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JOINT COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

DEPARTMENT OF THE SENATE
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J.R. Olsen
Clerk of the Senate

# The Torres Strait Treaty

## REPORT AND APPENDIXES

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## Recommendations

1. The Government should make every attempt to inform the Australian public of the terms and provisions of the Treaty, particularly those relating to seabed and fisheries resources.
2. In the implementation of the Treaty the Government should ensure that the spirit as well as the terms of the Treaty is observed. This applies particularly to the Protected Zone provisions and the preservation of the Torres Strait Islanders' culture.
3. That the Torres Strait Intergovernmental Advisory and Consultative Committee should be appointed as soon as possible. The nomination of the Torres Strait Islanders to serve on this body should be made a matter of priority so that the people of the area can see a tangible expression of the results of the Treaty.
4. Control over illegal migration from Papua New Guinea to the Torres Strait should be increased substantially. If practicable, local inhabitants should be employed to achieve this purpose.
5. Animal and plant quarantine control procedures should be considerably strengthened in the area to prevent the possible introduction of animal and plant diseases from Papua New Guinea.
6. Should exploitation of hydrocarbon deposits discovered in the area become viable in the future, the interests, both social and economic, of the Torres Strait community should always be considered in any such development.
7. The right of all Torres Strait Islanders to practise subsistence fishing must always be preserved.
8. Every encouragement should be given to Torres Strait Islanders to enter the commercial fishing industry should they so desire.
9. The interests of the Torres Strait Islanders should always receive consideration by the Australian Government after the Treaty has been ratified and commences to be implemented.
10. That this subcommittee maintain a monitoring role on Treaty developments.

## List of members

### *Main Committee*

Mr R. F. Shipton, M.P. (Chairman)	The Hon. G. M. Bryant, E.D., M.P.
Senator the Hon. R. Bishop (Deputy Chairman)	The Hon. J. D. M. Dobie, M.P.
Senator B. F. Kilgariff	Mr R. Jacobi, M.P.
Senator K. J. Martin	The Hon. R. C. Katter, M.P.
Senator K. W. Sibraa	Dr R. E. Klugman, M.P.
Senator J. P. Sim	Mr S. A. Lusher, M.P.
Senator the Hon. J. M. Wheeldon	Mr J. R. Martyr, M.P.
Senator H. W. Young	Mr M. J. Neil, M.P.
Mr J. L. Armitage, M.P.	Mr G. G. D. Scholes, M.P.
Dr N. Blewett, M.P.	Mr J. R. Short, M.P.
	Mr B. D. Simon, M.P.

### *Territorial Boundaries Sub-committee*

Mr R. F. Shipton, M.P. (Chairman) (Vic.)  
 Dr N. Blewett, M.P. (S.A.)  
 The Hon. G. M. Bryant, E.D., M.P. (Vic.)  
 Mr S. A. Lusher, M.P. (N.S.W.)  
 Mr J. R. Martyr, M.P.\* (W.A.)  
 Mr M. J. Neil, M.P. (N.S.W.)

\* Acting Chairman, September–December 1978. Mr R. F. Shipton attended the United Nations General Assembly in New York in this period.

### *Secretary*

L. O. Goldsmith  
 The Senate  
 Parliament House  
 Canberra, A.C.T.

## Terms of reference and submission of report

In December 1976 the Territorial Boundaries Subcommittee presented a report on the Torres Strait Boundary to the main committee, the Joint Committee on Foreign Affairs and Defence. The report was subsequently adopted and tabled in Parliament on 9 December 1976.<sup>1</sup> In March 1977 the subcommittee was requested by the main committee to continue to monitor the issue of territorial borders between Australia and Papua New Guinea. This responsibility was later formalised as the following terms of reference:

To monitor current developments on the issue of territorial borders between Australia and Papua New Guinea.

The subcommittee has pleasure in submitting their report on this reference.

R. F. Shipton, M.P.  
*Chairman*

27 February 1979

<sup>1</sup> Parliamentary Paper No. 416 of 1976.

## CHAPTER 1

# Introduction and chronology

When the Torres Strait report was presented in December 1976 it was stated that there would be many further developments in the area in the near future. As was pointed out in that report, both Australia and Papua New Guinea were negotiating on the question of a boundary or border between the two countries but no finality had, by December 1976, been reached. Accordingly in March 1977 the Subcommittee on Territorial Boundaries received a reference from the main committee to monitor and report on developments in this region.

This report attempts to fulfil that reference by detailing the provisions of the Treaty and examining at some length the possible effects of these Treaty provisions on the persons who will be most affected—the Torres Strait Islanders.

Evidence was received from a number of departments; in particular the Departments of Foreign Affairs, Immigration and Ethnic Affairs, Primary Industry and Health. In addition the subcommittee toured the area in July 1978 and visited a number of the islands to gauge the reaction of the inhabitants to the proposed changes in the existing boundary or border.

These two terms are used deliberately. The existing boundary between Australia and Papua New Guinea, based on a line drawn under the authority of the Queensland Coast Islands Act 1879, is regarded by the inhabitants of the Torres Strait and by a large number of other Australians as a border. In the strict, purist sense this is not correct. Only the islands named in the Act were claimed as Queensland territory; the waters of the Strait were not so claimed and are still regarded, subject to territorial waters claims, as international waters. Because of this deep and continuing confusion the use of either term to describe the demarcation of the extent of the territories of the two countries has been considered appropriate. The Statement of the Minister for Foreign Affairs, 25 May 1978, which details the Government's proposals on this matter, makes no reference to a border—only a reference to maritime boundaries.

This report is a continuation of the committee's earlier report on the Torres Strait Boundary. Final conclusions can obviously not be reached until after the Treaty has been in effect for a number of years.

As stated earlier, the committee hopes this brief report may illuminate the provisions of the Treaty, the effects these provisions may have on the inhabitants of the area concerned, and some of the problems the committee feels may arise in the implementation of the Treaty.

### Chronology

The conduct of negotiations with the ultimate aim of negotiating a treaty defining maritime boundaries between Australia and Papua New Guinea has been continued over a number of years by both Labor and Liberal-Coalition Governments. The following chronology has been prepared noting the major developments since 1972 in an attempt to place the present final proposals in a proper perspective. What are considered as major developments have been listed, the chronology

makes no pretensions to being completely exhaustive. (A large portion of this chronology, to August 1976, was previously published in an earlier report—*The Torres Strait Boundary*—Parliamentary Paper No. 416/1976).

### TORRES STRAIT TREATY—CHRONOLOGY

*15 December 1972:* Prime Minister, the Hon. E. G. Whitlam, writes to Premier of Queensland, the Hon. Joh Bjelke-Petersen, suggesting discussions between officials of Papua New Guinea, Queensland and Australian Governments.

*11 January 1973:* Mr Bjelke-Petersen replies saying he could see no good purpose being served by such discussions.

*17 January 1973:* Joint statement by Mr Whitlam and the Prime Minister of Papua New Guinea, the Rt Hon Michael Somare—Australia willing to negotiate relocation of border but reluctant to be party to any settlement not accepted by Islanders. Recognition of need for prior consultation between Australia and Queensland Governments.

*23 March 1973:* Discussions with Mr Bjelke-Petersen who agrees to Council for Aboriginal Affairs consulting with Islanders.

*13 June 1973:* Mr Whitlam meets Islanders.

*19, 20 September 1973:* Yam Island meeting between Islanders and coastal Papuans. Dr Coombs and two Queensland officials present as observers.

*2 April 1974:* Mr Bjelke-Petersen moves Parliamentary Resolution for establishment of Marine Park. Adopted by Queensland Parliament on 3 April 1974.

*29, 30 May 1974:* Daru Island Conference between Islanders and coastal Papuans. Dr Coombs and two Queensland officials present as observers.

*24 September 1974:* Mr Bjelke-Petersen makes statement in Queensland Parliament on Torres Strait.

*13 November 1974:* Discussions between Australian and Queensland Government officials in Canberra.

*13 September 1975:* Mr Whitlam writes to Mr Bjelke-Petersen, passing him a copy of letter of 8 September from Sir A. Maori Kiki, Papua New Guinea Minister for Defence, Foreign Relations and Trade, and expressing the hope that they can meet after officials have conferred further.

*18 September 1975:* A statement signed by the Councils of Darnley, Murray and Stephen Islands state that they are appalled at the political confrontation between Mr Bjelke-Petersen and the Federal Minister for Aboriginal Affairs, the Hon. Leslie Johnson; accuses both of not caring what the Islanders thought; and says that Mr Bjelke-Petersen is wrong in most of his allegations about bungling of Federal projects in the area.

*4 March 1976:* Joint communique issued by the Australian Prime Minister, the Rt Hon. J. M. Fraser, and the Papua New Guinean Prime Minister, the Rt Hon. M. Somare, during Mr Somare's visit to Canberra. It is agreed that one object of the negotiations is to draw a seabed line between Australia and Papua New Guinea and to establish a Protected Zone in the area to preserve the environment and traditional way of life of the inhabitants.

*15 March 1976:* Mr Somare withdraws a series of bills in the Parliament of Papua New Guinea seeking to define the seabed limits of Papua New Guinea.

*18 April 1976:* Telegram to Mr Fraser from Mr Getano Lui, Chairman of the (Torres Strait) Island Advisory Council, stating in part that if Australia does not support them, the Islanders will take their case to the International Court of Justice and the United Nations.

*6 May 1976:* Claims that Papua New Guinea seeking to extend present border more than 100 km southwards denied by Mr Fraser during question time.

*11 May 1976:* Talks in Canberra between Mr Fraser, the Rt Hon. J. D. Anthony, Deputy Prime Minister, and Mr Bjelke-Petersen.

*18, 19, 28, and 29 May 1976:* Meetings in Port Moresby between the Foreign Ministers of Australia and Papua New Guinea. Mr Andrew Peacock, Australian Minister for Foreign Affairs, states that it is 'most important' to settle the border issue 'as soon as possible'.

*19 May 1976:* National President of Returned Services League, Sir William Hall, urges Federal Government to 'stand firm' against any requests from Papua New Guinea to have the Islands transferred to its 'jurisdiction'.

*5 June 1976:* Joint statement by the Foreign Ministers of Australia and Papua New Guinea.

*7 June 1976:* Mr Bjelke-Petersen charges that the agreement has 'betrayed' the Torres Strait Islanders to a foreign country.

*9 June 1976:* The Hon. N. Ebia Olewale, Papua New Guinea Minister for Foreign Affairs, accuses Mr Bjelke-Petersen of wanting to keep the Torres Strait in order to exploit any mineral reserves that may be located there.

*10 June 1976:* The Hon. R. I. Viner, Minister for Aboriginal Affairs, explains to Island Chairmen the joint statement of 5 June.

*11 June 1976:* Mr Viner announced that Islanders were happy with the way in which the Commonwealth Government was handling their interests in the border negotiations; but they had asked that the Prime Minister, Mr Fraser, visit them before any final agreement was reached with Papua New Guinea. Mr Getano Lui said that the (Torres Strait) Island Advisory Council could not accept the Commonwealth Government's proposals.

*6 July 1976:* Sir Maori Kiki announces that 'the new boundary line will be on top of the water, under the sea and up in the sky . . .'

*8 July 1976:* Australian Government sources state that they will not yield to Papua New Guinea's requests.

*23 July 1976:* Sir Maori Kiki emphasises that the Torres Strait boundary now being negotiated between Australia and Papua New Guinea will be an 'all purpose international boundary' in which each nation will have 'full sovereignty'.

*23 July 1976:* Letter to Mr Viner from Mr Naseli Nona, Chairman Mabuia Island Council, accusing Mr Getano Lui of double talk and unilateral statements on behalf of the (Torres Strait) Island Advisory Council, is made public. In the letter, Mr Nona states that Mr Lui seems to speak more on behalf of the Queensland Government than the Torres Strait Islanders. He assures Mr Viner

<sup>1</sup> See statement to the National Parliament by Sir A. Maori Kiki, Parliamentary Paper No 416 o. 1976, *The Torres Strait Boundary*, p. 55.

that he and other Island Chairmen recognise that the Australian Government is trying to look after their interests.

2-8 August 1976: Australian Parliament Subcommittee on Territorial Boundaries visits Torres Strait area and holds public hearings.

22 November 1976: Australian Government reveals its position on certain negotiating points to Torres Strait Islanders. All islands are to remain Australian territory and a Protected Zone is to be established.

9 December 1976: Joint Parliamentary Committee on Foreign Affairs and Defence tables its report on the Torres Strait Boundary.

1 February 1977: Sir Maori Kiki states in the National Parliament that the Torres Strait border talks with Australia are deadlocked.

8 February 1977: Mr Fraser and Mr Somare announce, after a conference in Port Moresby, that discussion on the Torres Strait border issue will be deferred for the immediate future. (Elections in Papua New Guinea are imminent.)

8 February 1977: Papua New Guinea enacts the National Seas Legislation. These five Acts give Papua New Guinea the power to unilaterally declare a border with Australia, extend territorial seas to 12 miles and permit the declaration of 200 mile exclusive economic zones.

2 April 1977: Mr Bjelke-Petersen promises to refer a request, that the 'traditional' border between Papua New Guinea and Australia be recognised, to Mr Fraser.

1 October 1977: Mr Fraser states that he and Mr Somare have agreed to shelve the border issue but discussions on an economic zone between the two countries will continue.

15 October 1977: In an interview in London, as reported in the *London Times*, Mr Peacock states that the drawing of a boundary between Australia and Papua New Guinea is the most difficult problem he has so far faced.

4 February 1978: Mr Peacock visits Papua New Guinea for talks on the 200 mile fishing zone.

1 March 1978: Mr Olewale declares in London that demarcation of the Australia-Papua New Guinea border ranks with the policing of the Irian Jaya border as one of the major problems facing him as Foreign Minister.

30 March 1978: Papua New Guinea proclaims a 200 mile fishing zone. Three mile territorial waters around the islands of Boigu, Dauan and Saibai are recognised.

31 March 1978: Mr Peacock states that the three uninhabited islands of Kawa, Mata Kawa and Kussa were not among the Torres Strait islands annexed to Queensland in the last century, and that in the eventual Treaty Australia will recognise them as part of Papua New Guinea.

26-28 April 1978: Mr Peacock and Mr Olewale meet in Sydney to discuss the boundary issue.

25 May 1978: Full statement to the House of Representatives by Mr Peacock regarding provisions in the proposed treaty. The major provisions are:

- (i) seabed resources delimitation line;
- (ii) swimming fisheries resources delimitation line;
- (iii) Australia to recognise Papua New Guinea sovereignty over the islands of Kawa, Mata Kawa and Kussa;
- (iv) establishment of a Protected Zone, a ten-year embargo on mining and oil drilling in the Zone, and provision for joint conservation and fish licensing measures;
- (v) Australia to have 25 per cent of the commercial fisheries in the Papua New Guinea section of the Protected Zone and Papua New Guinea to have a similar share in the Australian section;
- (vi) provision for co-operation by the two countries in health, immigration, customs and quarantine measures within the Protected Zone;
- (vii) the Treaty to contain provisions guaranteeing freedom of navigation, passage and overflight.

16 June 1978: The Queensland Minister for Aboriginal and Islanders Advancement, the Hon. C. R. Porter, accuses the Federal Government of misleading the Queensland Government on the border agreement with Papua New Guinea. He claims the Queensland Government has been assured that the border would be in exactly the same place as before. He indicates that a High Court challenge to the agreement will be likely.

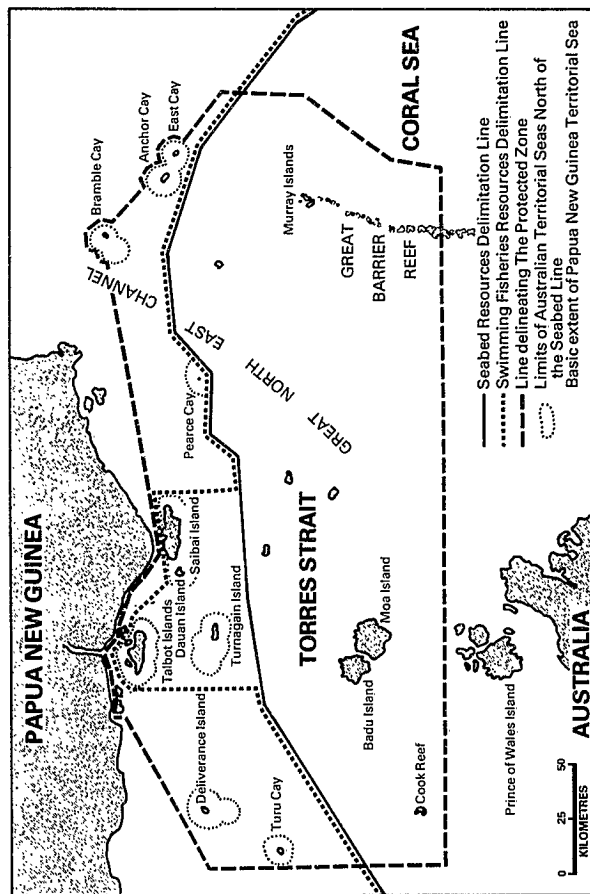
3-7 July 1978: Subcommittee on Territorial Boundaries visits the Torres Strait area. In all conversations with Council leaders, a general lack of knowledge is revealed of the provisions of the proposed treaty; resistance is made to any proposals to change the existing border, save for the transfer of Kawa, Mata Kawa and Kussa to Papua New Guinea.

28-29 August 1978: Mr Olewale and Mr Peacock meet in Sydney to discuss the maritime boundaries negotiations. Both Ministers state that they hope an agreement will be signed before Christmas. A Foreign Affairs spokesman states that the Queensland Government will be kept informed of developments, but that the agreement is between Australia and Papua New Guinea.

31 October 1978: Representatives of the Commonwealth and Queensland Governments discuss the Treaty with leaders of the Torres Strait community at Yorke Island. The leaders unanimously accept the provisions of the Treaty.

2 November 1978: Mr Peacock and Mr Olewale initial the text of the Treaty at Daru Island. Subject to the agreement of their respective Governments, the Treaty is expected to be signed in Sydney on 19 December 1978.

18 December 1978: Torres Strait Treaty signed by the Prime Ministers and Foreign Ministers of Australia and Papua New Guinea.



## CHAPTER II

### Terms of Treaty

This chapter attempts to detail the main provisions of the Treaty. Where appropriate some comments on the provisions have been interpolated by the committee.

#### PART 1 Article 1. DEFINITIONS

#### PART 2 Articles 2, 3, 4. SOVEREIGNTY AND JURISDICTION

##### Delimitation Lines

There are to be three major and two types of minor delimitation lines running through the Torres Strait area. These include:

- the seabed resources line;
- the swimming fisheries resources line;
- the Protected Zone delineation line;
- lines delimiting Australian territorial seas north of the seabed line;
- lines delimiting the territorial sea between
  - Papua New Guinea and Boigu; and
  - Papua New Guinea and Dauan/Saibai, with a straight line linking these two lines.

Three of these lines form the basis of the Treaty:

- the seabed resources line (which will coincide with the swimming fisheries line except that the latter will run north of the inhabited Australian islands of Saibai, Boigu and Dauan at meridians 142° 03' 30" East and 142° 51' 00" East);
- the swimming fisheries line;
- the Protected Zone delineation line.

The committee feels that the seabed resources line has the potential to become a major dividing line between the two nations. Should this prove to be the case, the Torres Strait Islanders face division of their land and people, and restriction on their traditional activities and movements. Further, a major dividing line would create an enclave of the inhabited islands of Boigu, Saibai and Dauan. This may in the long term lead to a Papua New Guinean claim that the three islands rightfully belong to her, especially should illegal migration and occupation by the Papua New Guineans to and of the islands continue and increase.

##### Kawa, Mata Kawa, Kussa

The committee feels that the question of ownership of the islands Kawa, Mata Kawa and Kussa has virtually become a non-issue. From the evidence put forward by the Government<sup>1</sup> and its own research, the committee feels that Papua New

<sup>1</sup> See Appendix II.



Guinea does have rightful claim to sovereignty over these islands. It is interesting to note that the Torres Strait Islanders have always considered the three islands as traditionally belonging to Papua New Guinea.

The whole question turns on the definition of the 'Talbot Islands'. The Premier of Queensland in 1879, the Rt Hon. Samuel Griffith, Q.C., decided that Kawa, Mata Kawa and Kussa were part of 'the group known as the Talbot Islands', and therefore the islands were included within the boundaries of Queensland by the Queensland Coast Islands Act 1879.

However Mr Griffith's decision was at variance with the British Admiralty definition of the Talbot Islands. The official Admiralty chart was drawn in 1873 by Navigating-Lieutenant Connor, who in that year surveyed the Talbot Islands while under the command of Captain John Moresby. This chart was referred to by the law officers who drafted the 1878 Letters Patent. The Admiralty chart drawn by Connor shows Kawa, Mata Kawa and Kussa as lying outside the Talbot Islands, which included only Boigu, Moimi and Aubusi.

Frederick J. Evans, the Admiralty Hydrographer, referred to the Talbot Islands in a letter dated 16 September 1875 as being 'two to three miles' from the New Guinea mainland. Kawa, Mata Kawa and Kussa are separated by only a few hundred metres from the mainland, whereas Boigu, Moimi and Aubusi are a little less than 5 kilometres from it.

From the documents and correspondence relating to the alteration of the maritime boundary of Queensland in 1879 to incorporate certain islands in Torres Strait, it would appear that the Queensland Coast Islands Act 1879 was not drafted to include the three islands of Kawa, Mata Kawa or Kussa.

Proof of this is contained in the report on the Torres Strait Boundary by the Joint Committee on Foreign Affairs and Defence Subcommittee on Territorial Boundaries, 1976 (Parliamentary Paper No. 416/1976).

Nonetheless, there has been substantial legal controversy over this issue. The Government has been charged with solving the problem of the islands by 'researching it away' rather than resolving it through constitutional means.<sup>2</sup> Sections 111 and 123 of the Constitution plus section 8 of the Constitution Act (the U.K. Act of which the Constitution is a part) have been put forward as means by which the Government may, constitutionally, be able to cede Kawa, Mata Kawa and Kussa to Papua New Guinea.<sup>3</sup> The committee does not feel it has sufficient legal knowledge to expound on this issue. However, as the islands have been shown on maps as Australian territory for almost 100 years, the committee suggests that the Government does need to make a statement regarding the legal aspects of this question.

#### **Territorial Seas**

The breadth of territorial seas of the Australian islands lying north of the seabed resources line will be a maximum of 'three miles'.

The extent of the Papua New Guinean territorial sea will depend on the base lines or archipelagic lines adopted by Papua New Guinea in accordance with international law, subject to the following limitations:

- (i) The breadth of the Papua New Guinean territorial sea along its southern coastline between meridian 142° 03' 30" East and 142° 51' 00" East will be a maximum of 'three miles'. It will not extend south of the territorial sea lines surrounding: (a) Boigu, and (b) Dauan and Saibai, nor will it extend south of the straight line linking these two areas.

<sup>2,3</sup> Professor Colin Howard, Letters to the Editor, *The Age*, 26 April 1978.

- (ii) It will not extend into the area south of the seabed line.
- (iii) It will not extend into agreed areas of Australian territorial sea north of the seabed line.
- (iv) It will not enter the agreed area of Australian fisheries jurisdiction north of the seabed line.

Neither nation will in future extend their territorial seas across the seabed delimitation line.

#### **PART 3 Articles 5, 6, 7, 8, 9. SOVEREIGNTY AND JURISDICTION—RELATED MATTERS**

##### **Existing Petroleum Permit**

The Treaty provides for arrangements not less favourable than those provided under Papua New Guinea law to any other holder of a seabed petroleum prospecting licence, to be made by Papua New Guinea in respect of the holders of any Australian petroleum exploration permit granted prior to 16 September 1975, in those parts of the permit area that, under the terms of the Treaty, will fall on the Papua New Guinean side of the seabed delimitation line.

##### **Exploitation of Certain Seabed Deposits**

The Treaty contains a provision along the following lines:

If any single accumulation of liquid hydrocarbons or natural gas, or if any other mineral deposit beneath the seabed, extends across a boundary line so as to come within the jurisdiction of both countries, and the part of such accumulation or deposit that is situated on one side of the line is recoverable in fluid form wholly or in part from the other side of the line, the two Governments will seek to reach agreement on the manner in which the accumulation or deposit shall be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

##### **Freedom of Navigation and Overflight**

The Treaty contains provisions of freedom of navigation, passage and overflight in the Torres Strait area.

#### **PART 4 Articles 10, 11, 12, 13, 14, 15, 16, 17, 18, 19. THE PROTECTED ZONE**

A Protected Zone is to be established in the Torres Strait to enable the Islanders and the Papua New Guineans living in the adjacent coastal area to maintain their traditional activities and their freedom of movement.

##### **Environment and Conservation**

Provisions have been formulated in the Treaty to ensure within the Protected Zone:

- protection and preservation of the marine environment;
- management and conservation of fisheries resources;
- protection of indigenous flora and fauna (including endangered species, notably the dugong and certain species of turtle);
- prevention and control of pollution.

### Embargo on Mining and Oil Drilling

There is to be an embargo on mining and oil drilling of the seabed within the Protected Zone for ten years, commencing from the date the Treaty is put into force. The provisions of the Treaty allow for the embargo to be extended beyond the ten-year period, by agreement between Papua New Guinea and Australia. The committee feels:

- (i) the Torres Strait Islanders should be included in an effective way in any such decision;
- (ii) should any mining or oil drilling take place after the ten-year embargo, the Torres Strait Islanders should have a viable interest in the returns.

### Traditional Activities and Freedom of Movement

Protected Zone provisions enabling continuation of traditional activities and freedom of movement by the Torres Strait Islanders and coastal Papua New Guineans in the Protected Zone will involve co-operation between the Australian and Papua New Guinean Governments on migration, customs, health and quarantine arrangements. However, each country will retain the right to implement national controls to prevent abuses or other possible adverse effects of the Protected Zone provisions.

The committee appreciates the need to 'regulate' freedom of movement in the area. Once a natural barrier to the spread of exotic diseases into Australia, the Torres Strait can no longer be regarded as such due to the importation of animals to the islands in the late 1800s and the increased movement of the traditional population and other persons in and through the area. As a result the Torres Strait has become a virtual gateway for diseases such as malaria and screw-worm, fruitfly, sorghum-head caterpillar, sugar-cane stem borers and other insect pests to enter the country from Papua New Guinea. In the future there may be a risk of rabies and foot and mouth disease entering the Australian mainland through this route. Where there is movement of people there will often be an accompanying movement of plants and animals—domestic or for trade—increasing the risk of spreading disease. Illegal entry of Papua New Guineans to Australian territory is known to exist (see Chapter III) despite some official restrictions on movement in the Strait. The removal of all restrictions would only cause the existing position to worsen. (See Chapter V for a discussion on quarantine and illegal migration.)

### Protected Zone—Administrative Arrangements

There will be liaison arrangements between the two countries to ensure that the Protected Zone arrangements work effectively. These will include:

- (i) a high-level Torres Strait Intergovernmental Advisory and Consultative Council responsible to the two Foreign Ministers on which national, State, Provincial governments and the people of the area will be represented; this is to be a council of review, not a managerial body;
- (ii) the nomination of two senior national Government officials (one from each country) to facilitate, at the local level, the implementation of the Protected Zone arrangements.

### PART 5 Articles 20, 21, 22, 23, 24, 25, 26, 27, 28. PROTECTED ZONE COMMERCIAL FISHERIES

The Treaty also contains provisions on agreed arrangements regarding commercial fisheries within the Protected Zone. These provisions extend to fish of stocks existing substantially within, but also occurring outside, the Protected Zone, within limits to be agreed by Australia and Papua New Guinea.

Provisions regarding commercial Protected Zone fisheries cover the following:

- (a) Traditional fishing will have precedence over commercial fishing.
- (b) Both countries will consult and co-operate in the issue and endorsement of licences for commercial fishing in the Protected Zone.
- (c) The promotion of economic development and employment opportunities in the Torres Strait and adjacent coastal area of Papua New Guinea is to be taken into regard by the relevant authorities of both countries in the administrative process of issuing licences.
- (d) There is to be periodic consultation with the people of the area on the licensing arrangements. The committee would like to know how often these consultations will take place, will they occur on a regular basis, will the Torres Strait Islanders and coastal Papua New Guineans be consulted whenever a new licence is to be issued, or a licence renewed.
- (e) The responsible authorities of each country will issue licences to their own nationals and, when necessary, endorse the licences of nationals of the other country.
- (f) Unless agreed otherwise by Papua New Guinea and Australia, only these two countries will commercially fish the Protected Zone.
- (g) In the process of allocating licences, and in deciding upon management and access arrangements of the two countries in respect of the commercial Protected Zone fisheries, regard will be had to existing levels of 'take' by each country prior to the date on which the Treaty takes force (but subject to sub-paragraph (h) referred to below). Providing these levels remain within the optimum sustainable yield of the fishery concerned, they will not be reduced during the first five years that the Treaty is entered into. Over the subsequent five years the levels of 'take' by Australia and Papua New Guinea will be adjusted progressively so that Papua New Guinea will have a 25 per cent share of the 'take' of the commercial Protected Zone fisheries in waters under Australian jurisdiction, and Australia will have a 25 per cent share of fisheries in Papua New Guinean waters. That is, with minor exceptions (dealt with below), Papua New Guinea will secure 75 per cent of fisheries in waters under her own jurisdiction, and 25 per cent of fisheries in waters under Australian jurisdiction. In the same vein, Australia will secure 75 per cent of fisheries in waters under her own jurisdiction, and 25 per cent of fisheries in waters under Papua New Guinea jurisdiction.

The sharing arrangement of the Protected Zone fisheries is subject to the following:

- (1) Other than Turnagain (which lies within Australian swimming fisheries jurisdiction) in the territorial seas of the Australian uninhabited islands north of the seabed line the 'sharing-of-take' formula will be 50 per cent Australian—50 per cent Papua New Guinea.

- (ii) Papua New Guinea will have 100 per cent of the 'take' in the commercial barramundi fishery near the Papua New Guinea coast (excluding any share of 'take' in the territorial seas of Aubusi, Kaumag, Moimi, Saibai, Dauan and Boigu). This 'take' will not be included in the Papua New Guinean share of 'take' as calculated above (25% A-75% PNG).
- (iii) The 'take' by each country in individual fisheries will be subject to agreement between the two countries in accordance with the sharing provisions referred to above (25%-75%), but not necessarily in the same percentage ratio. Australia, for example, need not take 25 per cent of each particular fishery in Papua New Guinea waters. It may take 40 per cent of one, but none of another.
- (h) Should one country not take up its full share of a Protected Zone fishery, the other has preference against third countries to take up all or any part of the surplus of that share.

#### Sharing of Fisheries and Conservation

The Treaty provisions outline the following three categories of living resources to be regarded for purposes of fisheries jurisdiction, sharing provisions, conservation, management and protection:

- (a) swimming fisheries resources (all living marine resources with the exception of sedentary organisms within the meaning of the 1958 Convention on the Continental Shelf);
- (b) seabed fisheries (most sedentary organisms as so defined);
- (c) other living resources of the seabed (corals, seaweed etc. and, outside the territorial seas of Australian uninhabited islands north of the seabed line (except Turnagain), pearl shell).

Fisheries jurisdiction will apply to (a), and seabed jurisdiction to (b) and (c). As a general rule, the fisheries conservation, management and sharing arrangements will apply to (a) and (b). The position of (c) in regard to sharing arrangements will be further considered, excepting pearl shell in the areas mentioned above.

#### PART 6 Articles 29, 30, 31, 32. FINAL ARTICLES

These articles are of a machinery nature covering such matters as settlement of disputes, consultations, annexes and ratification. The committee feels that no comment is required or is necessary on this Part.

#### Amendments made to the Statement of the Minister for Foreign Affairs on 25 May 1978, and included in the Treaty

On the whole the terms of the Treaty have remained consistent with the terms of the proposed treaty outlined by the Minister for Foreign Affairs in his statement of 25 May 1978. Certain amendments were made, however, to accommodate the wishes of the Islanders. These are as follows:

- (i) paragraph 2 of Article 19 was amended and paragraph 3 was added to make clear that the Torres Strait Joint Advisory Council would be a *review* body and not a management or administrative body;
- (ii) paragraph 6 of Article 19 was amended to make more flexible the composition of each country's national membership of the Advisory Council;

- (iii) paragraph 3 (b) of Article 18 was amended to make clear that the national representatives to be based on Daru and Thursday Island would not intrude upon the responsibilities of respective national, State, Provincial and local authorities;
- (iv) paragraph 5 of Article 23 was amended to exclude Papua New Guinea from any commercial rights to barramundi in the territorial seas of Aubusi, Kaumag, Moimi, Saibai, Dauan and Boigu.

### CHAPTER III

## Visit of the Subcommittee on Territorial Boundaries to the Torres Strait area July 1978

The subcommittee visited the area from 3 to 7 July 1978.<sup>1</sup> The Defence subcommittee was also present in the area for part of the period, examining defence aspects of the area. Members of this subcommittee participated in the initial conversations with community leaders on Thursday Island. No written record in the form of sworn evidence of this and other meetings held throughout the visit was made but the committee is satisfied that the following is a true and faithful record of conversations conducted and meetings held. The visit was made in an attempt to assess the attitude of the Torres Strait community to the proposed Treaty and to gain information on other matters including illegal immigration.

On the evening of Monday, 3 July, members of the two subcommittees as a combined group had informal discussions on a number of matters with two well-known leaders of the Torres Strait community, Mr George Mye and Mr Ted Loban.<sup>2</sup> Both Mr Mye and Mr Loban are, like most Torres Strait Islanders, interested in and concerned about the fishing industry. This activity, which is basic to the very existence of most of the inhabitants of the area, is the only truly viable industry. It is important not only for subsistence reasons but as the occupation which, if properly developed, could provide commercial employment for an increasingly large proportion of the community.

Mr Mye and Mr Loban said that in May 1978 the Hon. R. I. Viner, Commonwealth Minister for Aboriginal Affairs, had visited the Torres Strait and had attempted to explain the proposals contained in Mr Peacock's statement of 25 May 1978.<sup>3</sup> Both men expressed some doubts as to whether they had fully understood the proposals. They were both adamant, however, that they opposed the proposed boundary changes since they threatened known and exploited fishing rights.

The subcommittee also visited a fish processing factory on Thursday Island. In addition to inspecting fish processing and packing machinery the subcommittee observed the sale of crates of crayfish tails by a fisherman to the factory. This product is the most valuable of all the Torres Strait fisheries. Cray fishing can be undertaken by an individual or a small family group and requires relatively little capital since the crays are speared rather than being caught in pots. According to the factory manager the load of crayfish tails sold by the fisherman, which was worth about \$350, was the result of about two days work.

<sup>1</sup> Subcommittee members present were: Mr R. F. Shipton, M.P. (Chairman), the Hon. G. M. Bryant, M.P., and Mr J. R. Martyr, M.P.

<sup>2</sup> Members of the National Aboriginal Conference. Mr Mye is also a member of the (Torres Strait) Island Advisory Council.

<sup>3</sup> Appendix I contains the full text of this statement.

Apart from fishing there were very few activities in the Torres Strait where self-employed persons can gain a significant cash income. This fact became increasingly plain to the subcommittee in almost every conversation with the Torres Strait Islanders and from personal observation. Thus any proposal which includes a suggestion that existing fishing rights will, to some extent, be curtailed must be received in this community with a great deal of suspicion.

After leaving Thursday Island the subcommittee made an aerial inspection of the three uninhabited islands of Kawa, Mata Kawa and Kussa, which are situated close to the Papua New Guinea mainland, are low lying and covered with mangroves. Apart from forming a fish breeding ground and being a source for mangrove timber, the islands appear to have little economic significance. The party also made an aerial inspection of Boigu, the nearest inhabited island of the Torres Strait to Papua New Guinea.

The party landed at Saibai Island which is also low lying, and subject to flooding. This flooding was a considerable influence in causing a large group from this island to resettle at Bamaga (Cape York) some thirty years ago. Saibai is situated approximately three miles from the Papua New Guinea mainland. The party inspected the village area and, before meeting the community leaders, examined the site of what was apparently a migrant settlement area occupied by Papua New Guinean citizens. Some fairly substantial dwellings were being built by members of this group.

Mr Wagea Waia, Chairman of the Saibai Island Council, and a number of other members of the Saibai community greeted the party and a joint meeting of the two groups was held.

Acting as spokesman for the Saibai group, Mr Waia said he was opposed to any change in the border. He was concerned about fishing rights, particularly cray fishing at Turnagain Island. (This island, although north of the seabed resources line, is still within Australian jurisdiction of swimming fisheries resources. The reason for the concern expressed was not clear to the subcommittee.) Mr Waia felt that the traditional fishing rights of his people could be affected by the terms of the proposed Treaty. Mr Waia also said he was opposed to any seabed boundary on the grounds that in time such a boundary might become the effective border between Papua New Guinea and Australia.

Mr Waia readily admitted the presence of the Papuan community on Saibai—it is located at some distance from the main village—but maintained they were only temporary visitors rather than permanent residents. Mr Waia stated that control over the movement of these people was maintained by his stamping of their 'passports'—movement permits usually issued by the Papua New Guinea authorities at Daru—and by an insistence that any Papuans arriving at Saibai must undergo immunisation procedures.

The party landed briefly at Yorke Island, which is located in the middle of the Torres Strait and forms part of the central group—the islands are divided for administrative purposes into three groups: western, central and eastern. There was a brief meeting with a majority of the members of this community. Elder Mosby said he spoke for the community; he was completely opposed to any changes in the existing border.

The party sailed to Darnley Island, which is 200 kilometres north-east of Thursday Island, and one of the most easterly of the Torres Strait islands which is still inhabited. At the time of the visit there were no air communications but it is understood that this form of transport should be introduced shortly. Air transport should greatly reduce the sense of isolation felt at present by inhabitants of this

and the neighbouring island of Murray. On Darnley Island the chairman of the council, Mr S. Thaiday, greeted the party. At a meeting with him and some members of the council the party was told Mr Thaiday was totally opposed to any changes in the existing border. Mr Thaiday said he had signed a petition to this effect sponsored by Mr Getano Lui, Chairman of the (Torres Strait) Island Advisory Council. The party gained the impression that this petition had the support of Mr Porter, the Queensland Minister for Aboriginal and Islanders Advancement.

The party sailed from Darnley Island to Murray Island, where conversations were held with members of the community. Mr Henry Kaviere (school teacher) and Mr E. Lui, chairman of Murray Island council, were the principal speakers. Mr Lui said there were now 'too many lines on the map'; he wanted only one, the old border line. Mr Lui maintained that Mr Peacock should not have drawn the proposed border without consulting the people. He said a cray fishing industry was starting around Murray; this might be the means of attracting young people back to the island.

On the return trip to Thursday Island the party stopped briefly at Badu, one of the major islands in the western group. Here, members had a brief conversation with Mr N. Nona, chairman of the council of nearby Mabuiag Island. Mr Nona said he felt Mr Peacock had gone too far, and that Mr Viner at the Yam Island meeting on 30-31 March 1978 had not explained the proposed changes properly. The party also learnt that there were about thirty Papuans in more or less permanent residence on Badu.

On the evening of Thursday, 6 July, the subcommittee met the majority of the council chairmen of the Torres Strait Islands and members of the (Torres Strait) Island Advisory Council at an informal gathering on Thursday Island. Council Chairmen present were: Mr Getano Lui (Chairman, (Torres Strait) Island Advisory Council); Mr Nelson Billy (Warraber); Mr Henry Stevens (Stevens Island); Mr G. Lui, Jnr (Yam Island); Mr Miller Cook (Tamwoy Reserve—Thursday Island); Mr Joseph Mosby (Yorke Island); Mr Joey Nona (Badu—Western Islands representative, (Torres Strait) Island Advisory Council); Mr Charley Gabuma (Boigu); Mr Wagea Waia (Saibai); Mr M. Lui (Cocoanut). After a welcome from the Chairman of the party, Mr R. F. Shipton, a number of the Chairmen and representatives expressed their views.

Mr Getano Lui said the seabed boundary in the proposed treaty could become a real border and 'float up to the surface'. He said the boundary should be above (north of) Dauan, Boigu and Saibai Islands. He and the other chairmen were opposed to the seabed boundary.

Mr Charley Gibuma (Boigu) was content that the three islands Kawa, Mata Kawa and Kussa should go to Papua New Guinea. Boigu people fished there for barramundi and crabs. His people only fished for domestic purposes; they were not involved in commercial fishing.

*Boigu people used water from wells in Papua New Guinea; he wanted those water rights preserved.*

Mr G. Lui, Jnr (Yam) expressed concern that joint fishing ventures between Japan and Papua New Guinea might spoil the fishing grounds for use by the Islanders. He said Mr Peacock's statement was too technical and difficult to understand. How could explanations be simplified?

*Mr G. Lui, Snr 'Retain old border'.*

Mr Joey Nona (Badu) said he had a number of boats used for cray fishing. He said no members of the Department of Primary Industry had talked to the Islanders about their fishing customs before the Treaty proposals were released.

## Migration

Most of the chairmen stated that Papuans already on the various islands should be permitted to remain. Mr G. Lui (Snr) said the Papuans carried passes. The houses built by them on Yorke Island—where the party noticed a fairly substantial settlement had been established—were in the nature of 'holiday homes'. The Papuans stayed for a few months at certain times of the year before returning home to Papua New Guinea. Mr John Martyr, M.P., sought assurances that the chairmen spoke for their people and that they would not change their attitude to the proposal to vary the border. He pointed out that in the recent past the attitude had been one of approval but now the general mood seemed to be one of disapproval. When questioned each chairman or representative gave an assurance that they spoke on behalf of their people and they would not waver in their opposition to border changes.

From this visit, which occupied approximately one week and involved visits to a number of the islands in the western, central and eastern groups as well as Thursday Island itself, the subcommittee obtained some fairly firm impressions based on conversations and personal observation. The first of these was an almost total opposition to the proposed border changes. The only exception was the acceptance of the proposition that the three islands of Kawa, Mata Kawa and Kussa should be ceded to Papua New Guinea. The second impression was of almost utter confusion as to the major proposals in the Treaty and how they would be implemented. The third impression was that there appeared to be significant if not substantial migration from Papua to the Torres Strait Islands and possibly to mainland Australia. It was difficult to measure precisely the extent of this migration, but most islands visited had some Papuan residents. There were some fairly persistent rumours that Papuans were being used as cheap labour particularly in the fishing industry, but the subcommittee had no means of checking the truth or otherwise of this rumour.

It should be made clear that whilst the above is regarded as a fair and reasonable report of the visit of the subcommittee, no guarantee can be given that the facts, as stated in the conversations reported, are strictly correct. Thus in Chapter IV there is a report of sworn evidence from officers of the Departments of Foreign Affairs and Primary Industry which refutes some of the statements made by the various chairmen. These witnesses maintained the contrary on practically every major point: that the Treaty proposals had been fully discussed and that the island representatives had both understood and accepted them; and further that the fishing rights of the Islanders had been considered and were protected by the Treaty.

The subcommittee had great difficulty in determining where the truth lies between these conflicting assertions. It must, however, be remembered that the Torres Strait Islanders are relatively unsophisticated and relatively unfamiliar with European concepts. The committee accepts that difficulties of language and interpretation are not easily resolved in these circumstances and accepts that genuine misunderstandings could have occurred. The subcommittee's second impression, of confusion regarding terms of the Treaty, suggested that a much greater effort needed to be made to publicise the terms of the Treaty if they were to be acceptable to the Torres Strait community.

## CHAPTER IV

# The Torres Strait community and the Treaty

The Torres Strait Treaty, involving the creation of a maritime boundary with Papua New Guinea and requiring in the long term considerable administrative and economic changes, will be an event of major significance to the Torres Strait Islanders. In time it could have an importance almost equal to the establishment of European administration in the area in the last quarter of the nineteenth century. To understand the possible impact of the Treaty it is necessary to have some idea of the existing population distribution, social organisation, existing administrative arrangements, and existing life-style of the Islanders.<sup>1</sup>

In 1971, the date of the last census from which figures are available, there were some 9663 Torres Strait Islanders enumerated throughout Australia. Of this total, 4500 live in the Torres Strait area, 2350 in the 'reserve islands', some 1580 on Thursday Island and nearby unreserved islands and some 580 at the Bamaga reserve on the northern tip of Cape York. It can be seen from these figures that a majority of Torres Strait Islanders live outside the Torres Strait area and only a minority live on the 'reserve islands'. It is only on these islands that the traditional life-style is practised and where the island councils exercise authority. On Thursday Island, and on the other non-reserve islands, Torres Strait Islanders, save for those living at the Tamwoy Reserve, live as part of the ordinary community.

The actual make-up of the population in the Torres Strait area also requires some comment. There is a concentration of women, children under the age of 16 and those over the age of 65. This is the result of a large proportion of the active male population seeking employment in other areas, particularly northern Queensland, and in the iron ore and related projects in the north-west of Western Australia. This means that normal community life is somewhat distorted in that a majority of the males in the working age groups is not present for most of the year. It does, however, guarantee a relatively high cash income flowing into the area from the migrant workers. A possible long-term social effect of this work-inspired migration could possibly be depopulation of the islands, as families leave to be reunited with the male migrant workers in mainland Australia.

On the reserve islands the former indigenous social organisations of the Islanders for the administration of the communities have to some extent been formalised into island or village councils. These bodies, under the provisions of the (Queensland) *Torres Strait Island Act 1971-1975* and Regulations, have certain powers regarding the making of by-laws, maintenance of law and order,

<sup>1</sup> Chapter II of the earlier report of the Committee *The Torres Strait Boundary* dealt at some length with economic and social conditions in Torres Strait. The following statements are based largely on this earlier Report.

<sup>2</sup> As defined in the *Aborigines Torres Strait Islanders Act 1971-1975* (Qld.).

issuing of licences and control over persons visiting or living on the islands or in the communities covered by the legislation. These councils work in close co-operation with the Queensland Department of Aboriginal and Islanders Advancement. The impression gained is that this Department exercises a significant and almost all-pervading influence over the life of the Islanders. Rarely are opinions expressed by Islander community leaders resident in the reserve islands which are not generally in conformity with departmental policy, which again is a reflection of the policy of the Queensland Government.

The importance of the Queensland Department of Aboriginal and Islanders Advancement in the lives of the residents of the reserve islands derives from its control over such basic functions as: health, communication, education and, to a considerable degree, employment. Despite such recent Commonwealth legislation as the *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self Management) Act 1978*, the Queensland Government remains directly responsible for the above functions and its officers are in constant contact with the Islanders in the provision and supervision of these functions and services. This report by the committee is not to be taken as making any judgment on this state of affairs.

Employment on and within the reserve islands is largely restricted, with the important exception of fishing, to government-related activities. This employment is largely under the control of Queensland officials with the exception of new projects such as turtle farming, a venture which has been the subject of much controversy. The Anglican Church also provides some opportunities for employment in the area. Some indigenous commercial fishermen operate from the reserve islands but as with the majority of fishermen throughout Australia fishing is largely a one-man or family occupation.

In summary, the present (1978) picture of the Torres Strait community is as follows. The population of the Torres Strait Islands presents a somewhat distorted pattern in that a large proportion of the able-bodied males have migrated to other areas. Children under 16, females and persons over 65 years form a disproportionately large section of the population. There is a continual drift of the population from the reserve islands to Thursday Island and to mainland Australia. The island councils responsible for the day-to-day administration of the various communities, whilst freely elected, are subject to a large degree of direct and indirect control by officials of the Queensland Government. These officials control to a large degree most avenues of paid employment in the area, save for that in the fishing industry. The level of education throughout the area is not high; very few children complete high school or matriculate and the level of teaching is generally lower than that in mainland Australia. Thus it is a community deprived to some extent of its natural leaders, generally unsophisticated and undergoing change, which is confronted with the many complexities involved in the implementation of the Treaty. There is little wonder that its first reaction to the proposed Treaty was outright rejection, 'border no change'.

The Treaty proposals as set out in some detail in Chapter II are a complex series of proposals requiring legislation by both the Australian and Queensland Governments and by Papua New Guinea before they can be fully implemented. Their complexity was stressed by the Minister for Foreign Affairs in an answer to a question without notice from Mr J. R. Martyr, M.P.<sup>3</sup>, on Thursday, 9 November 1978. In part his answer said: ' . . . this is a most striking

<sup>3</sup> Mr Martyr was Acting Chairman of the subcommittee in the period September-December 1978 in the absence of Mr R. F. Shipton, M.P., who was attending the United Nations General Assembly.

solution to a most complex historical and geographical problem which has no precedent elsewhere.' The Treaty will probably not become fully effective until late in 1979 or 1980. Ratification by both countries cannot take place until certain consequential legislation has been enacted by both Australia and Papua New Guinea and by Queensland.

The committee feels that at this stage it is extremely difficult to assess the effects of the Treaty on the Torres Strait community. These effects will only become clear after ratification and the implementation of the consequential legislation. As can be seen from Chapter II and Appendix I, some of the most important provisions of the Treaty will not become operative for up to ten years after the Treaty becomes effective. The committee feels it is not in a position, nor is it a proper committee function, to postulate how the Torres Strait community may or may not be affected in 1988 or 1989 by the terms of the Treaty.

The committee is convinced, however, that in the protracted, detailed and very complex negotiations which accompanied the preparation of the Treaty, the interests of the Torres Strait Islanders appear to have been adequately safeguarded. Traditional fishing rights have been protected, rights to freedom of movement have been guaranteed and some measures apparently will be taken to control immigration from Papua New Guinea through the Torres Strait to the Australian mainland. At the same time control over commercial fishing in the area will continue to be increased to ensure that over-exploitation of existing fisheries does not occur. As well, through the establishment of an Advisory Council on which the Islanders will be represented, the Islanders will have some control over such activities as mineral and hydrocarbon exploration and exploitation should such developments occur in the future.

Perhaps the most significant development, in a public relations sense, has been the ability of the negotiating teams of the Federal and State Governments to convince the Torres Strait Islanders that the Treaty will not harm their present or future interests. As can be seen from the almost verbatim comments recorded in Chapter III (when the subcommittee visited the area in July 1978), there was complete and total opposition to the Treaty. The universal catch-cry was 'border no change'. A large proportion of this opposition was based on a lack of understanding of the complex series of propositions comprising the Treaty. Coupled with these two factors was a real (if erroneously based) fear that ancient fishing rights would be lost.

From public statements made by Mr Peacock<sup>4</sup>, the Premier of Queensland, Mr Bjelke-Petersen<sup>5</sup>, the Hon. Lionel Bowen, M.P., Deputy Leader of the Opposition and Mr D. S. Thomson, M.C., M.P.<sup>5</sup>, Member for the Leichhardt electorate (which includes the Torres Strait), it is clear that the Torres Strait Islanders were fully consulted before the Treaty was initialled by Mr Peacock and Mr Olewale at Daru on 2 November 1978. At a meeting held at Yorke Island (roughly in the centre of the Torres Strait) on 31 October, representatives of all the island communities attended. Also present were: the Premier, Mr Bjelke-Petersen, the Queensland Minister for Aboriginal and Islanders Advancement, Mr Porter, Mr Peacock and Mr Viner, the then (Commonwealth) Minister for Aboriginal Affairs. Further visits were made to Murray, Boigu, Dauan, Saibai and Badu islands.

<sup>4</sup> Press statement issued 1 November 1978 by the Minister for Foreign Affairs.

<sup>5</sup> *Hansard*, 23 November 1978. (Mr Peacock also issued a Ministerial statement on the Torres Strait).

In the course of these visits the Premier made a statement in which in part he said:

We felt it most important to have intensive discussions with Australia's principal negotiators, particularly Mr Peacock. I am glad that these discussions went so well, and that the views of the Islanders and the Queensland Government have been taken into full account.

The Premier went on to say:

This is a very complex and major matter, involving constitutional and legal questions of great magnitude and, even more important, the well-being of Australians who live in the Strait.

The committee has had no recent direct contact with Islander representatives. This group has in the past, however, been vocal and articulate in their opposition to any changes in the existing border and what they considered to be the sacrifice of their interests. The absence of any publicly stated dissent with the public statements made by Federal and State representatives suggests to the committee that generally the Islanders now do not oppose, even if they do not actively support, the terms of the Treaty. The committee therefore feels that the following statement attributed to the Premier accords with the facts: 'The Islanders had indicated to him and Mr Peacock that the visit had reassured them about their concerns, and they confirmed their acceptance of the treaty proposals as drafted.'<sup>6</sup>

The committee is satisfied that the Treaty as finally negotiated fulfils two fairly fundamental requirements, which are:

- (a) that the interests of the Torres Strait Islanders appear to have been considered and to have been accorded almost paramountcy when each provision was being negotiated;
- (b) the various and complex provisions of the Treaty have finally been both explained to and have been understood by the Islander leaders.

Under these circumstances the committee feels that the Treaty, when ratified, should be successful in achieving its objectives of preserving the existing rights of the two communities in the area, making provision for future developments and removing the cause for a possible dispute with one of the few countries with whom Australia shares a maritime boundary.

<sup>6</sup> Contained in press release by the Minister for Foreign Affairs, 1 November 1978.

## CHAPTER V

# Quarantine and illegal immigration

### A. Quarantine

The Torres Strait is a point at which Australia is most vulnerable to entry by plant and animal diseases, and insect pests. It forms a geographical link with Papua New Guinea and Irian Jaya, and with the remainder of South-East Asia. With her small human population and large livestock investment, Australia looks overseas to market her meat and other animal products. Should an exotic disease or unknown insect pest enter Australia, this country might not be able to market her meat and other animal products overseas, as the quarantine policies of many countries prevent their taking produce from other countries which have disease. Consequently Australia would face a considerable cost, not only of controlling or eradicating the disease but also of losing overseas markets, and many primary industries would suffer as a result.

There are various insect pests and diseases affecting humans, animals and plants from which Australia is free at present, but which pose a constant threat for the future. Numbered amongst these, and presenting a particularly serious problem, is the screw-worm fly (*Chrysomya bezziana*). This insect can barely be distinguished from the common bush fly, but it can maim, sterilise, cripple and kill any warm-blooded animal. The situation is ripe for the entry of the screw-worm fly into Northern Australia; in fact it is believed that it periodically appears on the Australian islands of Boigu and Saibai. Should the screw-worm fly enter northern Queensland, where there are extensive cattle herds, the situation would be out of control. Even if detection of the screw-worm fly were to take place within weeks, immediate eradication would be virtually impossible. Further, weather conditions are such in Australia that in the summer the fly could spread as far south as Melbourne, at a rate of 170 kilometres per month.<sup>1</sup>

Various veterinary specialists have suggested that, as some sort of delaying tactic, the Torres Strait Islands could be destocked. Such action would face social as well as possible constitutional problems. The committee feels that there is substantial room for improvement in the surveillance of human and stock movements in the Torres Strait, and that if these areas were properly monitored there may prove to be no need for destocking.

Charter flights move between the islands and centres in northern Queensland with only minimal quarantine surveillance. There is also considerable unchecked travel in the Strait. The committee is concerned that there is only one trained veterinary officer, who also acts as the plant quarantine officer, to supervise the whole of the Torres Strait. He has no trained assistants.

<sup>1</sup> Mark Baker, 'Threat from the North', *The Age*, 10 June 1978, p. 19.

The committee heard evidence from the Commonwealth Department of Health on the variety of problems the Department is facing in attempting to maintain quarantine standards in the Torres Strait/Queensland area. Plans are in hand by the Department to increase its animal quarantine presence in the Torres Strait. These plans include:

- (i) incorporating the use of the Department of Transport vessel *MV Lumen* (which regularly travels through the Torres Strait) as an integral part of its animal quarantine surveillance program, by placing quarantine officers aboard periodically;
- (ii) increasing the frequency of animal quarantine visits to the Islands during 1978-79; and
- (iii) appointing Island Chairmen as acting inspectors to improve controls and surveillance.

Animal quarantine activity in the longer term is to be considered in the light of increased disease risk to Papua New Guinea, arising from its common land border with Irian Jaya.

As well, discussions are currently being held between the Queensland Department of Primary Industry and the Commonwealth Department of Health for the appointment and training of a Torres Strait Islander as a plant quarantine officer. This officer would participate in intercepting suspect plant material and would also undertake public relations activities in the area to encourage co-operation from the inhabitants in plant quarantine matters.

With the newly announced surveillance programs, flights over the Torres Strait will be increased to one per day rather than, as previously, four or five times a month. As well, the surveillance flights are to be extended. Previously they were flown from Darwin to Croker Island; they will now fly as far south as Geraldton on the west coast, and Cairns on the east coast. Quarantine observers, who are to be specially recruited and trained for this purpose, will be on board the flights. They will report directly to the quarantine officers nominated by the Department of Health in each State. These people will be on duty or call twenty-four hours a day, and it is anticipated that any suspicious circumstances will be followed up within twelve hours of receiving the information, even should this require the chartering of another aircraft.

The committee is pleased to see that quarantine and general surveillance of the Torres Strait is to be increased, but would like to see the appointment of additional quarantine staff to the islands as well. The committee supports the training of indigenous people for surveillance purposes.

### B. Illegal Immigration

The presence of Papua New Guineans in the Torres Strait is known to the committee. As well, the committee is aware of various reports that the Papua New Guineans are entering the Australian mainland under false names, and of suggestions that some are drawing social security benefits. Authorities have been charged with condoning the situation in some cases, and not being able to contain it in others, due to lack of manpower and the vast distances involved. Quarantine activities associated with human immigration can take place only when officials are aware of the entry into the country of persons, plants or animals. The committee emphasises that Australian industry should not be subjected to the possibilities of disease because of inadequacies in quarantine surveillance.



The committee heard evidence from the Department of Immigration and Ethnic Affairs on this question of illegal immigration. The committee gained the impression that the Department was well aware of this present and increasing problem, but at present lacked the necessary manpower and organisation to effectively control the situation.

One of the major risks of disease entering Australia is through animals brought into Australian territory by Papua New Guineans settling illegally. Despite this fact there is no permanent immigration officer in the Torres Strait area, nor between Darwin and Townsville on the mainland coastline. Instead, the customs officer on Thursday Island has powers under the Migration Act. The State police on Thursday Island also have delegated powers under the Act. Immigration officers have made occasional visits to the area from Brisbane or from Townsville, and sometimes from Canberra. The committee feels that an immigration officer should be permanently stationed on Thursday Island or, that not being practicable, that frequent visits to the Torres Strait should be made by an immigration officer.

Approximately 500 Papua New Guineans are known to be either living on the Torres Strait Islands or working on pearl luggers out of Thursday Island. The committee has no number for illegal Papua New Guinean immigrants settled on the Australian mainland. The Papua New Guineans apparently island hop southwards by various means until arriving on Thursday Island. Once there they pass themselves off as Torres Strait Islanders and board an Ansett flight to the mainland. Because it is a domestic flight, they are able to do so without passports or embarkation papers. The committee is concerned that, with the current Irian Jaya-Papua New Guinea border problem, refugees in that area may attempt to enter Australian territory via the Torres Strait. This situation is added reason to increase the presence of immigration officers in the Torres Strait. Such action would assist, in co-operation with the Island Chairmen, in the control of the southward movement by illegal immigrants in the Torres Strait.

The migration problem in the Torres Strait is fairly significant. The total resident population of the region is approximately 5000 and the known number of illegal immigrants (which may be an understated figure) is generally stated to be about 500; that is, 10 per cent of the resident population. The committee feels that in these circumstances the problem of illegal immigration warrants more attention, in the form of increased detection and prevention, than it is at present receiving.

## CHAPTER VI

### Fishing

The committee believes that any potential for economic development within the Torres Strait will rely heavily on the fishing industry. Neither minerals nor hydrocarbons have been found in the area in any substantial quantities, and consequently mining companies have exhibited little interest in the region. Another factor militating against such developments is the Islanders' reluctance to have seabed mining take place within the Protected Zone. The Treaty has recognised the dependence of the Islanders on fishing by directing its approach to preserving, as far as possible, the existing life-style of the Islanders and coastal Papua New Guineans. This approach has led to the establishment of the Protected Zone, where freedom of movement to participate in traditional activities, especially fishing, has been ensured. Further, traditional fishing will take precedence over commercial fishing. The committee is satisfied that traditional fishing will be safeguarded as far as possible by the terms of the Treaty. In this situation, the committee now sees a need to supplement the preservation of the traditional, 'subsistence' way of life, with the development of a viable economic future for the Islanders.

The Treaty does contain certain provisions to assist this process. For example, the provisions stipulate that in issuing licences Papua New Guinea and Australia are to take into consideration the desirability of promoting economic development in the Torres Strait area and the adjacent coastal area of Papua New Guinea, and the employment opportunities of the people in the region. There is also to be periodic consultation with the indigenous people concerning fishing licensing arrangements. The committee realises that an international treaty is not the place to outline matters of proposed assistance, but sees the onus on the Government to aid the Islanders in establishing themselves commercially.

Commercial fishing in the Torres Strait in most cases has been exploited to the limits of each particular fishery by non-Islanders. Consequently, and ironically, there is not a lot of room to accommodate the Islanders' interests. This anomaly exists because the Islanders have taken very little part in commercial fishing in the past, and in their absence other interests, particularly from Queensland, have stepped in. To try to alter the situation at this stage by restricting 'outside' interests would be impracticable, and probably not constitutionally possible.

There are four main commercial fisheries in the Torres Strait. These are crayfish, prawns, pearl shell and pearl shell cultivation, and mackerel. Crayfish is an extremely valuable fish but this resource is already fully exploited, if not over-exploited. Its sharing arrangements have been negotiated along lines which are largely consistent with existing arrangements: 75 per cent Australia, 25 per cent Papua New Guinea.

Prawns, if properly managed and controlled, could be a lucrative fishery, but again the question arises as to whether the Islanders can be accommodated.

Extensive untrawlable grounds surround each trawlable area, and any intensive fishing would wipe out the latter. There appears to be room for an increase in effort in this fishery on a modest scale but this will probably be taken up by Papua New Guinea.

The pearl shell industry is one fishery where some of the Torres Strait Islanders have been commercially active, and it is largely Torres Strait owned. There is no market for pearl shell itself, however, and the viability of that particular fishery depends on the pearl cultivation industry. This industry in turn is based on a very volatile market, and is largely Japanese owned.

Mackerel is one fishery where there is a capacity for increased effort. Being a wet fishery in an area of high ambient temperatures, first class refrigeration and storage facilities are required. In the past the lack of such facilities has been an inhibiting factor to any development of the fishery by the Islanders. Both the Commonwealth and Queensland Governments are currently involved in installing refrigeration units on most of the islands. There is, consequently, potential here for the Islanders to undertake commercial fishing.

Due to the terms of the Treaty the mackerel fishery will require careful negotiation. The principal breeding ground of the mackerel fished in the Torres Strait is in an area around Bramble Cay. Approximately 75 per cent of the Torres Strait catch is taken there. That area, however, lies north of the swimming fisheries line, which brings it under Papua New Guinea jurisdiction. The 'take' in individual fisheries, though, is subject to agreement between Australia and Papua New Guinea, and hence Australia is not necessarily restricted to a maximum of 25 per cent of the mackerel. The committee feels that the Government should give serious consideration to the potential that this fishery provides to the Islanders and approach its negotiations with Papua New Guinea over Australia's level of 'take' in that fishery accordingly.

Oysters are a fishery which may also have potential commercially. They exist around various Torres Strait Islands but to date no study has been undertaken of their potential. The committee would like to see such a study instituted.

Barramundi occur mainly along the Papua New Guinea coastline bordering the Torres Strait. This fishery, which has traditionally been almost completely fished by Papua New Guineans, has remained 100 per cent in their hands. This accords with a basic principle of the Treaty—to preserve existing arrangements in the region. In fact, it appears that the barramundi fishery in this area would not accommodate more intensive fishing than that undertaken by the Papua New Guineans. The Islanders have, however, retained their traditional right to the barramundi for subsistence fishing, and have also secured full commercial rights to this fishery in territorial waters off the northern islands of Moimi, Aubusi, Kaumag, Boigu, Saibai and Dauan. The committee is unsure at this stage as to the amount of benefit the Islanders will accrue from this allotment.

As can be seen from the above, the Torres Strait does not have an abundance of fish stocks. At the same time the dependence of the Islanders on fishing for any sort of viable economic future cannot be ignored. The committee believes that the Government should aid the Islanders, where possible, to establish themselves commercially in one or more of the fisheries that has economic potential and room to accommodate them.

## CHAPTER VII

## Conclusions

In this report the committee has attempted both to review the terms of the Torres Strait Treaty and to examine the background and existing social, economic and political circumstances of the persons most affected by the Treaty, the Torres Strait Islanders.

Negotiations for the Treaty have been pursued for more than six years since December 1972. Over that period of time the negotiating positions of the two countries have varied considerably. Thus, in December 1972 – January 1973, Australia was offering to relocate the border in a southerly direction and transfer sovereignty of a number of inhabited islands to Papua New Guinea. The final text of the Treaty (signed in Sydney on 18 December 1978) makes provision for the transfer of only three very small islands—Kawa, Mata Kawa and Kussa—to Papua New Guinea. As can be seen from Appendix II, Australia's claim to sovereignty over these islands was somewhat doubtful and the original claim of sovereignty was apparently made in error.

The committee agrees generally with the following statement: 'the final negotiation of this Treaty, after years of patient negotiation between the Australian and Papua New Guinea Governments, is a most dramatic and important achievement', and also with the further statement that 'the Treaty is a long, complex and detailed document'.<sup>1</sup>

Because of the complexity of this document, summarisation of the contents of the Treaty is extremely difficult (an attempt has been made to do this in Chapter II). The committee feels, however, that broadly the more important matters covered by the Treaty can be listed as follows:

- retention of Australian sovereignty over all the islands with the exception of Kawa, Mata Kawa and Kussa;
- delimitation of the seabed resources between Australia and Papua New Guinea;
- establishment of a swimming fisheries resources boundary;
- creation of a Protected Zone for the preservation of the unique marine and social environment of the Strait area;
- confirmation of barramundi fishing rights in territorial waters for local inhabitants of the islands of Aubusi, Boigu, Dauan, Kaumag, Moimi and Saibai;
- guarantee of freedom of movement within the Protected Zone.

On the evidence presented and the information made available, much of it on a confidential basis, the committee is of the opinion that the Treaty is equitable to both countries, has regard to the interests of the parties most immediately affected, and is apparently supported by all interested parties.

<sup>1</sup> Ministerial statement by the Hon. A. S. Peacock, House of Representatives, 23 November 1978, *Hansard*, p. 3302.

Despite this statement the committee would like to recall and place on record that this has, by no means, always been the situation. The subcommittee visited the area in July 1978 and held discussions with a fairly extensive cross-section of elected representatives of the Torres Strait Islanders. At the time of the visit universal opposition was expressed to the terms of the Treaty. A complementary complaint was that the Treaty was so complex the full significance of the provisions was difficult to comprehend. The committee is satisfied that these somewhat vociferous and at that time apparently genuine complaints have now been satisfied. In part, this has been due to certain concessions made to the demands of the Torres Strait Islanders. A more important reason might be that, prior to the initialling of the Treaty by the two Foreign Ministers, a concerted effort was made by the Australian negotiating team to fully explain to the Torres Strait Islanders the terms, provisions and implications of the Treaty.

The committee feels that the Treaty, when ratified, will have a considerable positive effect on the life-style of the Torres Strait Islanders. The concept, and implementation, of the Protected Zone, which encompasses all the reserve islands of the Torres Strait, will provide an opportunity for the indigenous culture of the Torres Strait Islanders to be preserved.

The Protected Zone, with its guarantees regarding oil drilling and mining and the other Treaty provisions, such as the preservation of traditional fishing rights and the guarantee of freedom of movement throughout the area, will provide a framework within which the inevitable changes which occur in any dynamic society can perhaps occur under controlled conditions. The Treaty will provide an opportunity for the inhabitants of the reserve islands to practise their traditional life-style, should they so desire, relatively undisturbed.

It must be remembered, however, that over the last few decades rapid changes have already occurred in and to this culture. There has been a massive population shift from the outer islands to Thursday Island. At the same time a large number of adult males have left the area on a semi-permanent basis to seek employment in mainland Australia. Economically the Torres Strait community is dependent to a large degree on social service payments and money sent to dependants by the Islanders working outside the area.

Although not specifically related to matters covered by the Treaty, the Torres Strait area and community is becoming affected by two quite serious problems: exotic animal and plant diseases and illegal immigration. The problem of animal and plant quarantine is at present only potential. The Torres Strait Islands themselves will only be affected marginally. They have however the potential to act as a 'corridor' for the passage of animal and plant diseases passing from Papua New Guinea to Australia. A serious cattle pest, the screw-worm fly, is present in Papua New Guinea. Very vigorous quarantine efforts will be required to prevent the entry of this pest into Australia. This control can only be achieved by instituting a much more comprehensive and effective quarantine system involving the employment of many more people than is the case at present. This expanded campaign will of necessity have to be of a permanent nature, as other animal and plant diseases become endemic in Papua New Guinea.

Illegal immigration from Papua New Guinea to the Torres Strait Islands and eventually to mainland Australia is a well-known and apparently increasing practice. From evidence tendered to the committee it would appear that the Department of Immigration and Ethnic Affairs is aware of this development, and is making efforts to control the situation. Here again lack of trained personnel permanently stationed in the Torres Strait Islands makes effective control extremely

difficult. Only by considerably expanding the number of immigration officers permanently located in the area can such control become effective.

Fishing in the Torres Strait is, and will probably remain, one of the most important economic and to a degree social activities of the area. What must be kept in mind, however, is the distinct difference between subsistence and commercial fishing. The former is carried out quite often from the shores of the islands or from small boats anchored offshore. The catch taken is insignificant in commercial terms and is usually consumed locally. For individuals, the fish caught (including crayfish) forms a significant and almost costless part of their diet.

Commercial, as distinct from subsistence, fishing is relatively highly capitalised and labour intensive and is to a large degree controlled by non-Torres Strait Islanders with the important exception of the Nona family of Badu. Areas fished range up to hundreds of kilometres, and boats and crews are absent from their home ports for weeks at a time. The fish caught are usually exported and not consumed locally. The main commercial fisheries, crayfish (lobster), prawns and the various swimming fisheries, are not extensive and to some degree are already fully exploited. The committee feels that commercial fishing is an activity which, when the Treaty becomes fully effective, will require considerable attention to ensure that over-exploitation of limited resources does not occur. Some effort should also be made to encourage the Islanders to enter more fully into the commercial fishing industry.

Finally, the committee agrees that the Treaty as signed is a satisfactory document which has regard to the interests of both Australia and Papua New Guinea and of the communities living in the area who are most directly concerned. The Treaty should remove any cause for friction between the two countries in the area which it covers. Only after the ratification and implementation of the Treaty, however, will it be possible to make a judgment as to whether the hopes and expectations aroused by the Treaty have been fulfilled. The committee is of the view that the Treaty is in the best interests of all parties concerned and expresses the hope that it will receive early ratification.

#### **Recommendations**

A list of recommendations for future action which the committee has drawn up has been placed at the front of this report.

Signed: R. F. Shipton, M.P.  
Chairman  
3 April 1979

## Appendixes



**Treaty**  
between  
**Australia**  
and the  
**Independent State**  
**of Papua New Guinea**

concerning Sovereignty and Maritime Boundaries  
in the area between the two Countries,  
including the area known as Torres Strait,  
and Related Matters

Signed at Sydney, 18 December 1978

This Treaty requires ratification before it  
enters into force

TREATY

between

AUSTRALIA

and the

INDEPENDENT STATE OF PAPUA NEW GUINEA

concerning Sovereignty and Maritime Boundaries in  
the area between the two Countries, including the  
area known as Torres Strait, and Related Matters

Signed at Sydney, 18 December 1978

The maps annexed to this Treaty as Annexes 2, 4,  
6 and 7 are in the pocket inside the back cover.

DEPARTMENT OF FOREIGN AFFAIRS

CANBERRA

1978

TREATY BETWEEN AUSTRALIA AND THE INDEPENDENT STATE OF  
PAPUA NEW GUINEA CONCERNING SOVEREIGNTY AND MARITIME  
BOUNDARIES IN THE AREA BETWEEN THE TWO COUNTRIES, INCLUDING  
THE AREA KNOWN AS TORRES STRAIT, AND RELATED MATTERS

AUSTRALIA and PAPUA NEW GUINEA,

DESIRING to set down their agreed position as to their  
respective sovereignty over certain islands, to establish  
maritime boundaries and to provide for certain other related  
matters, in the area between the two countries including the  
area known as Torres Strait;

RECOGNISING the importance of protecting the traditional way  
of life and livelihood of Australians who are Torres Strait  
Islanders and of Papua New Guineans who live in the coastal  
area of Papua New Guinea in and adjacent to the Torres Strait;

RECOGNISING ALSO the importance of protecting the marine  
environment and ensuring freedom of navigation and overflight  
for each other's vessels and aircraft in the Torres Strait  
area;

DESIRING ALSO to cooperate with one another in that area in  
the conservation, management and sharing of fisheries  
resources and in regulating the exploration and exploitation  
of seabed mineral resources;

AS good neighbours and in a spirit of cooperation, friendship  
and goodwill;

HAVE AGREED as follows:

PART 1  
DEFINITIONS

ARTICLE 1  
Definitions

1. In this Treaty -

- (a) "adjacent coastal area" means, in relation to Australia, the coastal area of the Australian mainland, and the Australian islands, near the Protected Zone; and, in relation to Papua New Guinea, the coastal area of the Papua New Guinea mainland, and the Papua New Guinea islands, near the Protected Zone;
- (b) "fisheries jurisdiction" means sovereign rights for the purpose of exploring and exploiting, conserving and managing fisheries resources other than sedentary species;
- (c) "fisheries resources" means all living natural resources of the sea and seabed, including all swimming and sedentary species;
- (d) "free movement" means movement by the traditional inhabitants for or in the course of traditional activities;
- (e) "indigenous fauna and flora" includes migratory fauna;
- (f) "mile" means an international nautical mile being 1,852 metres in length;
- (g) "Protected Zone" means the zone established under Article 10;
- (h) "Protected Zone commercial fisheries" means the fisheries resources of present or potential commercial significance within the Protected Zone and, where a stock of such resources belongs substantially to the Protected Zone but extends into an area outside but near it, the part of that stock

found in that area within such limits as are agreed from time to time by the responsible authorities of the Parties;

- (i) "seabed jurisdiction" means sovereign rights over the continental shelf in accordance with international law, and includes jurisdiction over low-tide elevations, and the right to exercise such jurisdiction in respect of those elevations, in accordance with international law;
- (j) "sedentary species" means living organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil;
- (k) "traditional activities" means activities performed by the traditional inhabitants in accordance with local tradition, and includes, when so performed -
  - (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, for example, marriage celebrations and settlement of disputes; and
  - (iv) barter and market trade.

In the application of this definition, except in relation to activities of a commercial nature, "traditional" shall be interpreted



liberally and in the light of prevailing custom;

- (1) "traditional fishing" means 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;
- (m) "traditional inhabitants" means, in relation to Australia, persons who -
- (i) are Torres Strait Islanders who live in the Protected Zone or the adjacent coastal area of Australia,
  - (ii) are citizens of Australia, and
  - (iii) 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; and
- in relation to Papua New Guinea, persons who -
- (i) live in the Protected Zone or the adjacent coastal area of Papua New Guinea,
  - (ii) are citizens of Papua New Guinea, and

- (iii) 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.

2. Where for the purposes of this Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6,378,160 metres and a flattening of  $\frac{100}{29825}$  and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude  $25^{\circ}56'54.5515''$  South and at Longitude  $133^{\circ}12'30.0771''$  East and to have a ground level of 571.2 metres above the spheroid referred to above.

3. In this Treaty, the expression "in and in the vicinity of the Protected Zone" describes an area the outer limits of which might vary according to the context in which the expression is used.

## PART 2 SOVEREIGNTY AND JURISDICTION

### ARTICLE 2 Sovereignty Over Islands

1. Papua New Guinea recognises the sovereignty of Australia over -

- (a) the islands known as Anchor Cay, Aubusi Island, Black Rocks, Boigu Island,

Bramble Cay, Dauan Island, Deliverance Island, East Cay, Kaumag Island, Kerr Islet, Moimi Island, Pearce Cay, Saibai Island, Turnagain Island and Turu Cay; and

- (b) all islands that lie between the mainlands of the two countries and south of the line referred to in paragraph 1 of Article 4 of this Treaty.
2. No island over which Australia has sovereignty, other than those specified in sub-paragraph 1(a) of this Article, lies north of the line referred to in paragraph 1 of Article 4 of this Treaty.
3. Australia recognises the sovereignty of Papua New Guinea over -
- (a) the islands known as Kawa Island, Mata Kawa Island and Kussa Island; and
  - (b) all the other islands that lie between the mainlands of the two countries and north of the line referred to in paragraph 1 of Article 4 of this Treaty, other than the islands specified in sub-paragraph 1(a) of this Article.
4. In this Treaty, sovereignty over an island shall include sovereignty over -
- (a) its territorial sea;
  - (b) the airspace above the island and its territorial sea;
  - (c) the seabed beneath its territorial sea and the subsoil thereof; and

- (d) any island, rock or low-tide elevation that may lie within its territorial sea.

# ARTICLE 3 Territorial Seas

1. The territorial sea boundaries between the islands of Aubusi, Boigu and Moimi and Papua New Guinea and the islands of Dauan, Kaumag and Saibai and Papua New Guinea shall be the lines described in Annex 1 to this Treaty, which are shown on the map annexed to this Treaty as Annex 2, together with such other portion of the outer limit of the territorial sea of Saibai described in Annex 3 to this Treaty that may abut the territorial sea of Papua New Guinea.
2. The territorial seas of the islands specified in sub-paragraph 1(a) of Article 2 of this Treaty shall not extend beyond three miles from the baselines from which the breadth of the territorial sea around each island is measured. Those territorial seas shall not be enlarged or reduced, even if there were to be any change in the configuration of a coastline or a different result from any further survey.
3. The provisions of paragraph 2 of this Article shall not apply to that part of the territorial sea of Pearce Cay which lies south of the line referred to in paragraph 1 of Article 4 of this Treaty.
4. The outer limits of the territorial seas of the islands specified in sub-paragraph 1(a) of Article 2 of this Treaty, except in respect of that part of the territorial sea of Pearce Cay which lies south of the line referred to in paragraph 1 of Article 4 of this Treaty, shall be as described in Annex 3 to this Treaty. The limits so described are shown on the maps annexed to this Treaty as Annexes 2 and 4.

5. Australia shall not extend its territorial sea northwards across the line referred to in paragraph 1 of Article 4 of this Treaty.

6. Papua New Guinea shall not -

- (a) extend its territorial sea off its southern coastline between the meridians of Longitude 142°03'30" East and of Longitude 142°51'00" East, beyond three miles from the baselines from which the breadth of the territorial sea is measured;
- (b) extend its territorial sea or archipelagic waters into the area bounded by that portion of the line referred to in paragraph 2 of Article 4 of this Treaty running from the point of Latitude 9°45'24" South, Longitude 142°03'30" East to the point of Latitude 9°40'30" South, Longitude 142°51'00" East and that portion of the line referred to in paragraph 1 of Article 4 of this Treaty which runs between those two points;
- (c) establish an archipelagic baseline running in or through the area referred to in subparagraph (b) of this paragraph; or
- (d) extend its territorial sea southwards across the line referred to in paragraph 1 of Article 4 of this Treaty.

#### ARTICLE 4

#### Maritime Jurisdiction

1. Subject to the provisions of Article 2 of this Treaty, the boundary between the area of seabed and subsoil

that is adjacent to and appertains to Australia and the area of seabed and subsoil that is adjacent to and appertains to Papua New Guinea, and over which Australia and Papua New Guinea respectively shall have seabed jurisdiction, shall be the line described in Annex 5 to this Treaty. The line so described is shown on the map annexed to this Treaty as Annex 6 and, in part, on the map annexed to this Treaty as Annex 7.

2. Subject to the provisions of Article 2 of this Treaty, the boundary between the area of sea that is adjacent to and appertains to Australia and the area of sea that is adjacent to and appertains to Papua New Guinea, and in which Australia and Papua New Guinea respectively shall have fisheries jurisdiction, shall be the line described in Annex 8 to this Treaty. The line so described is shown on the map annexed to this Treaty as Annex 6 and, in part, on the maps annexed to this Treaty as Annexes 2 and 7.

3. In relation to the area bounded by the portion of the line referred to in paragraph 2 of this Article running from the point of Latitude 9°45'24" South, Longitude 142°03'30" East to the point of Latitude 9°40'30" South, Longitude 142°51'00" East and that portion of the line referred to in paragraph 1 of this Article which runs between those two points, exclusive of the territorial seas of the islands of Aubusi, Boigu, Dauan, Kaumag, Moimi, Saibai and Turnagain -

- (a) neither Party shall exercise residual jurisdiction without the concurrence of the other Party; and
- (b) the Parties shall consult with a view to reaching agreement on the most effective method of application of measures involving the exercise of residual jurisdiction.

4. In paragraph 3 of this Article, "residual jurisdiction" means -

- (a) jurisdiction over the area other than seabed jurisdiction or fisheries jurisdiction, including jurisdiction other than seabed jurisdiction or fisheries jurisdiction insofar as it relates to inter alia:
  - (i) the preservation of the marine environment;
  - (ii) marine scientific research; and
  - (iii) the production of energy from the water, currents and winds; and
- (b) seabed and fisheries jurisdiction to the extent that the exercise of such jurisdiction is not directly related to the exploration or exploitation of resources or to the prohibition of, or refusal to authorise, activities subject to that jurisdiction.

### PART 3

#### SOVEREIGNTY AND JURISDICTION - RELATED MATTERS

### ARTICLE 5

#### Existing Petroleum Permit

1. Where prior to 16 September 1975 Australia has granted an exploration permit for petroleum under Australian law in respect of a part of the seabed over which it ceases by virtue of this Treaty to exercise sovereign rights, and a permittee retains rights in respect of that permit immediately prior to the entry into force of this Treaty, Papua New Guinea, upon application by that permittee, shall

offer to that permittee a petroleum prospecting licence or licences under Papua New Guinea law in respect of the same part of the seabed on terms that are not less favourable than those provided under Papua New Guinea law to any other holder of a seabed petroleum prospecting licence.

2. An application for a licence under paragraph 1 of this Article shall be made -

- (a) in respect of a part of the seabed lying outside the Protected Zone, within six months after the date of entry into force of this Treaty;
- (b) in respect of a part of the seabed lying within the Protected Zone, during the period referred to in Article 15 and any extension of that period to which the Parties may agree.

### ARTICLE 6

#### Exploitation of Certain Seabed Deposits

If any single accumulation of liquid hydrocarbons or natural gas, or if any other mineral deposit beneath the seabed, extends across any line defining the limits of seabed jurisdiction of the Parties, and if the part of such accumulation or deposit that is situated on one side of such a line is recoverable in fluid form wholly or in part from the other side, the Parties shall consult with a view to reaching agreement on the manner in which the accumulation or deposit may be most effectively exploited and on the equitable sharing of the benefits from such exploitation.

### ARTICLE 7

#### Freedoms of Navigation and Overflight

1. On and over the waters of the Protected Zone that lie -

- (a) north of the line referred to in paragraph 1 of Article 4 of this Treaty and seaward of the low water lines of the land territory of either Party, and
- (b) south of that line and beyond the outer limits of the territorial sea,

each Party shall accord to the vessels and aircraft of the other Party, subject to paragraphs 2 and 3 of this Article, the freedoms of navigation and overflight associated with the operation of vessels and aircraft on or over the high seas.

2. Each Party shall take all necessary measures to ensure that, in the exercise of the freedoms of navigation and overflight accorded to its vessels and aircraft under paragraph 1 of this Article -

- (a) those vessels observe generally accepted international regulations, procedures and practices for safety at sea and for the prevention, reduction and control of pollution from ships;
- (b) those civil aircraft observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft, and State aircraft normally comply with such of those rules as relate to safety and at all times operate with due regard for the safety of navigation;
- (c) those vessels and aircraft north of the line referred to in paragraph 1 of Article 4 of this Treaty do not engage in the embarking or disembarking of any commodity, currency

or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the other Party, provided that the relevant laws and regulations of that Party do not have the practical effect of denying, hampering or impairing the freedoms of navigation and overflight accorded under paragraph 1 of this Article; and

- (d) those vessels and aircraft, north of the line referred to in paragraph 1 of Article 4 of this Treaty, do not act in a manner prejudicial to the peace, good order or security of the other Party.

3. Vessels of a Party engaged in the exploration or exploitation of resources in an area of jurisdiction of the other Party shall remain subject to the laws and regulations of the other Party made in the exercise of its resources jurisdiction consistently with this Treaty and with international law, including the provisions of those laws and regulations concerning the boarding, inspection and apprehension of vessels.

4. In those areas of the Protected Zone north of the line referred to in paragraph 1 of Article 4 of this Treaty to which paragraph 1 of this Article does not apply, civil aircraft of a Party engaged in scheduled or non-scheduled air services shall have the right of overflight, and the right to make stops for non-traffic purposes, without the need to obtain prior permission from the other Party, subject to compliance with any applicable laws or regulations made for the safety of air navigation.

5. In areas of the Protected Zone to which paragraph 1 of this Article does not apply, the vessels of a Party shall enjoy the right of innocent passage. There shall be no suspension of that right, and neither Party shall adopt

laws or regulations applying to those areas that might impede or hamper the normal passage of vessels between two points both of which are in the territory of one Party.

6. In cases where the provisions of neither paragraph 1 nor paragraph 5 of this Article apply, a regime of passage over routes used for international navigation in the area between the two countries, including the area known as Torres Strait, shall apply in respect of vessels that is no more restrictive of passage than the regime of transit passage through straits used for international navigation described in Articles 34 to 44 inclusive of Document A/Conf. 62/WP.10 of the Third United Nations Conference on the Law of the Sea, provided that, before a Party adopts a law or regulation that might impede or hamper the passage over those routes of vessels proceeding to or from the territory of the other Party, it shall consult with the other Party. If the provisions of those Articles are revised, are not included in any Law of the Sea Convention or fail to become generally accepted principles of international law, the Parties shall consult with a view to agreeing upon another regime of passage that is in accordance with international practice to replace the regime of passage applying under this paragraph.

7. The rights of navigation and overflight provided for in this Article are in addition to, and not in derogation of, rights of navigation and overflight in the area concerned under other treaties or general principles of international law.

#### ARTICLE 8 Navigational Aids

With a view to maintaining and improving the safety of navigation through the waters in the area between the two countries, the Parties shall cooperate

and, with due regard to the technical and other means available to each of them, shall, where appropriate and as may be agreed between them, provide mutual assistance in the provision and maintenance of navigational aids and in the preparation of charts and maps.

#### ARTICLE 9 Wrecks

1. Wrecks of vessels and aircraft which lie on, in or under the seabed in an area of seabed jurisdiction of a Party shall be subject to the jurisdiction of that Party.

2. If a wreck of historical or special significance to a Party is located or found in an area between the two countries under the jurisdiction of the other Party, the Parties shall consult with a view to reaching agreement on the action, if any, to be taken with respect to that wreck.

3. The provisions of this Article shall be without prejudice to the competence of the courts of a Party, for the purposes of the laws of that Party, in relation to maritime causes of action in respect of wrecks coming within the provisions of this Article.

4. This Article shall not apply to any military vessel or aircraft of either Party wrecked after the date of entry into force of this Treaty.

#### PART 4 THE PROTECTED ZONE

#### ARTICLE 10 Establishment and Purposes of the Protected Zone

1. A Protected Zone in the Torres Strait is hereby established comprising all the land, sea, airspace, seabed

and subsoil within the area bounded by the line described in Annex 9 to this Treaty. The line so described is shown on the maps annexed to this Treaty as Annexes 6 and 7 and, in part, on the map annexed to this Treaty as Annex 2.

2. The Parties shall adopt and apply measures in relation to the Protected Zone in accordance with the provisions of this Treaty.

3. The principal purpose of the Parties in establishing the Protected Zone, and in determining its northern, southern, eastern and western boundaries, is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement.

4. A further purpose of the Parties in establishing the Protected Zone is to protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Protected Zone.

#### ARTICLE 11

##### Free Movement and Traditional Activities Including Traditional Fishing

1. Subject to the other provisions of this Treaty, each Party shall continue to permit free movement and the performance of lawful traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other Party.

2. Paragraph 1 of this Article shall not be interpreted as sanctioning the expansion of traditional fishing by the traditional inhabitants of one Party into areas outside the Protected Zone under the jurisdiction of the other Party not traditionally fished by them prior to the date of entry into force of this Treaty.

3. The provisions of this Article and the other provisions of this Treaty concerning traditional fishing are subject to Article 14 and paragraph 2 of Article 20 of this Treaty.

#### ARTICLE 12

##### Traditional Customary Rights

Where the traditional inhabitants of one Party enjoy traditional customary rights of access to and usage of areas of land, seabed, seas, estuaries and coastal tidal areas that are in or in the vicinity of the Protected Zone and that are under the jurisdiction of the other Party, and those rights are acknowledged by the traditional inhabitants living in or in proximity to those areas to be in accordance with local tradition, the other Party shall permit the continued exercise of those rights on conditions not less favourable than those applying to like rights of its own traditional inhabitants.

#### ARTICLE 13

##### Protection of the Marine Environment

1. Each Party shall take legislative and other measures necessary to protect and preserve the marine environment in and in the vicinity of the Protected Zone. In formulating those measures each Party shall take into account internationally agreed rules, standards and recommended practices which have been adopted by diplomatic conferences or by relevant international organisations.

2. The measures that each Party shall take in accordance with paragraph 1 of this Article shall include measures for the prevention and control of pollution or other damage to the marine environment from all sources and activities under its jurisdiction or control and shall include, in particular, measures to minimise to the fullest practicable extent -

- (a) the release of toxic, harmful or noxious substances from land-based sources, from rivers, from or through the atmosphere, or by dumping at sea;
- (b) pollution or other damage from vessels; and
- (c) pollution or other damage from installations and devices used in the exploration and exploitation of the natural resources of the seabed and subsoil thereof.

3. The measures taken by each Party in accordance with paragraph 1 of this Article shall be consistent with its obligations under international law, including obligations not to prejudice the rights of foreign ships and aircraft, and shall be subject to the provisions of Article 7 of this Treaty.

4. The Parties shall consult, at the request of either, for the purpose of -

- (a) harmonising their policies with respect to the measures that each shall take pursuant to this Article; and
- (b) ensuring the effective and coordinated implementation of those measures.

5. If either Party has reasonable grounds for believing that any planned activity under its jurisdiction or control may cause pollution or other damage to the marine environment in or in the vicinity of the Protected Zone, that Party shall, after due investigation, communicate to the other Party its assessment of the potential impact of that activity on the marine environment.

6. If either Party has reasonable grounds for believing that any existing or planned activity under the jurisdiction or control of the other Party is causing or may cause pollution or other damage to the marine environment in or in the vicinity of the Protected Zone, it may request consultations with the other Party, and the Parties shall then consult as soon as possible with a view to adopting measures to prevent or control any pollution or other damage to that environment from that activity.

#### ARTICLE 14

##### Protection of Fauna and Flora

1. Each Party shall, in and in the vicinity of the Protected Zone, use its best endeavours to -

- (a) identify and protect species of indigenous fauna and flora that are or may become threatened with extinction;
- (b) prevent the introduction of species of fauna and flora that may be harmful to indigenous fauna and flora; and
- (c) control noxious species of fauna and flora.

2. Notwithstanding any other provision of this Treaty except paragraph 4 of this Article, a Party may implement within its area of jurisdiction measures to protect species of indigenous fauna and flora which are or may become threatened with extinction or which either Party has an obligation to protect under international law.

3. The Parties shall as appropriate and necessary exchange information concerning species of indigenous fauna and flora that are or may become threatened with extinction and shall consult, at the request of either of them, for the purpose of -



- (a) harmonising their policies with respect to the measures that each may take to give effect to paragraphs 1 and 2 of this Article; and
  - (b) ensuring the effective and coordinated implementation of those measures.
4. In giving effect to the provisions of this Article, each Party shall use its best endeavours to minimise any restrictive effects on the traditional activities of the traditional inhabitants.

ARTICLE 15  
Prohibition of Mining and Drilling  
of the Seabed

Neither Party shall undertake or permit within the Protected Zone mining or drilling of the seabed or the subsoil thereof for the purpose of exploration for or exploitation of liquid hydrocarbons, natural gas or other mineral resources during a period of ten years from the date of entry into force of this Treaty. The Parties may agree to extend that period.

ARTICLE 16  
Immigration, Customs, Quarantine and Health

1. Except as otherwise provided in this Treaty, 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.
2. Each Party, in administering its laws and policies relating to the entry and departure of persons and the importation and exportation of goods into and from areas

under its jurisdiction in and in the vicinity of the Protected Zone, shall act in a spirit of mutual friendship and good neighbourliness, bearing in mind relevant principles of international law and established international practices and the importance of discouraging the occurrence, under the guise of free movement or performance of traditional activities, of illegal entry, evasion of justice and practices prejudicial to effective immigration, customs, health and quarantine protection and control.

3. Notwithstanding the provisions of paragraph 1 of this Article -

- (a) traditional inhabitants of one Party who wish to enter the other country, except for temporary stay for the performance of traditional activities, shall be subject to the same immigration, customs, health and quarantine requirements and procedures as citizens of that Party who are not traditional inhabitants;
- (b) each Party reserves its right to limit free movement to the extent necessary to control abuses involving illegal entry or evasion of justice; and
- (c) each Party reserves its right to apply such immigration, customs, health and quarantine measures, temporary or otherwise, as it considers necessary to meet problems which may arise. In particular each Party may apply measures to limit or prevent free movement, or the carriage of goods, plants or animals in the course thereof, in the case of an outbreak or spread of an epidemic, epizootic or epiphytotic in or in the vicinity of the Protected Zone.

ARTICLE 17  
Implementation and Coordination

In order to facilitate the implementation of the provisions of this Treaty relating to the Protected Zone, the authorities of each Party shall, at the request of the authorities of the other Party, as may be appropriate and necessary -

- (a) make available to the authorities of the other Party information on the relevant provisions of its laws, regulations and procedures relating to immigration, citizenship, customs, health, quarantine, fisheries, the protection of the environment and other matters; and
- (b) consult with the authorities of the other Party with a view to making appropriate administrative or other arrangements to resolve any problems arising in the implementation of those provisions.

ARTICLE 18  
Liaison Arrangements

1. Each Party shall designate a representative who shall facilitate the implementation at the local level of the provisions of this Treaty.

2. The two designated representatives shall -

- (a) exchange information on relevant developments in and in the vicinity of the Protected Zone;
- (b) consult together and take such action as is appropriate to their respective

functions to facilitate the practical operation at the local level of the provisions of this Treaty and to resolve any problems arising therefrom;

- (c) keep under review free movement by the traditional inhabitants of one Party into areas under the jurisdiction of the other Party and the local arrangements applying in respect of such free movement; and
- (d) draw to the attention of their Governments, and make recommendations as appropriate on, any matters affecting the implementation of the provisions of this Treaty or arising therefrom which are not capable of resolution at the local level or which may otherwise require consideration by both Parties.

3. In the exercise of his functions, each representative shall -

- (a) consult closely with representatives of the traditional inhabitants of his country, particularly in relation to any problems which may arise in respect of free movement, traditional activities and the exercise of traditional customary rights as provided for in this Treaty, and convey their views to his Government; and
- (b) maintain close liaison with national, State, Provincial and local authorities of his country on all matters falling within their respective responsibilities.

4. Unless a different location is required by the circumstances, the representative of Australia shall be

based at Thursday Island and the representative of Papua New Guinea shall be based at Daru.

#### ARTICLE 19

##### Torres Strait Joint Advisory Council

1. The Parties shall jointly establish and maintain an advisory and consultative body which shall be known as the Torres Strait Joint Advisory Council (called in this Article "the Advisory Council").
2. The functions of the Advisory Council shall be -
  - (a) to seek solutions to problems arising at the local level and not resolved pursuant to Article 18 of this Treaty;
  - (b) to consider and to make recommendations to the Parties on any developments or proposals which might affect the protection of the traditional way of life and livelihood of the traditional inhabitants, their free movement, performance of traditional activities and exercise of traditional customary rights as provided for in this Treaty; and
  - (c) to review from time to time as necessary, and to report and to make recommendations to the Parties on, any matters relevant to the effective implementation of this Treaty, including the provisions relating to the protection and preservation of the marine environment, and fauna and flora, in and in the vicinity of the Protected Zone.
3. The Advisory Council shall not have or assume responsibilities for management or administration. These

responsibilities shall, within the respective areas of jurisdiction of each Party, continue to lie with the relevant national, State, Provincial and local authorities.

4. In the exercise of its functions, the Advisory Council shall ensure that the traditional inhabitants are consulted, that they are given full and timely opportunity to comment on matters of concern to them and that their views are conveyed to the Parties in any reports and recommendations made by the Advisory Council to the Parties.
5. The Advisory Council shall transmit its reports and recommendations to the Foreign Ministers of the Parties. After consideration by appropriate authorities of the Parties, consultations may be arranged with a view to the resolution of matters to which the Advisory Council has invited attention.
6. Unless otherwise agreed by the Parties, the Advisory Council shall consist of eighteen members, that is nine members from each Party who shall include -
  - (a) at least two national representatives;
  - (b) at least one member representing the Government of Queensland in the case of Australia and one representing the Fly River Provincial Government in the case of Papua New Guinea; and
  - (c) at least three members representing the traditional inhabitants,
 with each Party being free to decide from time to time from which of the aforementioned categories any other of its members will be drawn.
7. The Advisory Council shall meet when necessary at the request of either Party. Consecutive meetings of

the Advisory Council shall be chaired alternately by a representative of Australia and a representative of Papua New Guinea. Meetings shall be held alternately in Australia and Papua New Guinea or as may from time to time be otherwise arranged.

PART 5  
PROTECTED ZONE COMMERCIAL FISHERIES

ARTICLE 20  
Priority of Traditional Fishing and  
Application of Measures to  
Traditional Fishing

1. The provisions of this Part shall be administered so as not to prejudice the achievement of the purposes of Part 4 of this Treaty in regard to traditional fishing.

2. A Party may adopt a conservation measure consistent with the provisions of this Part which, if necessary for the conservation of a species, may be applied to traditional fishing, provided that that Party shall use its best endeavours to minimise any restrictive effects of that measure on traditional fishing.

ARTICLE 21  
Conservation, Management and Optimum Utilisation

The Parties shall cooperate in the conservation, management and optimum utilisation of Protected Zone commercial fisheries. To this end, the Parties shall consult at the request of either and shall enter into arrangements for the effective implementation of the provisions of this Part.

ARTICLE 22  
Conservation and Management of Individual Fisheries

1. The Parties shall, where appropriate, negotiate subsidiary conservation and management arrangements in

respect of any individual Protected Zone commercial fishery.

2. If either Party notifies the other in writing that it regards one of the Protected Zone commercial fisheries as one to which common conservation and management arrangements should apply, the Parties shall within ninety days from the date of the notification enter into consultations with a view to concluding arrangements specifying the measures to be applied by them with respect to that fishery.

3. The Parties shall, where appropriate, also negotiate supplementary conservation and management arrangements in respect of resources directly related to a fishery referred to in paragraph 1 of this Article, including resources involving stocks occurring in the Protected Zone where such stocks are not otherwise subject to the provisions of this Treaty.

ARTICLE 23  
Sharing of the Catch of the Protected Zone  
Commercial Fisheries

1. The Parties shall share the allowable catch of the Protected Zone commercial fisheries in accordance with the provisions of this Article and of Articles 24 and 25 of this Treaty.

2. The allowable catch, that is to say the optimum sustainable yield, of a Protected Zone commercial fishery shall be determined jointly by the Parties as part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty.

3. If either Party has reasonable grounds for believing that the commercial exploitation of a species of Protected Zone commercial fisheries would, or has the potential to, cause serious damage to the marine environment, or might endanger another species, that Party may request consulta-

tions with the other Party and the Parties shall then consult as soon as possible with a view to reaching agreement on whether such commercial exploitation could be undertaken in a manner which would not result in such damage or endanger another species.

4. In respect of any relevant period where the full allowable catch of a particular Protected Zone commercial fishery might be taken, each Party shall be entitled to a share of the allowable catch apportioned, subject to paragraphs 5, 6 and 8 of this Article and to Articles 24 and 25 of this Treaty, as follows:

- (a) in areas under Australian jurisdiction, except as provided in (b) below:

Australia	- 75%
Papua New Guinea	- 25%

- (b) within the territorial seas of Anchor Cay, Black Rocks, Bramble Cay, Deliverance Island, East Cay, Kerr Islet, Pearce Cay and Turu Cay:

Australia	- 50%
Papua New Guinea	- 50%

- (c) in areas under Papua New Guinea jurisdiction:

Australia	- 25%
Papua New Guinea	- 75%

5. Papua New Guinea shall have the sole entitlement to the allowable catch of the commercial barramundi fishery near the Papua New Guinea coast, except within the territorial seas of the islands of Aubusi, Boigu, Dauan, Kaumag, Moimi and Saibai where, in respect of that fishery, the provisions of paragraph 4 (a) of this Article shall not apply.

6. In apportioning the allowable catch in relation to an individual fishery, the Parties shall normally consider the allowable catch expressed in terms of weight or volume. In calculating the apportionment of the total allowable catch of the Protected Zone commercial fisheries, the Parties shall have regard to the relative value of individual fisheries and shall, for this purpose, agree on a common value for production from each individual fishery for the period in question, such value being based on the value of the raw product at the processing facility or such other point as may be agreed, but prior to any enhancement of value through processing, including processing at a pearl culture farm, or further transportation or marketing.

7. The Parties may agree to vary the apportionment of the allowable catch determined for individual fisheries as part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty but so as to maintain in respect of the total allowable catch of the Protected Zone commercial fisheries the apportionment specified in paragraph 4 of this Article for each Party.

8. In calculating the total allowable catch of the Protected Zone commercial fisheries, the allowable catch of the commercial barramundi fishery referred to in paragraph 5 of this Article shall be disregarded.

#### ARTICLE 24 Transitional Entitlement

1. As part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty, the level of the catch of each Protected Zone commercial fishery to which each Party is entitled, provided it remains within the allowable catch -

- (a) shall not, during the period of five years immediately after the entry into force of

this Treaty, be reduced below the level of catch of that Party before the entry into force of this Treaty; but

- (b) may, during the second period of five years after the entry into force of this Treaty, be adjusted progressively so that at the end of that second five-year period it reaches the level of catch apportioned in each case in Article 23 of this Treaty.

2. The entitlement of a Party under this Article shall, where the limitation of the allowable catch makes it necessary, take priority over the entitlement of the other Party under Article 23 of this Treaty, but shall be taken into account in calculating the entitlement of the first Party.

#### ARTICLE 25 Preferential Entitlement

If, in any relevant period, a Party does not itself propose to take all the allowable catch of a Protected Zone commercial fishery to which it is entitled, either in its own area of jurisdiction or that of the other Party, the other Party shall have a preferential entitlement to any of the allowable catch of that fishery not taken by the first Party.

#### ARTICLE 26 Licensing Arrangements

1. In the negotiation and implementation of the conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty -

- (a) the Parties shall consult and cooperate in the issue and endorsement of licences to permit commercial fishing in Protected Zone commercial fisheries;

- (b) the responsible authorities of the Parties may issue licences to fish in any Protected Zone commercial fishery; and
- (c) persons or vessels which are licensed by the responsible authorities of one Party to fish in any relevant period in a Protected Zone commercial fishery shall, if nominated by the responsible authorities of that Party, be authorised by the responsible authorities of the other Party, wherever necessary, by the endorsement of licences or otherwise, to fish in those areas under the jurisdiction of the other Party in which the fishery concerned is located.

2. The persons or vessels licensed by one Party which have been authorised, or are to be authorised, under the provisions of paragraph 1 of this Article to fish in waters under the jurisdiction of the other Party shall comply with the relevant fisheries laws and regulations of the other Party except that they shall be exempt from licensing fees, levies and other charges imposed by the other Party in respect of such fishing activities.

3. In issuing licences in accordance with paragraph 1 of this Article, the responsible authorities of both Parties shall have regard to the desirability of promoting economic development in the Torres Strait area and employment opportunities for the traditional inhabitants.

4. The responsible authorities of both Parties shall ensure that the traditional inhabitants are consulted from time to time on the licensing arrangements in respect of Protected Zone commercial fisheries.

#### ARTICLE 27 Third State Fishing in Protected Zone Commercial Fisheries

1. The responsible authorities of the Parties shall

inform one another and shall consult, at the request of either of them, concerning the proposed exploitation of the Protected Zone commercial fisheries -

- (a) by a joint venture in which there is third-State equity participation; or
- (b) by a vessel of third-State registration or with a crew substantially of the nationality of a third State.

2. Vessels the operations of which are under the control of nationals of a third State shall not be licensed to exploit the Protected Zone commercial fisheries without the concurrence of the responsible authorities of both Parties in a particular case or class of cases.

#### ARTICLE 28 Inspection and Enforcement

1. The Parties shall cooperate, including by exchange of personnel, in inspection and enforcement to prevent violations of the Protected Zone commercial fisheries arrangements and in taking appropriate enforcement measures in the event of such violations.

2. The Parties shall consult from time to time, as necessary, so as to ensure that legislation and regulations adopted by each Party pursuant to paragraph 1 of this Article are, as far as practicable, consistent with the legislation and regulations of the other Party.

3. Each Party shall make it an offence under its fisheries laws or regulations for a person to use a vessel of its nationality to fish in Protected Zone commercial fisheries for species of fisheries resources in areas over which the other Party has jurisdiction in respect of those species -

- (a) without being duly licensed or authorised by that other Party; or
- (b) in the case of a licensed or authorised vessel, in breach of the fisheries laws or regulations of the other Party applying within those areas.

4. Each Party will, in relation to species of fisheries resources in areas where it has jurisdiction in respect of those species -

- (a) investigate suspected offences against its fisheries laws and regulations; and
- (b) except as provided in or under this Article, take corrective action when necessary against offenders against those laws or regulations.

5. In this Article, "corrective action" means the action normally taken in respect of a suspected offence, after due investigation, and includes, where appropriate, the apprehension of a suspected offender, the prosecution of an alleged offender, or the execution of a penalty imposed by a court or the cancellation or suspension of the licence of an offender.

6. In accordance with the provisions of this Article, and in other appropriate cases as may be agreed between the Parties, corrective action in respect of offences or suspected offences against the fisheries laws or regulations of the Parties shall be taken by the authorities of the Party whose nationality is borne by the vessel or person concerned (called in this Article "the first Party") and not by the Party in whose area of jurisdiction the offence or suspected offence occurs (called in this Article "the second Party").

7. The Parties acknowledge that the principle stated in paragraph 6 of this Article should not be applied so as to frustrate the enforcement of fisheries laws or regulations or to enable offenders against those laws or regulations to go unpunished.

8. Where, in the case of a suspected offence alleged to have been committed in or in the vicinity of the Protected Zone, it appears that the offence was, or might reasonably be considered to have been, committed in the course of traditional fishing, corrective action or other measures shall be taken by the authorities of the first Party and not by the authorities of the second Party and, if being detained by the authorities of the second Party, the alleged offenders and their vessel shall be either released or handed over to the authorities of the first Party, in accordance with arrangements that will avoid undue expense or inconvenience to the authorities of the second Party.

9. Where paragraph 8 of this Article applies, the authorities of the second Party may require assurance in a particular case that corrective action or other measures will be taken by the authorities of the first Party that will adequately ensure that the activity complained of will not be repeated.

10. Where the provisions of paragraph 8 of this Article do not apply, and the person or vessel alleged to have been involved or used in the commission of a suspected offence in the Protected Zone is licensed to fish in the Protected Zone by the authorities of the first Party, corrective action shall be taken by the authorities of the first Party and not by the authorities of the second Party and, if being detained by the authorities of the second Party, the alleged offenders and their vessel shall be either released or handed over to the authorities of the first Party, in accordance with arrangements that will avoid undue expense or inconvenience to the authorities of the second Party, and the provisions of paragraphs 13 and 14 of this Article shall apply.

11. The provisions of paragraph 10 of this Article shall also apply in respect of a suspected offence by a person or vessel of the first Party in an area of jurisdiction of the second Party outside the Protected Zone where -

- (a) that person or vessel was authorised by the authorities of the second Party to fish in the area where the suspected offence was committed under the arrangements referred to in paragraph 1 of Article 22 of this Treaty; and
- (b) the suspected offence was committed in relation to the fishery the subject of that authorisation and did not involve the taking of other species or potential injury to another fishery.

12. Persons or vessels of the first Party detained by the authorities of the second Party in the circumstances described in paragraphs 8 and 10 of this Article may be detained for as long as necessary to enable those authorities to conduct an expeditious investigation into the offence and to obtain evidence. Thereafter, they shall not be detained other than for the purpose of the handing over of the persons or vessels in accordance with the provisions of those paragraphs unless they are lawfully detained on some other ground.

13. If an alleged offender referred to in paragraph 10 of this Article is, in respect of conduct in waters under the jurisdiction of the second Party -

- (a) convicted of an offence against the fisheries laws or regulations of the first Party; or
- (b) found by the authorities of the first Party, on the basis of sufficient available evidence, to have contravened or failed to comply with a condition of his licence or authorisation or that of his vessel;



the authorities of the first Party shall, where appropriate and having regard to paragraph 7 of this Article, cancel or suspend the licence or authorisation of the person or his vessel so far as it relates to the Protected Zone commercial fisheries.

14. Where a person or vessel involved or used in the commission of the alleged offence referred to in paragraph 10 of this Article is also currently licensed or authorised to fish in the area of the Protected Zone by the second Party, the authorities of the second Party may, after receiving a report and representations, if any, from the authorities of the first Party, cancel or suspend that licence or authorisation in accordance with its laws for such period as is warranted by the circumstances of the case.

15. Each Party shall provide the other Party with any evidence obtained during investigations carried out in accordance with this Article into a suspected offence involving a person or vessel of the other Party. Each Party shall take appropriate measures to facilitate the admission of such evidence in proceedings taken in respect of the suspected offence.

16. In this Article references to persons and vessels of, or of the nationality of, a Party include references to persons or vessels licensed by that Party under sub-paragraph 1(b) of Article 26 of this Treaty, and the crews of vessels so licensed, except where such persons or vessels have a prior current licence from the other Party under that sub-paragraph.

PART 6  
FINAL ARTICLES

ARTICLE 29  
Settlement of Disputes

Any dispute between the Parties arising out of

the interpretation or implementation of this Treaty shall be settled by consultation or negotiation.

ARTICLE 30  
Consultations

The Parties shall consult, at the request of either, on any matters relating to this Treaty.

ARTICLE 31  
Annexes

The Annexes to this Treaty shall have force and effect as integral parts of this Treaty.

ARTICLE 32  
Ratification

This Treaty shall be subject to ratification and shall enter into force on the exchange of the instruments of ratification.

IN WITNESS WHEREOF the undersigned being duly authorised have signed the present Treaty and have affixed thereto their seals.

DONE in duplicate at Sydney on this eighteenth day of December, One thousand nine hundred and seventy-eight.

FOR AUSTRALIA

FOR PAPUA NEW GUINEA

Signed MALCOLM FRASER  
Prime Minister

Signed MICHAEL SOMARE  
Prime Minister

Signed ANDREW PEACOCK  
Minister for  
Foreign Affairs

Signed N. EBIA OLEWALE  
Deputy Prime Minister  
and Minister for  
Foreign Affairs and  
Trade

ANNEX 1 TO THE TREATY  
BETWEEN AUSTRALIA AND  
THE INDEPENDENT STATE  
OF PAPUA NEW GUINEA  
CONCERNING SOVEREIGNTY  
AND MARITIME BOUNDARIES  
IN THE AREA BETWEEN THE  
TWO COUNTRIES, INCLUDING  
THE AREA KNOWN AS TORRES  
STRAIT, AND RELATED  
MATTERS

TERRITORIAL SEA BOUNDARIES BETWEEN THE ISLANDS OF  
AUBUSI, BOIGU AND MOIMI AND PAPUA NEW GUINEA AND  
BETWEEN THE ISLANDS OF DAUAN, KAUMAG AND  
SAIBAI AND PAPUA NEW GUINEA

BETWEEN THE ISLANDS OF AUBUSI, BOIGU AND MOIMI AND PAPUA NEW GUINEA

A line -

commencing at the point of Latitude  
9°15'43" South, Longitude 142°03'30"  
East ("Point 1");

running thence north-easterly along the  
geodesic to the point of Latitude 9°12'50"  
South, Longitude 142°06'25" East ("Point 2");

thence north-easterly along the geodesic to  
the point of Latitude 9°11'51" South,  
Longitude 142°08'33" East ("Point 3");

thence south-easterly along the geodesic to  
the point of Latitude 9°11'58" South,  
Longitude 142°10'18" East ("Point 4");

.../2

2.

thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}11'22''$  South, Longitude  $142^{\circ}12'54''$  East ("Point 5");

thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}11'34''$  South, Longitude  $142^{\circ}14'08''$  East ("Point 6");

thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}13'53''$  South, Longitude  $142^{\circ}16'26''$  East ("Point 7"); and

thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}16'04''$  South, Longitude  $142^{\circ}20'41''$  East ("Point 8") where it terminates.

BETWEEN THE ISLANDS OF DAUAN, KAUMAG AND SAIBAI AND PAPUA NEW GUINEA

A line -

commencing at the point of Latitude  $9^{\circ}22'04''$  South, Longitude  $142^{\circ}29'41''$  East ("Point 9");

running thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}21'48''$  South, Longitude  $142^{\circ}31'29''$  East ("Point 10");

thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}22'33''$  South, Longitude  $142^{\circ}33'28''$  East ("Point 11");

thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}21'25''$  South, Longitude  $142^{\circ}35'29''$  East ("Point 12");

thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}20'21''$  South, Longitude  $142^{\circ}41'43''$  East ("Point 13");

.../3

3.

thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}20'16''$  South, Longitude  $142^{\circ}43'53''$  East ("Point 14"); and

thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}19'26''$  South, Longitude  $142^{\circ}48'18''$  East ("Point 15") where it terminates.

ANNEX 3 TO THE TREATY  
BETWEEN AUSTRALIA AND  
THE INDEPENDENT STATE  
OF PAPUA NEW GUINEA  
CONCERNING SOVEREIGNTY  
AND MARITIME BOUNDARIES  
IN THE AREA BETWEEN THE  
TWO COUNTRIES, INCLUDING  
THE AREA KNOWN AS TORRES  
STRAIT, AND RELATED  
MATTERS

OUTER LIMITS OF TERRITORIAL SEAS

TERRITORIAL SEA OF THE ISLANDS OF AUBUSI, BOIGU AND MOIMI

The outer limit of the territorial sea of the islands of Aubusi, Boigu and Moimi shall be a continuous line -

- (a) commencing at the point specified as Point 1 in Annex 1 to this Treaty;
- (b) running thence along the geodesics successively joining the points specified as Points 1 to 8 in Annex 1 to this Treaty; and
- (c) thence along a series of intersecting arcs of circles having a radius of three miles and drawn successively from the following points -

	<u>Latitude</u> (South)	<u>Longitude</u> (East)
(i)	9°15'53"	142°17'39"
(ii)	9°16'26"	142°17'36"
(iii)	9°16'28"	142°17'36"
(iv)	9°16'31"	142°17'30"
(v)	9°17'06"	142°17'30"

2.

(vi)	9°17'15"	142°17'30"
(vii)	9°17'26"	142°17'15"
(viii)	9°17'50"	142°16'46"
(ix)	9°17'55"	142°16'39"
(x)	9°17'56"	142°16'30"
(xi)	9°17'53"	142°16'11"
(xii)	9°17'52"	142°16'07"
(xiii)	9°17'44"	142°14'52"
(xiv)	9°17'45"	142°14'49"
(xv)	9°17'44"	142°14'38"
(xvi)	9°17'44"	142°14'30"
(xvii)	9°17'38"	142°14'06"
(xviii)	9°17'38"	142°13'59"
(xix)	9°17'36"	142°13'47"
(xx)	9°17'34"	142°13'31"
(xxi)	9°17'33"	142°13'20"
(xxii)	9°17'32"	142°12'56"
(xxiii)	9°17'32"	142°12'46"
(xxiv)	9°17'33"	142°12'26"
(xxv)	9°17'38"	142°11'56"
(xxvi)	9°17'39"	142°11'51"
(xxvii)	9°17'38"	142°11'34"
(xxviii)	9°17'37"	142°11'30"
(xxix)	9°17'33"	142°10'20"
(xxx)	9°17'30"	142°10'13"
(xxxi)	9°17'15"	142°09'08"
(xxxii)	9°17'13"	142°09'00"
(xxxiii)	9°17'02"	142°08'35"
(xxxiv)	9°16'56"	142°08'23"
(xxxv)	9°16'52"	142°08'15"
(xxxvi)	9°16'47"	142°08'01"
(xxxvii)	9°16'46"	142°07'58"
(xxxviii)	9°16'21"	142°06'52"
(xxxix)	9°16'19"	142°06'51"
(xl)	9°15'08"	142°06'28"

to the point of commencement.

.../3

3.

TERRITORIAL SEA OF THE ISLANDS OF DAUAN, KAUMAG AND SAIBAI

The outer limit of the territorial sea of the islands of Dauan, Kaumag and Saibai shall be a continuous line -

- (a) commencing at the point specified as Point 9 in Annex 1 to this Treaty;
- (b) running thence along the geodesics successively joining the points specified as Points 9 to 15 in Annex 1 to this Treaty; and
- (c) thence along a series of intersecting arcs of circles having a radius of three miles and drawn successively from the following points -

	<u>Latitude</u> (South)	<u>Longitude</u> (East)
(i)	9°22'24"	142°47'49"
(ii)	9°22'28"	142°47'53"
(iii)	9°22'39"	142°47'57"
(iv)	9°22'48"	142°48'00"
(v)	9°22'58"	142°48'01"
(vi)	9°23'02"	142°48'01"
(vii)	9°23'06"	142°47'59"
(viii)	9°23'12"	142°47'55"
(ix)	9°23'28"	142°47'46"
(x)	9°23'44"	142°47'41"
(xi)	9°25'46"	142°46'36"
(xii)	9°25'48"	142°46'36"
(xiii)	9°25'53"	142°46'29"
(xiv)	9°26'05"	142°46'12"
(xv)	9°26'10"	142°46'03"

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(xvi)	9°26'15"	142°45'47"
(xvii)	9°26'15"	142°45'34"
(xviii)	9°26'12"	142°45'25"
(xix)	9°26'09"	142°45'12"
(xx)	9°26'06"	142°45'07"
(xxi)	9°25'57"	142°44'39"
(xxii)	9°25'48"	142°43'07"
(xxiii)	9°25'54"	142°42'42"
(xxiv)	9°25'53"	142°42'13"
(xxv)	9°25'52"	142°41'59"
(xxvi)	9°25'51"	142°41'51"
(xxvii)	9°25'48"	142°41'15"
(xxviii)	9°25'47"	142°41'04"
(xxix)	9°25'46"	142°40'55"
(xxx)	9°25'43"	142°40'20"
(xxxi)	9°25'44"	142°40'04"
(xxxii)	9°25'50"	142°39'30"
(xxxiii)	9°25'51"	142°39'22"
(xxxiv)	9°25'50"	142°39'13"
(xxxv)	9°25'48"	142°39'03"
(xxxvi)	9°25'35"	142°38'05"
(xxxvii)	9°25'31"	142°37'46"
(xxxviii)	9°25'28"	142°37'36"
(xxxix)	9°25'23"	142°37'22"
(xl)	9°25'22"	142°37'19"
(xli)	9°25'04"	142°36'35"
(xlii)	9°24'50"	142°36'03"
(xliii)	9°25'25"	142°33'03"
(xliv)	9°25'27"	142°32'58"
(xlv)	9°25'54"	142°32'17"
(xlvi)	9°26'11"	142°33'00"
(xlvii)	9°26'15"	142°31'55"
(xlviii)	9°26'17"	142°31'52"
(xlix)	9°26'17"	142°31'48"
(l)	9°26'15"	142°31'46"
(li)	9°26'06"	142°31'47"
(lii)	9°25'38"	142°31'35"

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(liii)	9°25'28"	142°31'34"
(liv)	9°25'24"	142°31'33"
(lv)	9°25'05"	142°31'27"
(lvi)	9°24'39"	142°31'18"
(lvii)	9°24'37"	142°31'17"
(lviii)	9°24'32"	142°31'24"

to the point of commencement.

TERRITORIAL SEA OF ANCHOR CAY AND EAST CAY

The outer limit of the territorial sea of Anchor Cay and East Cay shall be a continuous line formed by a series of intersecting arcs of circles having a radius of three miles and drawn successively, so as to enclose the islands, from the following points -

	<u>Latitude</u> (South)	<u>Longitude</u> (East)
(i)	9°21'27"	144°07'30"
(ii)	9°21'25"	144°07'28"
(iii)	9°21'25"	144°07'38"
(iv)	9°21'26"	144°07'44"
(v)	9°21'29"	144°07'50"
(vi)	9°21'31"	144°07'55"
(vii)	9°21'44"	144°08'24"
(viii)	9°21'45"	144°08'27"
(ix)	9°21'49"	144°08'33"
(x)	9°21'54"	144°08'37"
(xi)	9°23'09"	144°12'43"
(xii)	9°23'02"	144°12'55"
(xiii)	9°23'02"	144°13'23"
(xiv)	9°23'04"	144°13'29"
(xv)	9°23'06"	144°13'33"
(xvi)	9°23'09"	144°13'40"
(xvii)	9°23'13"	144°13'44"
(xviii)	9°23'30"	144°13'59"

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6.

(xix)	9°23'40"	144°14'11"
(xx)	9°23'44"	144°14'18"
(xxi)	9°23'50"	144°14'25"
(xxii)	9°23'59"	144°14'30"
(xxiii)	9°24'05"	144°14'31"
(xxiv)	9°24'19"	144°14'33"
(xxv)	9°24'29"	144°14'37"
(xxvi)	9°24'40"	144°14'40"
(xxvii)	9°24'44"	144°14'40"
(xxviii)	9°24'49"	144°14'35"
(xxix)	9°24'53"	144°14'33"
(xxx)	9°24'57"	144°14'27"
(xxxi)	9°24'57"	144°14'20"
(xxxii)	9°24'56"	144°14'14"
(xxxiii)	9°24'44"	144°13'19"
(xxxiv)	9°24'40"	144°13'02"
(xxxv)	9°24'36"	144°12'58"
(xxxvi)	9°24'31"	144°12'56"
(xxxvii)	9°23'47"	144°12'34"
(xxxviii)	9°22'06"	144°08'38"
(xxxix)	9°22'07"	144°08'31"
(xl)	9°21'59"	144°07'57"
(xli)	9°21'47"	144°07'32"
(xlii)	9°21'44"	144°07'29"
(xliii)	9°21'40"	144°07'26"
(xliv)	9°21'35"	144°07'24"

TERRITORIAL SEA OF BLACK ROCKS AND BRAMBLE CAY

The outer limit of the territorial sea of Black Rocks and Bramble Cay shall be a continuous line formed by a series of intersecting arcs of circles having a radius of three miles and drawn successively, so as to enclose the islands, from the following points -

	<u>Latitude</u> (South)	<u>Longitude</u> (East)
(i)	9°10'28"	143°49'59"

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7.

(ii)	9°08'40"	143°52'19"
(iii)	9°08'33"	143°52'22"
(iv)	9°08'26"	143°52'32"
(v)	9°08'24"	143°52'41"
(vi)	9°08'23"	143°52'48"
(vii)	9°08'24"	143°52'54"
(viii)	9°08'27"	143°53'06"
(ix)	9°08'32"	143°53'12"
(x)	9°08'43"	143°53'19"
(xi)	9°08'48"	143°53'19"
(xii)	9°08'52"	143°53'17"
(xiii)	9°09'00"	143°53'13"
(xiv)	9°09'04"	143°53'07"
(xv)	9°09'08"	143°53'00"
(xvi)	9°09'07"	143°52'49"

TERRITORIAL SEA OF DELIVERANCE ISLAND AND KERR ISLET

The outer limit of the territorial sea of Deliverance Island and Kerr Islet shall be a continuous line formed by a series of intersecting arcs of circles having a radius of three miles and drawn successively, so as to enclose the islands, from the following points -

	<u>Latitude</u> (South)	<u>Longitude</u> (East)
(i)	9°32'39"	141°32'15"
(ii)	9°32'35"	141°32'11"
(iii)	9°32'07"	141°31'50"
(iv)	9°32'02"	141°31'54"
(v)	9°31'56"	141°31'58"
(vi)	9°31'51"	141°32'02"
(vii)	9°31'29"	141°32'17"
(viii)	9°31'27"	141°32'19"
(ix)	9°31'24"	141°32'21"
(x)	9°30'40"	141°33'32"

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8.

(xi)	9°30'08"	141°34'01"
(xii)	9°30'01"	141°34'05"
(xiii)	9°29'57"	141°34'08"
(xiv)	9°29'51"	141°34'14"
(xv)	9°29'51"	141°34'19"
(xvi)	9°29'58"	141°36'13"
(xvii)	9°30'04"	141°36'16"
(xviii)	9°30'12"	141°36'16"
(xix)	9°30'28"	141°36'18"
(xx)	9°30'47"	141°36'18"
(xxi)	9°31'00"	141°36'15"
(xxii)	9°31'11"	141°36'10"
(xxiii)	9°31'29"	141°36'02"
(xxiv)	9°31'38"	141°35'55"
(xxv)	9°31'47"	141°35'46"
(xxvi)	9°31'50"	141°35'42"
(xxvii)	9°32'02"	141°35'21"
(xxviii)	9°36'21"	141°34'33"
(xxix)	9°36'24"	141°34'34"
(xxx)	9°36'35"	141°34'33"
(xxxi)	9°36'49"	141°34'26"
(xxxii)	9°36'56"	141°34'21"
(xxxiii)	9°37'05"	141°34'02"
(xxxiv)	9°37'14"	141°33'47"
(xxxv)	9°37'15"	141°33'28"
(xxxvi)	9°37'13"	141°33'25"
(xxxvii)	9°37'09"	141°33'22"
(xxxviii)	9°37'03"	141°33'21"
(xxxix)	9°36'58"	141°33'22"
(xl)	9°36'52"	141°33'27"

#### TERRITORIAL SEA OF PEARCE CAY

The outer limit of that part of the territorial sea of Pearce Cay which lies north of the line referred to in paragraph 1 of Article 4 of this Treaty shall be a continuous line -

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9.

- (a) commencing at the point of Latitude 9°33'00" South, Longitude 143°14'51" East;
- (b) thence along a series of intersecting arcs of circles having a radius of three miles and drawn successively from the following points -

	<u>Latitude</u> (South)	<u>Longitude</u> (East)
(i)	9°30'56"	143°17'03"
(ii)	9°30'53"	143°17'03"
(iii)	9°30'50"	143°17'08"
(iv)	9°30'46"	143°17'19"
(v)	9°30'43"	143°17'26"
(vi)	9°30'42"	143°17'34"
(vii)	9°30'41"	143°17'43"
(viii)	9°30'48"	143°17'42"
(ix)	9°30'50"	143°17'40"

to the point of Latitude 9°33'00" South, Longitude 143°19'46" East; and

- (c) thence along the parallel of Latitude 9°33'00" South to the point of commencement.

#### TERRITORIAL SEA OF TURNAGAIN ISLAND

The outer limit of the territorial sea of Turnagain Island shall be a continuous line formed by a series of intersecting arcs of circles having a radius of three miles, and drawn successively, so as to enclose the island, from the following points -

	<u>Latitude</u> (South)	<u>Longitude</u> (East)
(i)	9°32'54"	142°10'47"

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(ii)	9°32'54"	142°10'44"
(iii)	9°32'54"	142°10'40"
(iv)	9°32'52"	142°10'36"
(v)	9°32'49"	142°10'35"
(vi)	9°32'44"	142°10'36"
(vii)	9°32'23"	142°10'54"
(viii)	9°32'11"	142°11'39"
(ix)	9°32'10"	142°11'45"
(x)	9°32'15"	142°11'54"
(xi)	9°32'37"	142°14'59"
(xii)	9°32'36"	142°15'08"
(xiii)	9°32'37"	142°15'14"
(xiv)	9°32'40"	142°15'24"
(xv)	9°32'44"	142°15'40"
(xvi)	9°32'44"	142°15'47"
(xvii)	9°32'45"	142°15'53"
(xviii)	9°32'48"	142°16'04"
(xix)	9°32'51"	142°16'16"
(xx)	9°32'53"	142°16'28"
(xxi)	9°32'54"	142°16'34"
(xxii)	9°32'56"	142°16'39"
(xxiii)	9°32'58"	142°16'49"
(xxiv)	9°33'02"	142°17'01"
(xxv)	9°33'03"	142°17'12"
(xxvi)	9°33'05"	142°17'18"
(xxvii)	9°33'11"	142°17'30"
(xxviii)	9°33'14"	142°17'40"
(xxix)	9°33'16"	142°17'50"
(xxx)	9°33'18"	142°18'00"
(xxxi)	9°33'21"	142°18'09"
(xxxii)	9°33'23"	142°18'16"
(xxxiii)	9°33'28"	142°18'27"
(xxxiv)	9°33'33"	142°18'42"
(xxxv)	9°33'35"	142°18'51"
(xxxvi)	9°33'38"	142°19'03"
(xxxvii)	9°33'41"	142°19'12"
(xxxviii)	9°33'42"	142°19'19"

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(xxxix)	9°33'44"	142°19'25"
(xl)	9°33'47"	142°19'38"
(xli)	9°33'49"	142°19'40"
(xlii)	9°34'15"	142°20'11"
(xliii)	9°34'19"	142°20'16"
(xliv)	9°34'23"	142°20'17"
(xlv)	9°34'29"	142°20'14"
(xlvi)	9°34'34"	142°20'10"
(xlvii)	9°34'42"	142°20'03"
(xlviii)	9°34'46"	142°19'58"
(xlix)	9°34'49"	142°19'52"
(l)	9°34'52"	142°19'32"
(li)	9°34'52"	142°19'24"
(lii)	9°34'52"	142°19'15"
(liii)	9°34'50"	142°19'05"
(liv)	9°34'48"	142°18'54"
(lv)	9°34'46"	142°18'39"
(lvi)	9°34'43"	142°18'28"
(lvii)	9°34'40"	142°18'11"
(lviii)	9°34'38"	142°18'05"
(lix)	9°34'35"	142°17'56"
(lx)	9°34'30"	142°17'39"
(lxi)	9°34'23"	142°17'09"
(lxii)	9°34'21"	142°16'55"
(lxiii)	9°34'19"	142°16'39"
(lxiv)	9°34'16"	142°16'29"
(lxv)	9°34'07"	142°15'58"
(lxvi)	9°34'05"	142°15'49"
(lxvii)	9°34'01"	142°15'41"
(lxviii)	9°33'50"	142°15'17"
(lxix)	9°33'48"	142°15'10"
(lxx)	9°33'44"	142°15'00"
(lxxi)	9°33'35"	142°14'48"
(lxxii)	9°33'24"	142°14'31"
(lxxiii)	9°33'09"	142°13'59"
(lxxiv)	9°33'08"	142°13'53"

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TERRITORIAL SEA OF TURU CAY

The outer limit of the territorial sea of Turu Cay shall be a continuous line formed by a series of intersecting arcs of circles having a radius of three miles and drawn successively, so as to enclose the island, from the following points -

	<u>Latitude</u> (South)	<u>Longitude</u> (East)
(i)	9°49'53"	141°24'42"
(ii)	9°49'39"	141°24'44"
(iii)	9°49'31"	141°24'52"
(iv)	9°49'25"	141°25'02"
(v)	9°49'23"	141°25'13"
(vi)	9°49'20"	141°25'25"
(vii)	9°49'19"	141°25'36"
(viii)	9°49'18"	141°25'43"
(ix)	9°49'18"	141°25'53"
(x)	9°49'17"	141°26'07"
(xi)	9°49'23"	141°26'09"
(xii)	9°49'26"	141°26'06"
(xiii)	9°49'32"	141°25'58"
(xiv)	9°49'38"	141°25'49"
(xv)	9°49'44"	141°25'38"
(xvi)	9°49'47"	141°25'31"
(xvii)	9°49'53"	141°25'19"
(xviii)	9°49'56"	141°25'09"
(xix)	9°49'57"	141°24'54"
(xx)	9°49'56"	141°24'45"

ANNEX 5 TO THE TREATY BETWEEN  
AUSTRALIA AND THE INDEPENDENT  
STATE OF PAPUA NEW GUINEA  
CONCERNING SOVEREIGNTY AND  
MARITIME BOUNDARIES IN THE AREA  
BETWEEN THE TWO COUNTRIES,  
INCLUDING THE AREA KNOWN AS  
TORRES STRAIT, AND RELATED  
MATTERS

SEABED JURISDICTION LINE

A line -

- (a) commencing at the point of Latitude 10°50'00" South, Longitude 139°12'00" East;
- (b) running thence south-easterly along the geodesic to the point of Latitude 11°09'00" South, Longitude 139°23'00" East;
- (c) thence north-easterly along the geodesic to the point of Latitude 10°59'00" South, Longitude 140°00'00" East;
- (d) thence north-easterly along the geodesic to the point of Latitude 9°46'00" South, Longitude 142°00'00" East;
- (e) thence north-easterly along the geodesic to the point of Latitude 9°45'24" South, Longitude 142°03'30" East;
- (f) thence north-easterly along the geodesic to the point of Latitude 9°42'00" South, Longitude 142°23'00" East;
- (g) thence north-easterly along the geodesic to the point of Latitude 9°40'30" South, Longitude 142°51'00" East;

- (h) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}40'00''$  South, Longitude  $143^{\circ}00'00''$  East;
- (i) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}33'00''$  South, Longitude  $143^{\circ}05'00''$  East;
- (j) thence east along the parallel of Latitude  $9^{\circ}33'00''$  South to its intersection by the meridian of Longitude  $143^{\circ}20'00''$  East;
- (k) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}24'00''$  South, Longitude  $143^{\circ}30'00''$  East;
- (l) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}22'00''$  South, Longitude  $143^{\circ}48'00''$  East;
- (m) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}30'00''$  South, Longitude  $144^{\circ}15'00''$  East;
- (n) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}51'00''$  South, Longitude  $144^{\circ}44'00''$  East;
- (o) thence south-easterly along the geodesic to the point of Latitude  $12^{\circ}20'00''$  South, Longitude  $146^{\circ}30'00''$  East;
- (p) thence south-easterly along the geodesic to the point of Latitude  $12^{\circ}38'30''$  South, Longitude  $147^{\circ}08'30''$  East;
- (q) thence south-easterly along the geodesic to the point of Latitude  $13^{\circ}10'30''$  South, Longitude  $148^{\circ}05'00''$  East;

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- (r) thence south-easterly along the geodesic to the point of Latitude  $14^{\circ}38'00''$  South, Longitude  $152^{\circ}07'00''$  East;
- (s) thence south-easterly along the geodesic to the point of Latitude  $14^{\circ}45'00''$  South, Longitude  $154^{\circ}15'00''$  East;
- (t) thence north-easterly along the geodesic to the point of Latitude  $14^{\circ}05'00''$  South, Longitude  $156^{\circ}37'00''$  East; and
- (u) thence north-easterly along the geodesic to the point of Latitude  $14^{\circ}04'00''$  South, Longitude  $157^{\circ}00'00''$  East where it terminates.

ANNEX 8 TO THE TREATY BETWEEN AUSTRALIA  
AND THE INDEPENDENT STATE OF PAPUA  
NEW GUINEA CONCERNING SOVEREIGNTY  
AND MARITIME BOUNDARIES IN THE AREA  
BETWEEN THE TWO COUNTRIES, INCLUDING  
THE AREA KNOWN AS TORRES STRAIT, AND  
RELATED MATTERS

FISHERIES JURISDICTION LINE

A line -

- (a) commencing at the point of Latitude  $10^{\circ}50'00''$  South, Longitude  $139^{\circ}12'00''$  East;
- (b) running thence south-easterly along the geodesic to the point of Latitude  $11^{\circ}09'00''$  South, Longitude  $139^{\circ}23'00''$  East;
- (c) thence north-easterly along the geodesic to the point of Latitude  $10^{\circ}59'00''$  South, Longitude  $140^{\circ}00'00''$  East;
- (d) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}46'00''$  South, Longitude  $142^{\circ}00'00''$  East;
- (e) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}45'24''$  South, Longitude  $142^{\circ}03'30''$  East;
- (f) thence north along the meridian of Longitude  $142^{\circ}03'30''$  East to its intersection by the parallel of Latitude  $9^{\circ}15'43''$  South;
- (g) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}12'50''$  South, Longitude  $142^{\circ}06'25''$  East;

- (h) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}11'51''$  South, Longitude  $142^{\circ}08'33''$  East;
- (i) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}11'58''$  South, Longitude  $142^{\circ}10'18''$  East;
- (j) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}11'22''$  South, Longitude  $142^{\circ}12'54''$  East;
- (k) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}11'34''$  South, Longitude  $142^{\circ}14'08''$  East;
- (l) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}13'53''$  South, Longitude  $142^{\circ}16'26''$  East;
- (m) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}16'04''$  South, Longitude  $142^{\circ}20'41''$  East;
- (n) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}22'04''$  South, Longitude  $142^{\circ}29'41''$  East;
- (o) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}21'48''$  South, Longitude  $142^{\circ}31'29''$  East;
- (p) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}22'33''$  South, Longitude  $142^{\circ}33'28''$  East;
- (q) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}21'25''$  South, Longitude  $142^{\circ}35'29''$  East;

- (r) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}20'21''$  South, Longitude  $142^{\circ}41'43''$  East;
- (s) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}20'16''$  South, Longitude  $142^{\circ}43'53''$  East;
- (t) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}19'26''$  South, Longitude  $142^{\circ}48'18''$  East where it joins the outer limit of the three mile territorial sea of Saibai Island;
- (u) thence along that outer limit so as to pass to the east of Saibai Island to the point of Latitude  $9^{\circ}23'40''$  South, Longitude  $142^{\circ}51'00''$  East;
- (v) thence south along the meridian of Longitude  $142^{\circ}51'00''$  East to its intersection by the parallel of Latitude  $9^{\circ}40'30''$  South;
- (w) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}40'00''$  South, Longitude  $143^{\circ}00'00''$  East;
- (x) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}33'00''$  South, Longitude  $143^{\circ}05'00''$  East;
- (y) thence east along the parallel of Latitude  $9^{\circ}33'00''$  South to its intersection by the meridian of Longitude  $143^{\circ}20'00''$  East;
- (z) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}24'00''$  South, Longitude  $143^{\circ}30'00''$  East;

- (za) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}22'00''$  South, Longitude  $143^{\circ}48'00''$  East;
- (zb) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}30'00''$  South, Longitude  $144^{\circ}15'00''$  East;
- (zc) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}51'00''$  South, Longitude  $144^{\circ}44'00''$  East;
- (zd) thence south-easterly along the geodesic to the point of Latitude  $12^{\circ}20'00''$  South, Longitude  $146^{\circ}30'00''$  East;
- (ze) thence south-easterly along the geodesic to the point of Latitude  $12^{\circ}38'30''$  South, Longitude  $147^{\circ}08'30''$  East;
- (zf) thence south-easterly along the geodesic to the point of Latitude  $13^{\circ}10'30''$  South, Longitude  $148^{\circ}05'00''$  East;
- (zg) thence south-easterly along the geodesic to the point of Latitude  $14^{\circ}38'00''$  South, Longitude  $152^{\circ}07'00''$  East;
- (zh) thence south-easterly along the geodesic to the point of Latitude  $14^{\circ}45'00''$  South, Longitude  $154^{\circ}15'00''$  East; and
- (zi) thence north-easterly along the geodesic to the point of Latitude  $14^{\circ}05'00''$  South, Longitude  $156^{\circ}37'00''$  East where it terminates.

ANNEX 9 TO THE TREATY BETWEEN AUSTRALIA  
AND THE INDEPENDENT STATE OF PAPUA  
NEW GUINEA CONCERNING SOVEREIGNTY AND  
MARITIME BOUNDARIES IN THE AREA BETWEEN  
THE TWO COUNTRIES, INCLUDING THE AREA  
KNOWN AS TORRES STRAIT, AND RELATED  
MATTERS

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PROTECTED ZONE

A line -

- (a) commencing at the point of Latitude  $10^{\circ}28'00''$  South, Longitude  $144^{\circ}10'00''$  East;
- (b) running thence west along the parallel of Latitude  $10^{\circ}28'00''$  South to its intersection by the meridian of Longitude  $141^{\circ}20'00''$  East;
- (c) thence north along that meridian to its intersection by the parallel of Latitude  $9^{\circ}33'00''$  South;
- (d) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}13'00''$  South, Longitude  $141^{\circ}57'00''$  East;
- (e) thence north along the meridian of Longitude  $141^{\circ}57'00''$  East to its intersection by the southern coastline of the island of New Guinea at low water;
- (f) thence generally easterly along the southern coastline of the island of New Guinea, that is along the low water line on that coast and across any river mouth and in the case of the mouth of the Mai Kussa River along the parallel of Latitude  $9^{\circ}09'00''$  South, thence along the southern coastline of the island of New Guinea, that is along the low water line on that coast and across any river mouth to its intersection by the meridian of Longitude  $142^{\circ}36'00''$  East;

2.

- (g) thence south along that meridian to its intersection by the parallel of Latitude  $9^{\circ}21'00''$  South;
- (h) thence north-easterly along the geodesic between that point of intersection and the point of Latitude  $9^{\circ}09'00''$  South, Longitude  $143^{\circ}47'20''$  East;
- (i) thence along the outer limit of the three-mile territorial sea of Black Rocks, so as to pass to the north-west of Black Rocks, to the point of intersection of that limit by the outer limit of the three-mile territorial sea of Bramble Cay;
- (j) thence along that outer limit, so as to pass successively to the north and east of Bramble Cay, to the point of Latitude  $9^{\circ}10'50''$  South, Longitude  $143^{\circ}55'40''$  East;
- (k) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}18'40''$  South, Longitude  $144^{\circ}06'10''$  East;
- (l) thence along the outer limit of the three-mile territorial sea of Anchor Cay, so as to pass to the north of Anchor Cay, to the point of intersection of that limit by the outer limit of the three-mile territorial sea of East Cay;
- (m) thence along that outer limit, so as to pass successively to the north and east of East Cay, to the point of Latitude  $9^{\circ}26'50''$  South, Longitude  $144^{\circ}16'50''$  East;
- (n) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}35'15''$  South, Longitude  $144^{\circ}28'00''$  East;

.../3

3.

- (o) thence south along the meridian of Longitude  $144^{\circ}28'00''$  East to its intersection by the parallel of Latitude  $9^{\circ}54'00''$  South;
- (p) thence south-westerly along the geodesic to the point of Latitude  $10^{\circ}15'00''$  South, Longitude  $144^{\circ}12'00''$  East; and
- (q) thence south-westerly along the geodesic to the point of commencement.



**STATUS OF THE ISLANDS  
OF KAWA, MATA KAWA,  
AND KUSSA**





## **STATUS OF THE ISLANDS OF KAWA, MATA KAWA, AND KUSSA**

The Minister for Foreign Affairs in his statement on 31 March 1978 on maritime jurisdiction in the area between Australia and Papua New Guinea stated that research had shown that the 3 small uninhabited islands of Kawa, Mata Kawa and Kussa were not among the Torres Strait islands annexed to Queensland in the last century and that the Australian Government had accordingly informed the Government of Papua New Guinea that, in the eventual treaty on maritime boundaries between Australia and Papua New Guinea and other matters relating to the Torres Strait, Australia would recognize them as part of Papua New Guinea. Following is a summary of the relevant research.

## STATUS OF THE ISLANDS OF KAWA, MATA KAWA AND KUSSA

The small islands of Kawa, Mata Kawa and Kussa lying very close to the southern coast of Papua New Guinea have been widely assumed to have been annexed to Queensland under the Letters Patent of 10 October 1878. An examination of the genesis of the description "Talbot Islands" referred to in the Letters Patent, and in particular of the little known Admiralty chart forwarded to the Government of Queensland with the Letters Patent to show the islands annexed, indicates that this assumption is not soundly based.

### I

The uninhabited islands constituting the Kawa group (Kawa Island and Mata Kawa Island, sometimes shown with one or two islets between them) lie at the entrance to the Wassi Kussa River on the southern coast of Papua New Guinea at about the longitude of 142°. (See the chart of the area attached in Annex A). Their distance from the coast as shown on the chart is about half a mile.

2. The uninhabited island of Kussa lies at the eastern end of the wide entrance of the Mai Kussa River on the same coast at about 142° 17'. (See Annex A). The distance from the coast as shown on the chart is about half a mile.

3. From time to time the distance from the coast will vary due to accretion from the rivers and erosion, and thus could be even less than stated above.

4. Lying to the south-east of Kawa and Mata Kawa Islands on the one hand and to the south of Kussa Island on the other and shown at a distance of about 3½ miles from the southern coast of Papua New Guinea is the inhabited and relatively large Boigu (Talbot) Island with two small islands very close to its northern shore, namely, Aubusi Island and Moimi Island and 4 other islets close to Aubusi.

5. The island of Yapere lies to the east of Kussa Island, closer to the Papua New Guinea coastline. It is closer to Boigu than the Kawa Islands.

6. As the chart in Annex A discloses, Aubusi and Moimi Islands have the appearance of appendages of Boigu Island, while Kawa, Mata Kawa, Kussa and Yapere Islands all have the appearance of appendages of the coastline of Papua New Guinea.

### II

7. None of the islands is individually referred to by name in the Letters Patent dated 10 October 1878, in which provision was made for the annexation of certain islands in Torres Strait and lying between Australia and the Island of New Guinea to the then Colony of Queensland (see Appendix 1).

8. The relevant part of the Letters Patent reads as follows (emphasis added):

"... certain islands in Torres Straits, and lying between the Continent of Australia and Island of New Guinea, that is to say, all Islands included within a line drawn from Sandy Cape . . . thence from Bramble Cays in a line west by south (south seventy-nine degrees west) true; embracing Warrior Reef, Saibai, and Tuan Islands, thence diverging in a north-westerly direction so as to embrace the group known as the Talbot Islands; thence to and embracing the Deliverance Islands . . .

9. The question that arises is as to what was the intent of the Letters Patent in referring to the "Talbot Islands".

### III

10. The name "Talbot Island" properly belongs to Boigu Island, being the name given to that Island by the first British navigator to sight it, William Bampton, Commander of the *Hornmuzeer*, on 26 August 1793. He sighted the coasts of Boigu Island and of New Guinea, and made no mention of any other islands in the area.<sup>1</sup>

## IV

11. The first detailed survey of the coastline in question fell to Navigating Lieutenant Edmond Connor in 1873 in the course of Captain Moresby's surveys on the voyage of the *Basilk* in the area of New Guinea.<sup>9</sup> The results of the survey appear in the chart an extract of which is reproduced in Annex B. The chart bears the stamp of the Hydrographer's Office dated 6 July 1874, is signed by Navigating Lieutenant Connor and is also signed as approved by Captain Moresby. In Connor's chart, the coastline and the nearby islands appear clearly, with some differences from current usage in spelling—e.g., 'Boigu' appears as 'Boigoo'. What is of special interest is that Connor's chart contains the first reference that research has uncovered to there being more than one Talbot Island, the caption 'Talbot Islands' appearing on the chart *within* the coastline shown for Boigu Island. The description appears to be relevant only to Boigu Island and to the immediately adjacent islands of Aubusi (which appears as 'Ahwudj') and Moimi (which appears as 'Moyim').

12. The desirability of a survey of the area, with a view to possible eventual annexation, was raised in a letter dated 21 August 1875 from the Colonial Office to the Admiralty. The Admiralty reply dated 22 September 1875 stated (having in mind no doubt the results of Navigating Lieutenant Connor's work) that 'no new exploration or survey would add any material facts to the knowledge already possessed', and enclosed a report dated 16 September 1875 from the Hydrographer to the Admiralty.<sup>9</sup> The following passage describing the Talbot group is directly relevant (emphasis added):

'Off this mainland of New Guinea, opposite to Cape York at a distance of two to three miles, are two groups of low and swampy islands—Talbot and Saibai—they are cultivated in part, inhabited by warlike but friendly natives, and have been frequently visited from the settlement at Somerset, and more lately by Her Majesty's ship *Basilk*'

13. This description clearly excluded from the Talbot Islands the Kawa Islands and Kussa Island as shown on the Connor chart (Annex B), since that chart shows the islands as about half a mile from the mainland.

14. The results of Connor's survey were incorporated into Admiralty charts, including chart No. 2764 revised up to 1876, an extract of which appears as Annex C. The chart refers to 'Talbot Is.' the reference being placed very close to Boigu Island and so as to suggest that the main reference intended is to that island.

## V

15. The Governor of Queensland, Sir Arthur Kennedy, in writing on 14 January 1878 to the Colonial Secretary of State on the subject of enlarging the 'maritime boundaries' of the Colony, enclosed several papers including a sketch plan prepared by Commander Heath, Portmaster, Brisbane, showing in red the islands proposed to be brought within the Queensland jurisdiction.<sup>4</sup> A copy of the sketch plan has been obtained from the Public Record Office, London. The Kawa Islands and Kussa Island do not appear on the sketch plan. The name 'Talbot I.' appears on the plan in the singular form, and in fact only the southern coast of that Island is shown in detail. It is not coloured in red.

16. A Colonial Office minute dated 25 March 1878 commented as follows:

'I gather from the papers and from the sketch plan contained, that the Queensland Govt. are willing to accept the annexation to the Colony of the two most important Islands, viz. Tauan (Teiuan) and Saibai (Sibia), but it is not clear what their wishes are with respect to the Talbot Islands. These Islands do not however appear to be of the same importance as Tauan and Saibai. The Queensland Govt. also wish to annex various other Islands lying to the West and to the East of those which are important from an Imperial point of view, and unless any of the Islands are claimed by Foreign Powers I shld. think there is no objection to a compliance with the request.'<sup>6</sup>

17. A line was drawn by the Admiralty on an Admiralty chart to show the islands intended to be annexed and the chart with the line so drawn was forwarded to the Colonial Office under a letter dated 17 April 1878. The line on the chart *excluded* Talbot Island. Draft Letters Patent were prepared which were executed by the Queen on 16 July 1878.<sup>8</sup> The operative words in the Letters Patent made no reference to Talbot Island, even though Talbot Island was referred to in the title of the Letters Patent and in the Order in Council dated 29 June 1878 authorizing the Letters Patent.<sup>7</sup>

## VI

18. The omission was noted and fresh instructions were given by the Colonial Office to the Admiralty to include 'Talbot Island' (singular) among the islands to be annexed.<sup>8</sup> The Admiralty replied on 3 August 1878 in the following terms:

'In reply to your letter of the 24th ultimo expressing the wish of Sir Michael Hicks Beach to include the Talbot Islands within the limits of the Colony of Queensland, and requesting to be informed of the best mode of altering the Drafts of the Letters so that this group may be therein mentioned, I am commanded by my Lord Commissioners of the Admiralty to acquaint you that the definition of the boundary of Queensland as given in the draft of the Letters Patent would require to be amended so as to read there:

"X X X embracing Warrior Reef, Saibai and Tauan, thence diverging in a north Westerly direction so as to embrace the group known as the Talbot Islands; thence to and embracing the Deliverance Islands and onwards in a West by South direction to the Meridian of X X X X"

2. A copy of the Chart amended in accordance with the foregoing is transmitted herewith.'<sup>9</sup>

19. A letter dated 10 August 1878 from the Colonial Office to the Admiralty asked for 6 additional copies of the corrected chart enclosed in the letter of 3 August 'with the red line *showing the new maritime boundary*'.<sup>10</sup> The Draft Letters Patent were put in their final form and copies, together with copies of the chart showing the 'new maritime boundary' were sent by the Colonial Secretary of State to the Governors of Queensland, New South Wales and Fiji. A copy of the full text of the relevant despatch dated 16 October 1878 to the Governor of Queensland is set out in Appendix 2. The despatch expressly referred to the chart as being 'an Admiralty chart showing the amended boundary'. That is to say, the chart was specifically prepared and circulated to show where the 'boundary' lay.

## VII

20. An extract showing the relevant area taken from the copy of the Admiralty chart that is held in the Colonial Office Records is contained in Annex D.

21. The copy of the Admiralty chart forwarded to the Governor of Queensland with the despatch of 16 October 1878 cannot be located in the State's records. However, the copy of the chart forwarded to the Governor of New South Wales is in the Archives Office of New South Wales and an extract showing the relevant area is attached as Annex E. The line shown on the copy corresponds with that shown on the copy in the Colonial Office records.

22. The Admiralty chart shows a line that can only be interpreted as excluding the Kawa Islands and Kussa Island from the islands to be annexed to Queensland. The reasons are as follows:

- The chart shows a line that hugs Boigu Island, described on the chart as 'Talbot I'.
- The chart is a small scale chart, yet it shows a considerable distance between the line and the southern coast of Papua New Guinea at all relevant points. The distance shown is quite inconsistent with the inclusion of Mata Kawa and Kawa Islands and Kussa Island within the islands intended to be annexed to Queensland.
- Notwithstanding the small scale of the chart, there is a small unnamed island shown in the position of Kussa Island. That island is not embraced by the line shown on the chart.
- Similarly a small unnamed feature is shown in the position of the Kawa Islands but is not embraced by the line shown on the chart.
- The direction of the line shown on the chart is inconsistent with the direction of the line shown on subsequent Queensland maps—see Annex F for a comparison of the lines. The line on the chart is a curve hugging Boigu (Talbot) and terminating at Deliverance Island. The line usually shown on subsequent Queensland maps runs in a north-westerly direction and then in a westerly direction so as to embrace Boigu, *then again* in a north-westerly direction and then in a westerly direction so as to embrace the Kawa Islands, and finally to and embracing Deliverance Island.

23. This interpretation of the chart in Annex D accords fully with Connor's chart (Annex B) and with the description of the Talbot Islands contained in the Admiralty description given in the report of the Hydrographer referred to in paragraph 12 above.

24. Further confirmation is provided by the map that was published in the Queensland Legislative Council Journal, 1879, Session I, an extract of which is contained in Annex G. It is described as a 'Map shewing the new Maritime Boundary of Queensland—Letters Patent 10 October 1878'. It shows a line that corresponds with the line drawn on the Admiralty chart, an extract of which appears in Annex D, and no doubt is based on that line. The line shown in the Journal hugs the northern side of Boigu Island, described on the map as 'Talbot I.'. The Kawa Islands and Kussa Island are not shown as being included within the 'boundary'.

25. The intent therefore of the 1878 Letters Patent was not to annex Kawa and Mata Kawa Islands and Kussa Island to Queensland. Any doubt or ambiguity arising from the Letters Patent on the matter could and should have been resolved by reference to the chart specifically prepared and duly circulated to show the 'boundary' described therein. In fact, the significance and indeed the existence of the chart appears to have been largely (though not wholly) overlooked.

### VIII

26. The practice from a very early stage of including the Kawa group and Kussa Island as part of Queensland may well have been based upon the *Australian Directory*, 3rd edition, published by the Hydrographic Office of the Admiralty in 1879, i.e., after the Letters Patent were prepared. The 'Talbot Group' is referred to and is described as consisting of 1 large and 6 small islands. It is to be noted that the 1863 edition of the Directory referred only to 'Talbot Island'. A footnote reference is given in the 1879 Directory to Admiralty chart number 2764 (see Annex C), which, it may be noted, seems to show only 6 islands in all in the relevant area. No names of the islands other than Boigu are given in the Directory but it seems probable that the Kawa group at least was taken to be included as well as Kussa Island.

27. On the other hand, there does not appear to have been any widespread popular understanding as to what was included within the Talbot group. For example, Sir William MacGregor, the Administrator of British New Guinea, after a visit to the area in 1890, referred to the Kawa group in a Despatch as follows:

'We passed the four islands opposite and west of the Wasi Kussa—namely, from east to west, Karobailo, Mata Kawa, Adabadana Kawa, and Kawa. It is not clear to me at present whether they are part of Queensland or of British New Guinea.'<sup>11</sup>

28. As one illustration of the line shown on subsequent Queensland maps, an extract has been included in Annex H of an 1892 map of 'Torres Strait and Islands' produced by the Surveyor-General, Brisbane. The map shows the description '(Talbot Is. 7)' as including 4 islands of the Kawa Group at the mouth of the Wasi Kussa and Kussa Island; they are shown as belonging to Queensland. Aubusi Island, however, is not shown.

29. Practice, however, was not uniform and there is evidence of uncertainty, if not confusion, as to which islands were included and even as to the identity of Talbot Island itself. A case in point is a 'Map of Papua' prepared by the Survey Office, Brisbane, which is dated 1900 and which appears as an attachment to the *Report of the Royal Commission on British New Guinea* printed in Commonwealth Parliamentary Paper No. 6 of 1907. The map shows the boundaries of the Western Division of Papua and of the 'maritime boundary' of Queensland. An extract is annexed as Annex I. It shows an overlap of the boundaries in which the Kawa group of islands and Kussa Island are shown as coming both within the Western Division of Papua and within Queensland. An island shown in the location of Yapere Island (see Annex A) is also within the overlap. (This island is usually shown as *not* being part of Queensland—it is clearly excluded by the Admiralty chart line in Annex D.) Also, the 'Royal Commission' map applies the description 'Talbot Is.' to the Kawa group only. Boigu (Talbot) Island is clearly excluded from the description.

30. Not all maps produced have followed the practice of including the Kawa group or Kussa Island as part of Queensland. A notable instance consisted of some maps produced in atlases edited by Mr J. Bartholomew (Cartographer to the King), one example of which, dated 1924, is reproduced in part in Annex J. It clearly shows the Kawa Islands as lying outside the Queensland 'boundary' line, though it should be added that it shows Kussa as included within it.

31. A more recent example is *The Oxford Atlas*, published by the Oxford University Press, the first edition of which appeared in 1951. The 1966 revision shows a line generally in accord with the line shown on the Admiralty chart, with features corresponding to the Kawa group and Kussa Island shown north of the line.

### IX

32. A further important point to be referred to is that when it became a question of examining the territorial extent of Queensland in the legal context of the *Seas and Submerged Lands* litigation in 1975, reliance was placed on the line shown on the Admiralty chart. For the purposes of this litigation an exhaustive examination was made of materials relating to the territorial extent of the Australian colonies. A reduced reproduction of the New South Wales copy of the chart (see Annex E) was submitted to the High Court as part of the agreed materials placed before the Court. Queensland relied on the chart in its submissions to the Court and its Counsel stated:

'That map shows the delineation as to how the boundary was defined in the Letters Patent.'<sup>12</sup>

### X

33. It is also to be noted that in a paper entitled 'The Case for Recognition of Traditional Boundaries in Torres Strait', signed on 31 March 1977 by the Chairman of the Torres Strait Advisory Council, Mr Getano Lui, and by Mr Kamuel Abednego, Chairman of the Tamwoy Community Council and subsequently transmitted at their request to the Prime Minister of Australia by the Premier of Queensland, it was stated, *inter alia*:

'Some uninhabited islands in the western sector of Torres Strait are shown on all maps and charts of the area as belonging to Queensland. Although these islands, named Kawai, Mata Kawa and Kussa, together with some other un-named and uninhabited islands of the Talbot Group, are shown as lying south of the 1879 line, they actually lie NORTH of our traditional boundary, and the Torres Strait Islanders have always regarded them as belonging to Papua New Guinea.'

Canberra  
May 1978

# REFERENCES

1. Matthew Flinders *A Voyage to Terra Australis*, London, 1814, Vol. 1, p. xliii.
2. See John Moresby, *New Guinea and Polynesia: Discoveries and Surveys in New Guinea and the D'Entrecasteaux Islands: a cruise in Polynesia and visits to the pearl-shelling stations in Torres Straits of H.M.S. Basilisk*, London, 1876.
3. Reproduced in *Commonwealth Parliamentary Paper* No. 416 of 1976, pp. 116-118.
4. *Id.*, p. 146 *et seq.*
5. *Id.*, p. 151.
6. *Id.*, p. 169 (where however the date shown is 18 July 1878).
7. *Id.*, p. 163.
8. *Id.*, p. 166.
9. *Ibid.*
10. *Id.*, p. 167 (emphasis added).
11. Great Britain Command Paper, C. 6323 (Further correspondence respecting Papua New Guinea).
12. *New South Wales and others v. Commonwealth*, High Court of Australia, transcript of argument, 10 April 1975, p. 933.

## APPENDIX I

### QUEENSLAND.

(New Maritime Boundary.)

DRAFT OF LETTERS PATENT passed under the Great Seal of the United Kingdom for the rectification of the Maritime Boundary of the Colony of Queensland, and for the annexation to that Colony of Tuan, Saitai, Talbot, Deliverance, and other Islands lying in Torres Straits and between Australian and New Guinea.

*Letters Patent,  
Dated 10th October, 1878.*

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India: To all to whom these Presents shall come: Greeting:

*Preamble.*

*Enacts that certain Islands should  
be annexed to Queensland.*

WHEREAS it is expedient that certain Islands in Torres Straits, and lying between the Continent of Australia and Island of New Guinea, that is to say, all Islands included within a line drawn from Sandy Cape northward to the south-eastern limit of Great Barrier Reef, thence following the line of the Great Barrier Reef to their north-eastern extremity, near the latitude of nine and a-half degrees south, thence in a north-westerly direction, embracing East Anchor,

[723]

I certify and this  
is the true and  
correct copy of the  
draft of the Letters  
Patent for the  
rectification of the  
Maritime Boundary of  
the Colony of  
Queensland.

*[Signature]*

LETTERS PATENT for the rectification of  
the Maritime Boundary of the Colony of  
QUEENSLAND.

ORIGINAL ARCHIVAL

THE ARCHIVES AUTHORITY OF NEW SOUTH WALES

and Beemle Cays, thence from Beemle Cays in a line west by south (south seventy-nine degrees west) true; embracing Warrior Reef, Ballal, and Tuna Islands, thence diverging in a north-westerly direction so as to embrace the group known as the Tullet Islands; thence to and embracing the Deliverance Islands, and onwards in a west by south direction (true) to the meridian of one hundred and thirty-eight degrees of east longitude, should be annexed to and form part of Our Colony of Queensland. Now We do, by these Our Letters-Patent, under the Great Seal of Our United Kingdom of Great Britain and Ireland, authorize Our Governor for the time being of Our said Colony of Queensland, by Proclamation under His hand and the public seal of the said Colony, to declare that, from and after a day to be therein mentioned, the said Islands shall be annexed to and form part of Our said Colony. Provided always that Our said Governor issues no such Proclamation as aforesaid until the Legislature of Our said Colony of Queensland shall have passed a law providing that the said Islands shall, on the day aforesaid, become part of Our said Colony, and subject to the laws in force therein. Provided also that the application of the said laws to the said Islands may be modified either by such Proclamation, as aforesaid, or by any law or laws to be from time to time passed by the Legislature of Our said Colony for the government of the said Islands as annexed.

II. And We do hereby reserve to Us, Our heirs and successors, full power and authority, from time to time, to revoke, alter, or amend these Our Letters-Patent as to Us or Them shall seem meet.

III. And We do further direct and enjoin that these Our Letters-Patent shall be read and

Proclamation to be issued for the annexation of the Islands to the Colony.

Provis. Law to be passed extending Laws of the Colony to the territory annexed.

Provis. Application of such Laws may be modified by Proclamation, &c.

Power reserved to Her Majesty to revoke, alter, or amend the present Letters-Patent.

Publication of Letters-Patent.

I certify that this is a true and correct copy of the original document in the Archives Office of New South Wales.

  
PRINCIPAL REGISTRAR.

THE ARCHIVES AUTHORITY OF NEW SOUTH WALES

proclaimed at such place or places as Our said Governor shall think fit within Our said Colony of Queensland.

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the tenth day of October, in the forty-second year of Our Reign.

By Warrant under the Queen's Sign-Manual.

C. ROMILLY.

I certify that this is an exact copy of the original document in the Archives Office of New South Wales.

  
PRINCIPAL REGISTRAR.

THE ARCHIVES AUTHORITY OF NEW SOUTH WALES

## APPENDIX 2

Sir Michael Hicks Beach to  
Sir A. E. Kennedy

Copy  
Queensland  
General

Downing Street  
16th October 1878.

Sir,

With reference to your Despatch No. 91 of the 14th of January last, I have the honor to transmit to you Letters Patent passed under the Great Seal for the rectification of the *Maritime boundary of Queensland*, and for the annexation to the Colony of Tuan, Saibai, Talbot, Deliverance and other Islands lying in Torres Strait and between Australia and New Guinea. I also enclose a copy of an Admiralty Chart showing the amended boundary.

You will cause these Letters Patent to be proclaimed in the usual manner in the Colony.

Copies of this Despatch and the Letters Patent and Admiralty Chart have been sent to the Governor of New South Wales and Fiji for their information.

I have, etc.,

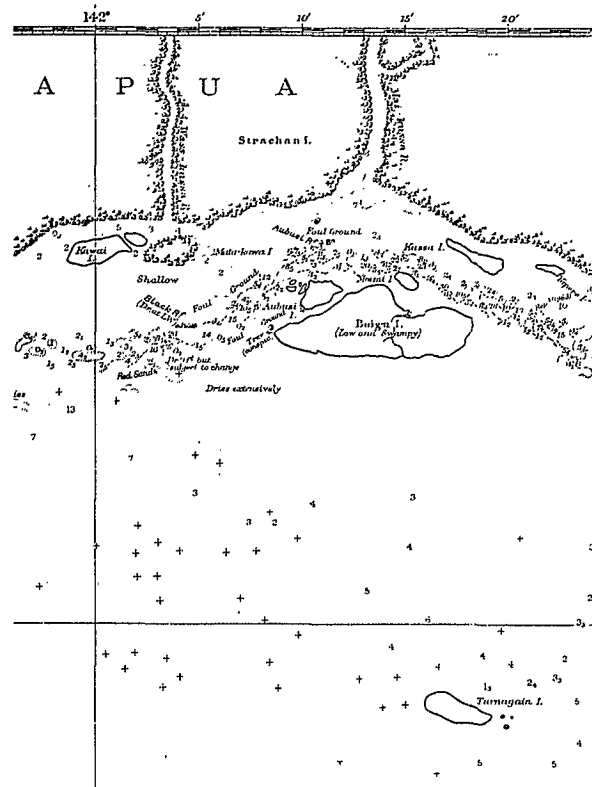
(Sd) M. E. H. Beach

Governor

Sir A. E. Kennedy, K.C.M.G., C.B.

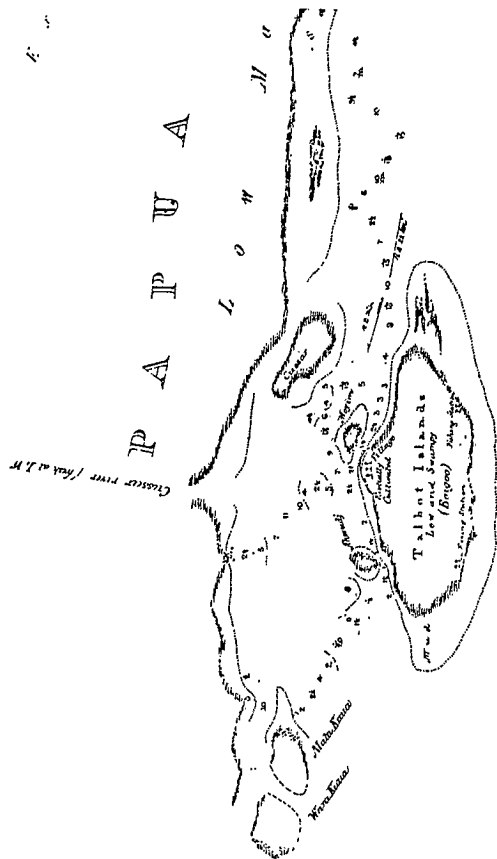
## ANNEX A

Extract from "Torres Strait and Approaches",  
Admiralty Chart 2321, 1955.



## ANNEX B

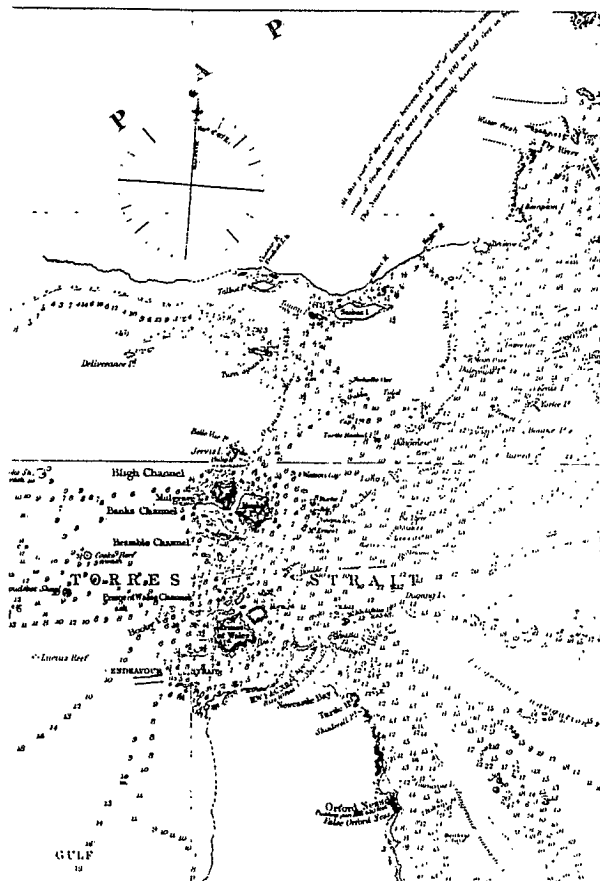
Extract from "Torres Strait from the Orman Reef  
to the Katow River", Navigating Lieutenant  
E.R. Connor, R.N., 1873.



It is high water Full & Change at Cornwall is about 3.30 AM the Spring tides being 22 feet. During the rest of the lunation the high tide occurs between 1.30 AM and 1 PM, the day tide rising from 9 to 12 feet. The night tide seldom rises more than 3 feet.

## ANNEX C

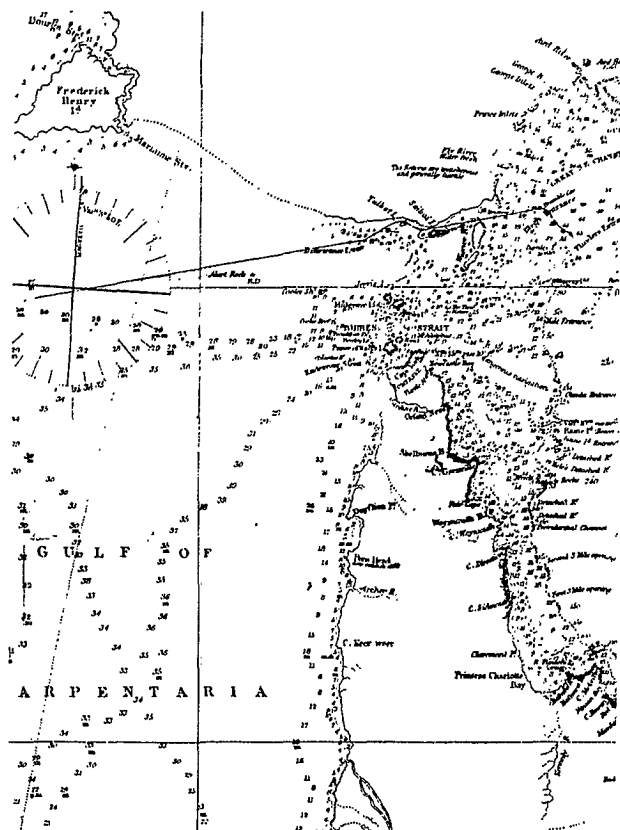
Extract from "Coral Sea and Great Barrier Reefs",  
Admiralty Chart 2764, A8, revision of 1876.





## ANNEX D

Extract from "Australia and the Adjacent Islands between its Northern Coast and the Equator," Northern Portion" (No.2759a) from C.O 234/38. (Reproduced by permission of H.M. Stationery Office, London).

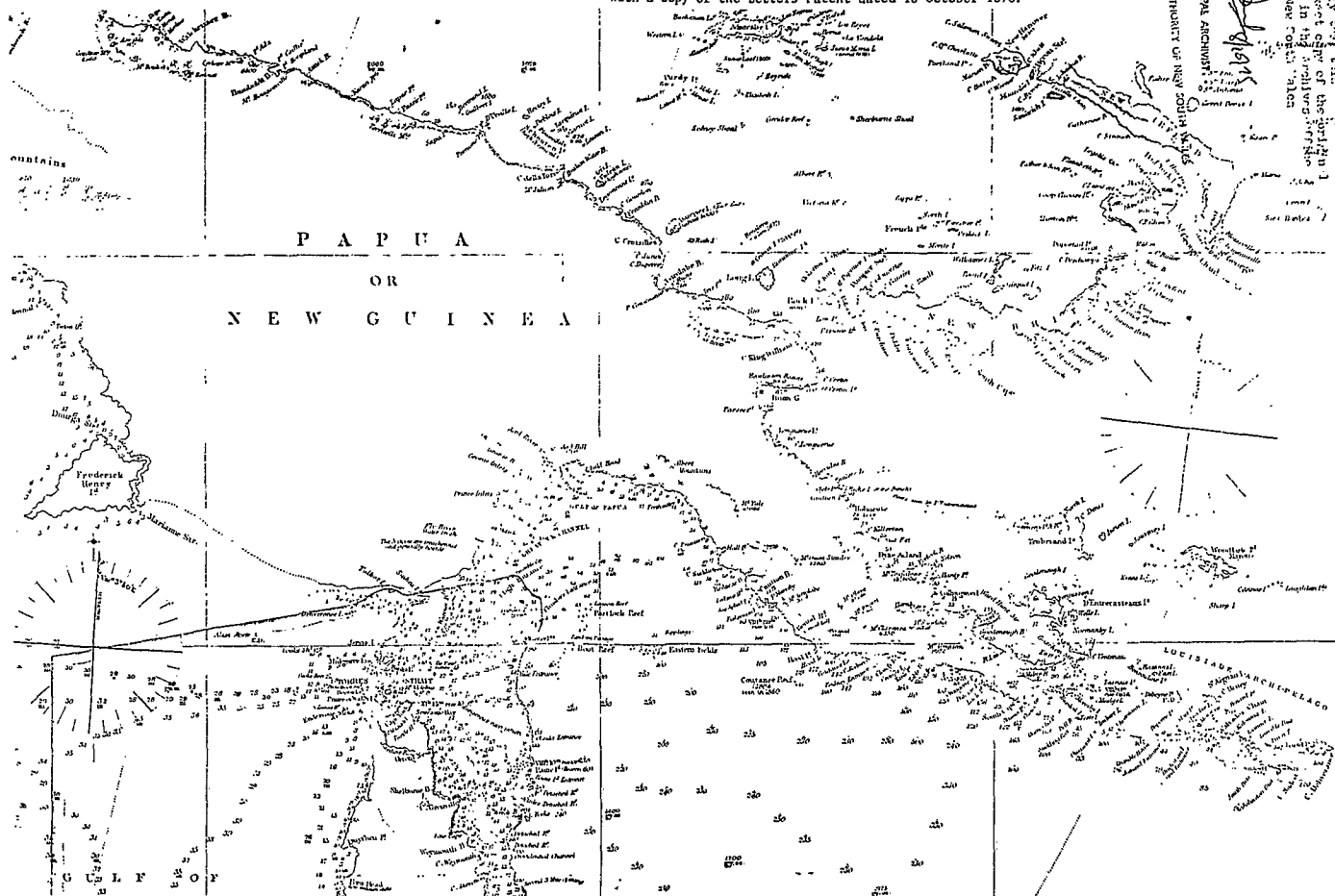


Extract from the Chart referred to in Annex D, taken from the copy of the Chart forwarded to the Governor of New South Wales with a copy of the Letters Patent dated 10 October 1878.

## PRINCIPAL ARCHIVIST

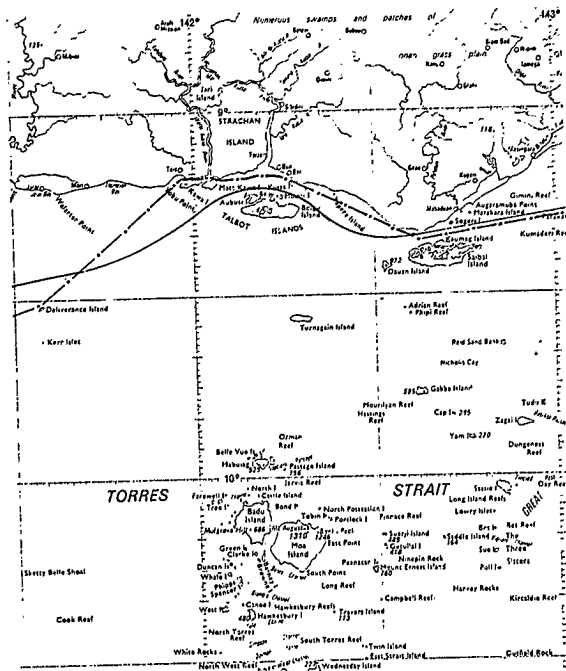
THE AVIATION COMMUNITY

I cordially trust this is an exact copy of the map in the original of New Town "Admiral".



ANNEX F

Sketch to compare "boundary lines" shown in ANNEX E: and in ANNEX H respectively



Approximate position of boundary  
as shown at Annex E —————

Approximate position of boundary  
as shown at Annex H -----

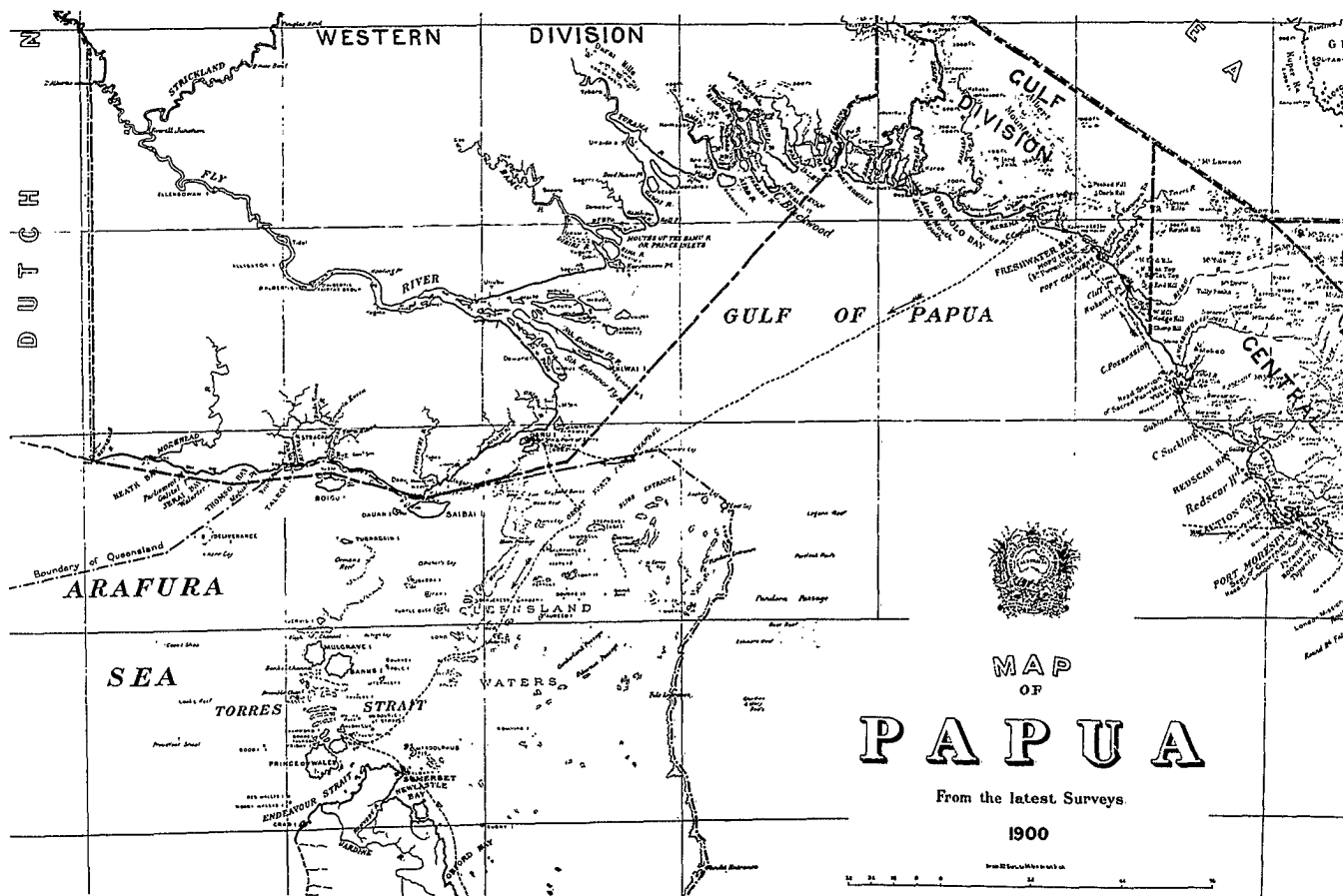
Extract from "Map Shewing the the New Maritime Boundary of  
Queensland, Letters Patent 10 October 1878", Queensland  
Legislative Council V & P, 1879,



[illegible]

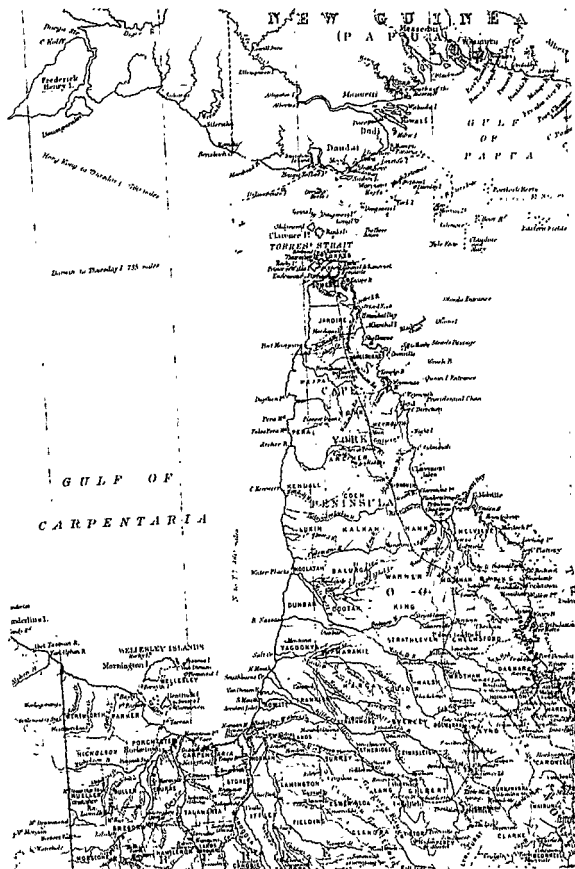
## ANNEX I

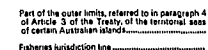
Extract from "Map of Papua From the latest Surveys 1900",  
Survey Office, Brisbane, attached to the Report of the 1907  
Royal Commission on British New Guinea (Commonwealth  
Parliamentary Papers, No. 6 of 1907).



# ANNEX J

Extract of maps of Queensland in "The Citizen's Atlas of the World", 4th ed., (1924), edited by J. Bartholomew, (Cartographer to the King). (Reproduced by permission of J. Bartholomew & Son Ltd., Edinburgh).



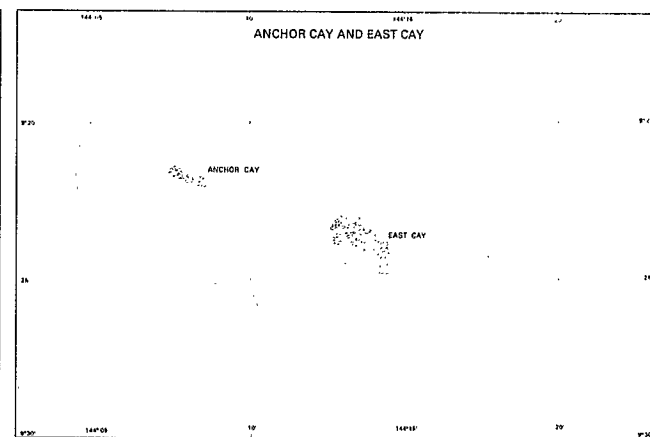
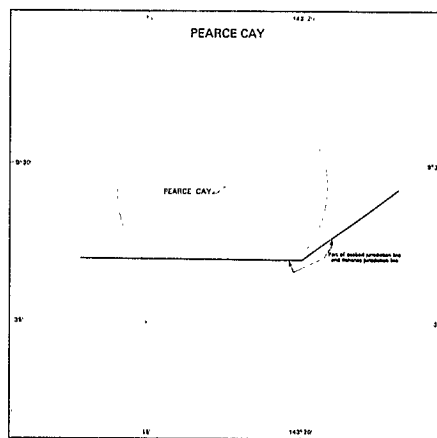
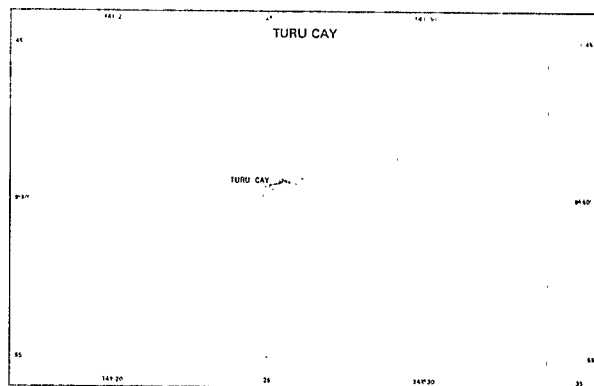
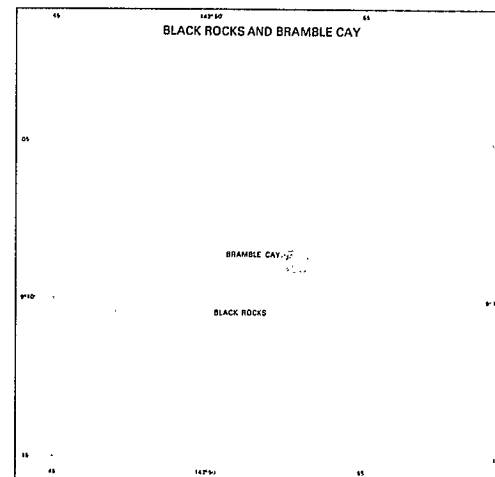
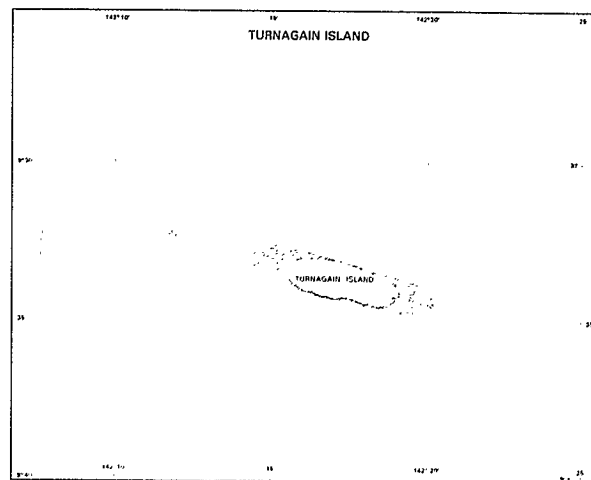
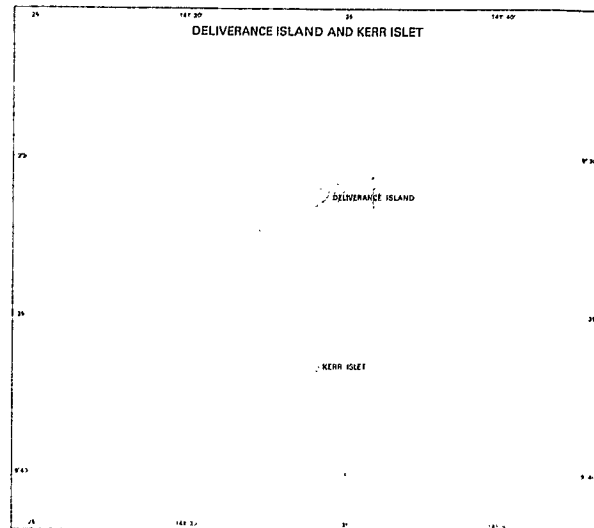


SCALE 1:100 000

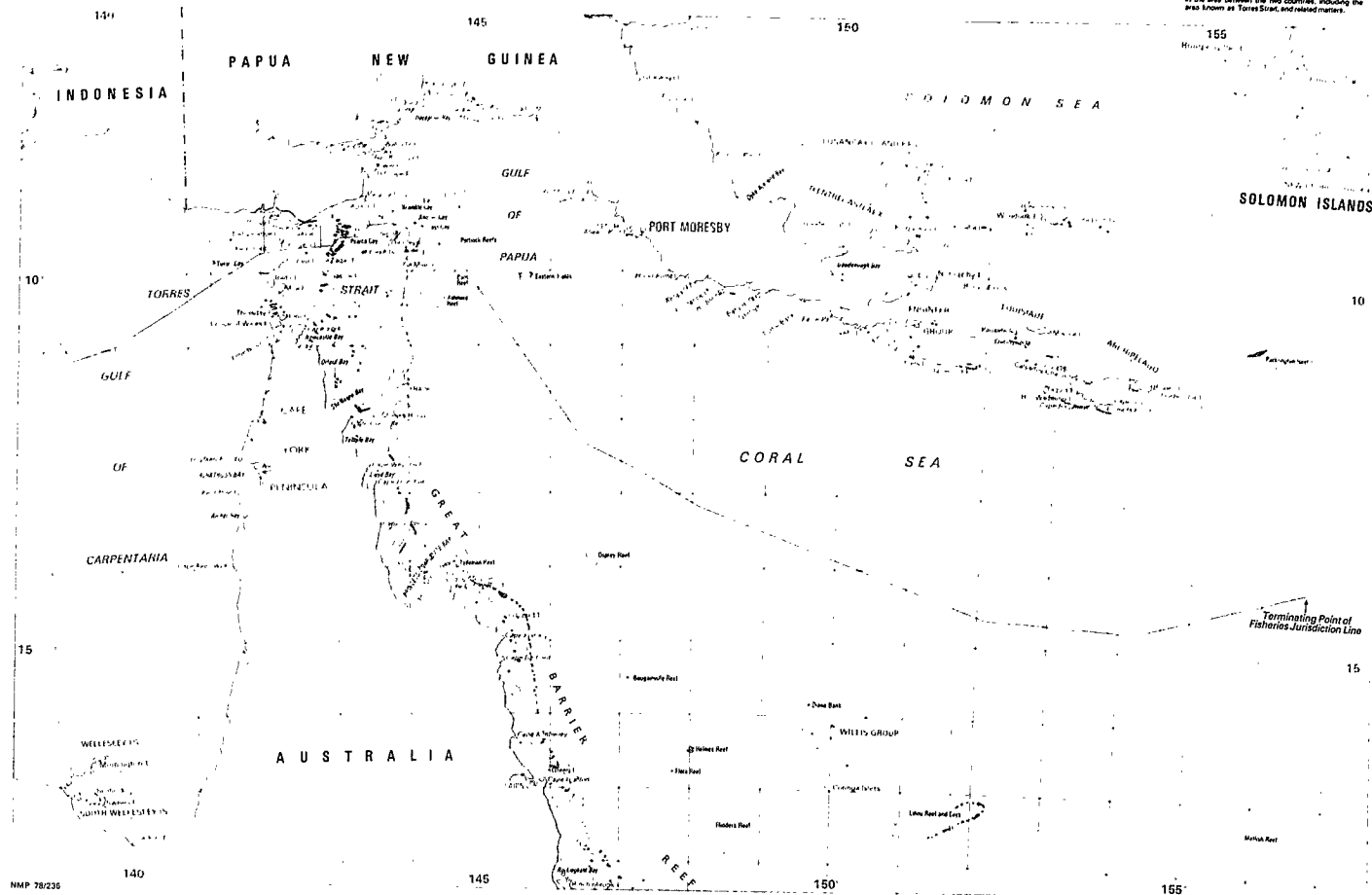
1 0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 1

Nautical miles



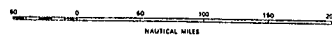


ANNEX 5 to the Treaty between Australia and the Independent State of Papua New Guinea concerning sovereignty and maritime boundaries in the area between the two countries, including the area known as Torres Strait, and related matters.

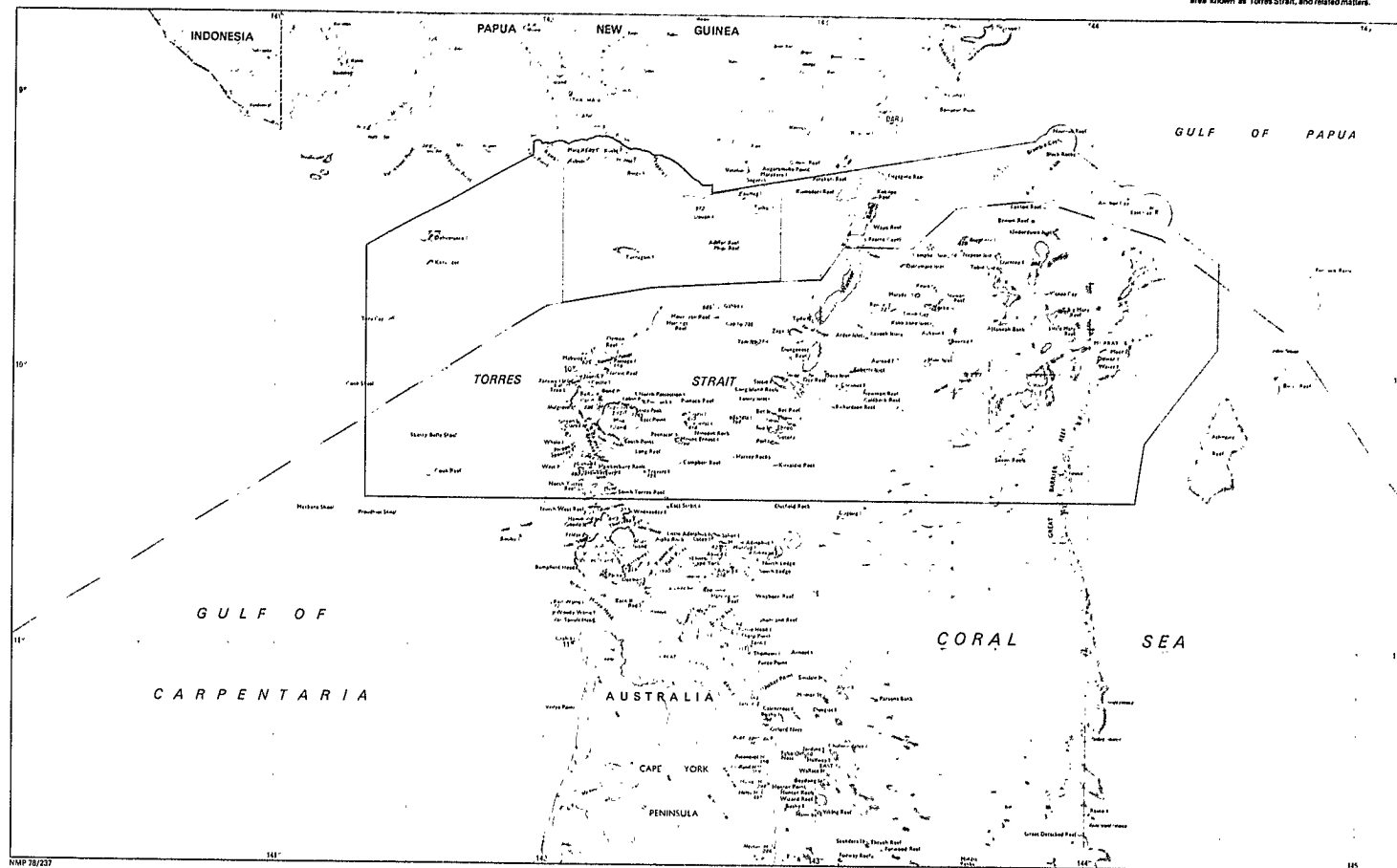


NMP 78/235

Prepared by the Division of National Mapping, Canberra, and the National Mapping Bureau, Port Moresby

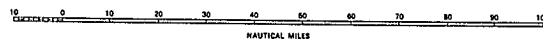


Seabed Jurisdiction Line  
Fisheries Jurisdiction Line  
Seabed Jurisdiction Line  
and  
Fisheries Jurisdiction Line  
Protected Zone Boundaries



NMP 78/227

Prepared by the Division of National Mapping, Canberra, and the National Mapping Bureau, Port Moresby.



Seabed Jurisdiction Line  
 Fisheries Jurisdiction Line  
 Seabed Jurisdiction Line  
 and  
 Fisheries Jurisdiction Line  
 Protected Zone Boundaries