Torres Strait Region 16 November 2009, [Internet], available at: <https://cabinet.qld.gov.au/documents/2009/Nov/Senate%20Inquiry%20into%20Torres%20Strait/Attachments/Queensland%20Government%20submission.pdf>

56 Some of the Treaty villages are able to access the Telstra network operating in Torres Strait. This complements the PNG internet and mobile phone network, Digicel, which was reported to experience some interruptions.

infrastructure so health workers in Australia could coordinate with PNG to manage the spread of communicable diseases.

4.45 Law enforcement agencies, including the AFP, also identified the importance of upgrading telecommunications infrastructure to enhance their intelligence capabilities including through cross-border communication with PNG authorities and with community members in the Protected Zone.

4.46 In 2013–14 the TSRA engaged Telstra to assess the work needed to improve the mobile voice and data communications network in the Torres Strait region. As a result, a two-stage project aimed at improving telecommunication infrastructure is being implemented. As at March 2019, the total cost estimated of the project is \$15.58 million and involves financial contributions from DAWR, TSRA, the Queensland State Government and Telstra:

- Stage 1 *Torres Strait Digital Foundation Project* — completed between June 2017 and August 2018 at a cost of \$8.26 million (to which DAWR contributed \$2 million, TSRA \$1.93 million and Telstra \$4.33 million).

The TSRA reported that the project achieved: improved 3G performance across all sites where that network was already available; new 4G coverage on two of the central islands (Badu Island and Kubin Village on Moa Island); new mobile network infrastructure at Erub Island; and new 4G-ready infrastructure at Mabuyag Island (one of the central islands), Ugar, Erub and Mer (north-eastern islands).

- Stage 2 *Torres Strait Digital Expansion Project* — as at March 2019, the TSRA was negotiating an agreement with Telstra and the Queensland Government valued at \$7.32 million (with contributions of \$1.4 million from the TSRA, \$2.26 million Queensland Government and \$3.66 million from Telstra). The TSRA contribution is funded through a grant agreement with DAWR, signed on 8 June 2018, to provide network connectivity to enable TSRA rangers to use IT systems for timely reporting of biosecurity risks.⁵⁷ The grant agreement has a scheduled date of completion of 30 November 2019.

Stage 2 aims to build or upgrade the telecommunication infrastructure required to deliver 4G coverage to all islands of Torres Strait.

4.47 Once completed, the telecommunication infrastructure project has the potential to significantly improve the management of cross-border movements, law enforcement, health, education and biosecurity in Torres Strait, and to bring additional socioeconomic benefits to Torres Strait communities.



Grant Hehir
Auditor-General

Canberra ACT
29 May 2019

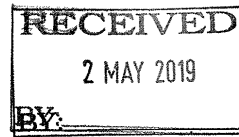
⁵⁷ The grant agreement totals \$1.73 million and also includes \$330,000 for training and awareness raising activities.

Appendices

Appendix 1 Entity responses



Australian Government
Department of Agriculture
and Water Resources



ACTING SECRETARY

Ref: EC19-000345

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601
grant.hehir@anao.gov.au

Grant
Dear Mr Hehir

Thank you for providing the Department of Agriculture and Water Resources (the department) with the opportunity to comment on the Australian National Audit Office's (ANAO's) proposed report on its audit of Australian Government coordination arrangements in Torres Strait.

The department welcomes the report's conclusions and findings. The department is pleased the report recognises that the business rules, governance structures and joint activities supporting biosecurity in Torres Strait are comprehensive, up-to-date and effective.

The department is also pleased the report illustrates our strategic and collaborative approach to working with Australian Government entities and other agencies in Torres Strait and the Northern Peninsula Area.

The department's summary response to the audit is enclosed (at [Attachment A](#)) for publication in the final report. The department acknowledges the recommendations, which are addressed to other agencies. A number of suggested edits are also included (at [Attachment B](#)).

Thank you again for the opportunity to comment on the proposed audit report.

Yours sincerely

Lyn O'Connell
Lyn O'Connell

29 April 2019

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Canberra City ACT 2601

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agriculture.gov.au
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Australian Government
Department of Foreign Affairs and Trade

Secretary

Telephone: 02 6261 2214
Facsimile: 02 6273 2081
Email: frances.adamson@dfat.gov.au

File Number: 17/27526#13

8 May 2019

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Grant,

Thank you for the opportunity to comment on the proposed Australian National Audit Office report on *Australian Government Coordination Arrangements in Torres Strait*. Please find enclosed a summary response and response to recommendations relevant to the Department of Foreign Affairs and Trade.

The Department of Foreign Affairs and Trade is committed to working collaboratively with our partner agencies and Papua New Guinea to ensure the integrity of the Torres Strait Treaty, and the traditional way of life it protects. I welcome your recommendations for ongoing improvements in this area. I am pleased to advise we have taken steps to implement the recommendations.

I would like to thank the Australian National Audit Office audit team for their considerable efforts and professional conduct in preparing this report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Frances Adamson'.

Frances Adamson

R 6 Casey Building, Barton ACT 0221 www.dfat.gov.au



Australian Government
Department of Home Affairs

Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Mr Hehir

Thank you for the opportunity to provide comments on the Australian National Audit Office's (ANAO) report on the *Australian Government Coordination Arrangements in Torres Strait*.

The Department of Home Affairs (the Department) and the Australian Border Force (ABF) acknowledge the value of the ANAO providing independent analysis of and insights into the coordination arrangements in the Torres Strait. We are pleased that you found that the current coordination arrangements optimise the use of vessels and aircraft for planned surveillance and intelligence activities, and that the governance structure and joint activities that support the management of biosecurity in the Torres Strait are effective.

The Torres Strait is a particularly unique and complex operating environment involving the collaboration of multiple Government entities, the operation of the Torres Strait Treaty aimed at protecting the traditional way of life of Torres Strait Islanders and the coastal peoples of PNG, and application of legislation including the *Migration Act 1958*. Operations are conducted and powers are exercised in the context of appropriately regulating the jurisdiction sympathetic to the normal activities and traditions of the indigenous people.

The Department and the ABF note the findings, conclusions and the recommendation made in the report. We agree with the recommendation regarding the need for comprehensive business rules to guide the implementation of immigration and customs legislation in the Torres Strait, which should have regard as the report notes, to the complexities of operating in the Torres Strait and the need for a degree of flexibility and discretion in applying legislative and Treaty provisions. The Department agrees that good governance is essential in any operating environment and is actively addressing relevant policies and procedural instructions to guide the implementation of immigration and customs legislation in the Torres Strait, and the consistent application of the relevant Treaty and legislation.

On 10 May 2019 the Department finalised a Policy Statement relating to allowed inhabitants of the Protected Zone. This Statement broadly satisfies the recommendation and will facilitate the ABF to enhance Procedural Instructions and Standard Operating Procedures to provide further guidance around the exercise of discretionary detention powers. A Procedural Instruction for detaining an unlawful non-citizen in an excised offshore place and a Standard Operating Procedure providing further guidance for border monitoring officers on the importation of goods used in connection with traditional activities, have been reviewed and are currently in the final stages of drafting. We expect to finalise these two documents soon.

Further, on 18 April 2019, the ABF and the Department of Agriculture and Water Resources (DAWR) signed a Letter of Exchange which articulates roles, responsibilities and work instructions, and reflects the amendments to the *Biosecurity Act 2015*. The ABF and DAWR have a long productive working relationship in this unique operating environment that relies on cooperation to provide border security and deliver services to the Commonwealth, including the administration of immigration, customs and biosecurity regulations. A copy of this Letter of Exchange has been provided to your office.

We also note the two suggested areas of improvement. With respect to issues of data quality with the IT system and lack of controls applied to verify that traditional visits are conducted for the purpose for which they are authorised, we would like to advise that the capturing of traditional movements is monitored by the ABF Border Monitoring Officers, and informed by the Department of Foreign Affairs and Trade led permit system. Ongoing

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IT connectivity which impacts on real-time data input, will continue to be an enduring issue until IT connectivity is more generally improved in the region.

The report also notes the local stakeholders' concerns that the ABF utilisation of vessels is not always timely or effective to respond to law enforcement issues of local relevance, in particular in the northern part of the Protected Zone. The ABF works closely with our stakeholders to address issues of risk to the Torres Strait. In assessing our ability to assist local law enforcement agencies (e.g. Queensland Police), the ABF must assess the level of risk posed against the broader risks to the Australian border.

The ABF has a standing Concept of Operations and command, control and coordination (C3) doctrine to deliver operational effect and outcomes. Under this operating model the Australian Border Operations Centre as the centralised and unified operations centre plays a critical role in the provision of a single source of truth or situational awareness to ensure decision making on the acceptance of tasks and any redirection or allocation of resources and capability is undertaken based on a holistic consideration and prioritisation of threat and risk to the Australian border.

We would like to thank you and your officers for the collaborative approach taken in conducting this audit and the appreciation of the complexities in auditing and reporting upon the coordination arrangements in Torres Strait.

Yours sincerely



Mark Brown
Chief Audit Executive

15 May 2019



Australian Government
Australian Fisheries Management Authority

11 April 2019

Mr Grant Hehir
Auditor-General for Australia
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Hehir

The Australian Fisheries Management Authority (AFMA) welcomed the opportunity to participate in the audit of Australian Government Coordination Arrangements in the Torres Strait. AFMA has extensive responsibilities in managing Commonwealth fisheries resources in the region and works to deliver on these in cooperation with a number of Commonwealth and other agencies.

AFMA has considered the proposed audit report and accepts that timely finalisation of Protected Zone Joint Authority annual reports and regular updating of the Authority's website will enable stakeholders to be better informed about fisheries management issues and actions. Together with other PZJA member agencies, AFMA will also continue to work towards further integration and coordination of fisheries management in the Torres Strait.

As requested by ANAO, AFMA is also providing a summary response and our response to Recommendation 4. These are attached.

Thank you again for ANAO's analysis. The audit findings will assist AFMA in increasing its effectiveness in managing fisheries in the Torres Strait.

Yours sincerely

Wez Norris
Chief Executive Officer

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Darwin
PO Box 131
Darwin NT 0801
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Thursday Island
PO Box 376
Thursday Island QLD 4875
P 07 4069 1990 F 07 4069 1277



TSRA
www.tsra.gov.au

29 April 2019

Mr Grant Hehir
Auditor General for Australia
Australian National Audit Office
CANBERRA ACT 2000

Dear Mr Hehir

**Proposed Report Under S19
Australian Government Coordination Arrangements in the Torres Strait**

I refer to your correspondence of 8 April 2019 in relation to the proposed report on the Australian Government coordination arrangements in the Torres Strait.

I thank the Australian National Audit Office for consulting with the Torres Strait Regional Authority (TSRA) on the review and the proposed report.

The proposed report has been reviewed by the TSRA and advises that it has no further comments.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Stan", written over a light blue circular stamp.

Mr Stan Lui
Ag. Chief Executive Officer
Torres Strait Regional Authority

Torres Strait Regional Authority
PO Box 261, Thursday Island,
Queensland 4875

Telephone 07 40 690 700 Fax 07 40 691 879
Free Call 1800 079 093 Email info@tsra.gov.au

www.tsra.gov.au

Appendix 2 Request for PNG Traditional Visitors (request letter)



TORRES STRAIT ISLAND REGIONAL COUNCIL

ABN 15 292 645 165

Lot 22 Main Road Saibai Island QLD 4875

PO Box 7336 Cairns QLD 4870
Ph: (07) 40 832 802 Fax: (07) 40 832 812

Request for PNG Traditional Visitors To Visit Saibai Island

[Click here to enter a date.](#)

ATTN: The Chairman/Councillor
Sigabadar Village
Western Province, Papua New Guinea

Dear Sir/Madam,

I, _____ of Lot _____ Saibai Island QLD 4875, request the following PNG Traditional Visitor/s to be granted permission to visit & stay on Saibai for _____. Choose an item. From the [Click here to enter a date.](#) To [Click here to enter a date.](#)

Terms & Conditions for PNG Traditional Visitors

- Maximum of 3 Adults or Family of Five (2 Adults & 3 Children)
- Sigabadar Traditional Visitors are permitted to visit from Monday to Thursdays with over-nights and Fridays Daily visits only provided they have prior request letters from hosts on Saibai and approved by PNG Authorities & TSIRC-Saibai. If request are considered to be for culturally significant events with weekend stay included, approval must be sought with the TSIRC Councillor
- All other Treaty Villages are permitted Daily visits only from Mondays to Fridays with Strictly no Overnight stay.

Name/s	Adult:	Child:	Relationship:
	<input type="checkbox"/>	<input type="checkbox"/>	Choose an item.
	<input type="checkbox"/>	<input type="checkbox"/>	Choose an item.
	<input type="checkbox"/>	<input type="checkbox"/>	Choose an item.
	<input type="checkbox"/>	<input type="checkbox"/>	Choose an item.
	<input type="checkbox"/>	<input type="checkbox"/>	Choose an item.

Purpose of visit: Choose an item.

Host Declaration:

As the host of the traditional visitor/s, I will take full responsibility to accommodate and supply any needs necessary such as fuel, food & accommodation for the Visitor. I will also be responsible to ensure that the Visitors return back to their respective Treaty Villages on the requested end date.

Signature: _____ Date: _____

PNG Councillor Declaration:

I Councillor _____
Of _____ Approve/Decline
the aforementioned PNG visitors to visit Saibai Island.

If Declined: _____

Signature: _____
Date: _____

TSIRC Representative Declaration:

TSIRC Division 3 Saibai Island Approve/Decline this
Request for the aforementioned visitors to visit Saibai
Island.

If Declined: _____

Signature: _____
Date: _____
Choose an item.— Division 3/ Saibai Island

Template Reviewed & Updated 15/11/2017

Appendix 3 Traditional Visitors Prior Notice

TRADITIONAL VISITOR PRIOR NOTICE

This prior notice must be approved and countersigned prior to any travel from Papua New Guinea to Australia under the traditional movement provisions of the Torres Strait Treaty

Dear Councillor

The following PNG traditional inhabitants are given approval to visit Mr/Ms _____ of _____ Island for the purpose of _____.

Note: Travel is permitted **for traditional activities only**. These are activities performed by the traditional inhabitants in accordance with local tradition, and include: (i) activities on land, including gardening, collection of food and hunting; (ii) activities on water, including traditional fishing; (iii) religious and secular ceremonies or gatherings for social purposes; and (iv) barter and market trade.

Visits for health treatment, to attend court, to do paid/unpaid work, using the ATM or shopping are **not** considered traditional activities.

The following PNG traditional inhabitants intend to stay from ____ / ____ /20 until ____ / ____ /20

1. _____ 6. _____
2. _____ 7. _____
3. _____ 8. _____
4. _____ 9. _____
5. _____ 10. _____

Important: PNG Contact Mobile and Fax Number: _____

All of the above persons are from the PNG Treaty village of _____

They will be travelling on a _____ foot BBT/aluminium dinghy powered by a _____ HP _____ model outboard motor. The Treaty vessel identification label is TV ____--____

Safety at sea is important. PNG traditional inhabitants visiting Australia should ensure they have sufficient fuel for the return trip with additional fuel for emergency use. Safety equipment, including life vests, **must** be carried at all times. Travel after dark is **not** recommended.

Optional Check for Australian Communities: As host of this travel, I support this visit and guarantee I will supply any fuel needed by my PNG traditional visitors for the return trip should it be required.

Name: Mr/Ms _____

Fuel purchased? ☐ Yes ☐ No

PNG COUNCILLOR SIGNATURE and STAMP

Name: _____

Signature: _____

Date: _____

AUSTRALIAN COUNCILLOR/ APPROVED DELEGATE

☐ APPROVED

☐ APPROVED WITH CONDITIONS

☐ NOT APPROVED

Signed: _____