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## Policing our ocean domain: Establishing an Australian coast guard

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Australia is one of the world's largest maritime nations, yet few of its citizens know that. It is the only country to occupy an entire continent and, because of this insularity, one of the few where physical foreign interference is possible only from across the sea. Yet, being a continent, the area of sea that Australia commands is truly enormous—for some purposes almost 12% of the earth's surface.

In the past, Australia has generally been ill prepared to accept the responsibilities that go with this geography. In defence of the nation, Australia's alliance partners have at times used their naval power to contain armed threats in Australia's maritime approaches. However, in recent decades, the greatly increased use of the continent's maritime approaches has focused attention on the importance of enforcing Australian law over its maritime zones. Of its nature, Australian jurisdiction cannot be enforced by other nations.

Australian Government interest in law enforcement over the maritime approaches is generally taken to have begun in 1968 with amendments to Commonwealth fisheries legislation to proclaim a 12 nautical mile (nm) fishing zone. That interest materialised into tangible measures only slowly, even though some aspects of the

responsibility Australia was beginning to accept arose under international treaty. The more important sources of change were political outcries during the last three decades of the twentieth century, in reaction to which Australian governments allocated additional resources and changed management arrangements for maritime border security. This history of change through incremental crisis management ended in 2005 with the establishment of what is now Border Protection Command (BPC), to coordinate and control civil and military activities aimed at securing Australia's maritime zones.

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*This paper examines issues to do with the management of Australia's maritime borders, how current arrangements are faring, and what might best be done in future.*

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In November 2007 an Australian Labor Party government was elected with a party platform that pledged to establish an Australian coast guard. However, the direction of the election campaign meant that the platform was not detailed by a specific policy launch and the

Opposition spokesperson at the time did not subsequently become a minister. The new Labor government referred policies on the establishment of an Australian coast guard and management of homeland security to a review.

This paper examines issues to do with the management of Australia's maritime borders, how current arrangements are faring, and what might best be done in future. However, it should be remembered that, irrespective of which model Australia adopts, effective maritime border arrangements will often depend on the active cooperation of state government agencies, industry and the public.

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## The environment for maritime border security

### *Physical geography*

Australia has an unavoidable interest in its maritime realms simply because of their size and location. Backed by international law, the country claims sovereign rights over waters that stretch from the tropics to the sub-Antarctic and, until recently, covered 8.2 million square kilometres. Those waters include the Australian Fishing Zone (AFZ) and Exclusive Economic Zone (EEZ) that generally extend 200 nm to sea from the coastal baseline. They also include the continental shelf, where Australia has rights over resources on and under the seabed. In April 2008, those territorial waters were extended by an additional 2.5 million square kilometres in nine regions outside the 200 nm zones,<sup>1</sup> bringing the total over which Australia

### Australia's ocean interests

Length of continental coastline—  
36,000 km

Number of land features in Australian territorial waters—12,000

Distances to island territories:

Christmas Island, 1,500 nm  
west of Darwin

Cocos (Keeling) Island, 1,600 nm  
northwest of Perth

Heard and McDonald Islands,  
2,200 nm southwest of Perth.

Australia has the:

world's third largest fishing zone  
world's largest area of coral reefs,

and is the  
major claimant to Antarctic Territory.

asserts some form of sovereign right to 10.7 million square kilometres. Australia claims more than 40% of the Antarctic mainland and has established an EEZ based on those territories, although this is not recognised by the international community.

Australia's maritime zones are among the largest in the world. Indonesia describes itself as an archipelagic nation and incorporates seas from Southeast Asia to northern Australia within its boundaries, but its claims amount to barely more than half of Australia's.

Australia's maritime zones are now around 40% larger than the landmass of the continent and the country claims rights over more waters than any other nation, including the US, whose EEZ encompasses 8.8 million square kilometres. Its claims to waters off the Australian Antarctic Territory, further increase Australia's responsibilities. Under international

arrangements, Australia is responsible for managing search and rescue arrangements and security responses over an area that is about 12% of the earth's surface.

The scope of Australia's claims mean that it has sovereignty interests embracing parts of the Pacific, Indian and Southern oceans and the Tasman, Coral, Timor and Arafura seas. This vast geographic expanse encompasses a highly varied range of climatic and sea

conditions that have significant implications for the type of operations conducted by agencies responsible for Australia's maritime zones and for the equipment they use.

A wide variety of activities take place across Australia's maritime zones. Shipping continues to be an important activity within Australia's maritime zones and carries some 99% of Australia's international trade, with



3,517 vessels making a total of 10,127 voyages to Australia in 2005–06.<sup>2</sup> Most of this trade is carried out by foreign vessels, there being only thirty-seven Australian-owned vessels in the local trade. However, a large number of Australians travel around the coastline in a variety of pleasure and sporting craft.

Almost all of the AFZ supports commercial levels of fish stocks, as do some areas of the continental shelf, such as the orange roughy fishery south of Tasmania. Some of these fisheries, such as the southern bluefin tuna and Patagonia toothfish, are of significant international interest, while other areas, such as the Arafura Sea and Timor Sea shark fisheries, are subject to exploitation by both traditional and commercial foreign fishers.

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Crude oil and natural gas are extracted from sites in Bass Strait and off the northwest coast, with significant developments occurring in the Pilbara region as a result of the increased production of natural gas. After a Commonwealth study into offshore security requirements in 2004, the government accepted responsibility for the security of offshore facilities and a security regime was developed. The oil and gas industries require support activities that go beyond the maintenance of static offshore platforms and include a considerable number of support craft, many of which are based overseas and, in the northwest fields, make little or no contact with the Australian mainland.

Increasingly, the oceans are seen as an important environmental resource,

with efforts being made to protect their ecosystems through the establishment of marine parks or protected areas. These are also used to protect historic shipwrecks, oil and gas pipelines and submarine telecommunications cables. Marine parks and historic shipwrecks are often associated with significant local and international marine tourism, which has become the largest Australian maritime industry.

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*In the maritime arrangements, administration of legislation is not usually associated with the capacity to enforce it.*

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#### *The regulatory environment*

Sometimes, the conduct of these activities may produce circumstances that require action to prevent, or intercede against, breaches of Australian law. The Australian Government has constitutional power over defence, customs, immigration and quarantine matters. In areas outside Australia's territorial waters, additional authority is generally provided by the Commonwealth's external affairs powers. Australia's establishment of an EEZ, and its proclamation of a territorial sea 12 nm in width, with a contiguous zone of a further 12 nm (wherein Australia can enforce customs, immigration and quarantine laws) corresponds with the provisions of the UN Convention on the Law of the Sea (UNCLOS), signed in 1982. Australia claims sovereign rights to exploit and manage all living resources within its EEZ and AFZ and to control the exploration for, and extraction of, minerals from the seabed beneath the zone.

Those rights include the management of fisheries and other activities that have environmental consequences. The right to

control minerals exploration and exploitation and to manage sedentary sea life extends beyond the EEZ to the edge of Australia's continental shelf. Those rights were significantly extended with the recognition of additional areas by the UN in April 2008.

Generally, the authority vested in legislation covering maritime zones has been divested to those agencies that normally administer the functional area on land. However, those departments whose activity is administering a particular field of Commonwealth activity, such as immigration or quarantine, usually have little, more often nil, capacity to operate in maritime zones. In the maritime arrangements, administration of legislation is not usually associated with the capacity to enforce it. For example, breaches of ordinary criminal law, largely a matter for the states, may also be a cause for action within Australia's maritime zones. However, most state police forces have little capacity to operate offshore.

A significant complication lies in the divisions of responsibility in Australia's federal system of government. Those divisions have sometimes required resolution, such as the constitutional settlement over offshore jurisdiction reached in 1980. That settlement ceded some powers to the states and Northern Territory within their own internal waters and to a distance of three nm out to sea. A somewhat different approach was exemplified by the *Crimes at Sea Act 2000*, which authorised the Australian Government to apply the relevant state law in Australia's maritime zones.

The legal complexity of the enforcement of Australia's interests over its maritime zones is as important a determinant of the maritime border security environment as is Australia's physical geography. The Australian maritime security arrangements depend on the implementation of a wide range of

### Australian ocean law

Major powers for controlling maritime activities are contained in Commonwealth legislation such as the:

*Customs Act 1901*

*Migration Act 1958*

*Defence Act 1903*

*Quarantine Act 1908*

*Fisheries Management Act 1991*

*Environmental Protection and Biodiversity Conservation Act 1999.*

Responsibilities for search and rescue also accrue under the International Convention for the Safety of Lives at Sea (SOLAS), 1974 provisions of the International Maritime Organization (IMO). Also important are the International Convention on Maritime Search and Rescue (1979) and the Convention on International Civil Aviation (1974).

Under IMO arrangements, Australia, as the Security Forces Authority, is responsible for dealing with acts of violence against ships within its search and rescue area.

legislation, managed by a large number of agencies—according to procedures deemed acceptable by courts of law in a variety of jurisdictions—and often enforced by personnel of agencies different from those responsible for implementing particular matters. Twenty-four Australian Government agencies and an even larger cluster of state and territory bodies can have an interest in some aspect of the arrangements, so success depends on a high degree of consultation, cooperation, coordination and integrated planning.

## A Who's Who of Australia's maritime security arrangements

Australian Government agencies with a major role in arrangements for maritime border security include:

**Border Protection Command (BPC)**—*central command element*, located within the Border Enforcement Division of the Australian Customs Service and staffed jointly by Australian Defence Force, Australian Customs Service, Australian Fisheries Management Authority and Australian Quarantine and Inspection Service personnel, is jointly responsible for managing maritime domain awareness, surveillance, response planning and response operations to control the security of Australian maritime zones.

**Australian Defence Force (ADF)**—*major resource provider*, contributes marine, aerial and terrestrial forces for surveillance and response requirements. The units supplied are usually under the operational control of Border Protection Command, either from Canberra or through the BPC Deputy ADF Commander, who is Commander Northern Command (NORCOM), located in Darwin.

**Australian Customs Service (ACS)**—*major resource provider*, contributes to an awareness of activity in Australia's maritime zones and the capacity to respond through the vessels of its Customs Marine Unit and contract aerial surveillance and commercial security services. Also a *major client* of the arrangements, ACS is responsible for controlling the movement of people and goods in and out of Australia.

**Australian Maritime Safety Authority (AMSA)**—*resource provider*, contributes data to create maritime awareness and operates five aircraft that contribute to aerial surveillance over the maritime zones

in addition to their search and rescue role. Responsible for coordinating civil aviation and maritime search and rescue, control of pollution incidents and marine safety awareness. AMSA is largely self-funded through levies and charges on the maritime industry.

**Australian Federal Police (AFP)**—*resource provider*, located within the Attorney-General's portfolio, responsible for enforcing Commonwealth criminal law, including in Australia's maritime zones.

**Attorney-General's Department (AGD)**—*resource provider*, supplies often time-sensitive legal opinions in assisting the conduct of operations. AGD also operates the agencies responsible for coordinating counter-terrorist and disaster management operations.

**Department of Immigration and Citizenship (DIAC)**—*support element and client*, responsible for managing the movement of people in and out of Australia, including those arriving unlawfully by sea, and for the upkeep and repatriation of foreign fishermen seized for conducting unlicensed operations in Australian waters.

**Australian Fisheries Management Authority (AFMA)**—*support element and client*, a statutory authority within the Department of Agriculture, Fisheries and Forestry, responsible for regulating Commonwealth fisheries and monitoring and controlling the activities of Australian and foreign fishing vessels within the AFZ and in proximate international waters. AFMA staff are seconded to Border Protection Command and work in the National Surveillance Centre in Canberra.

**Australian Quarantine and Inspection Service (AQIS)**—*support element and client*, a division within the Department of Agriculture, Fisheries and Forestry, responsible, in this context, for controlling the importation of exotic diseases and pests. AQIS staff are seconded to Border Protection Command and work in the National Surveillance Centre in Canberra.

**Department of the Environment, Water, Heritage and the Arts**—*client*, responsible for managing and protecting the Commonwealth's marine protected areas, the marine environment and ecology, threatened species and for controlling dumping at sea.

**Office of Transport Security**—*related partner agency*, a division of the Department of Infrastructure, Transport, Regional Development and Local Government, responsible, in this context, for promoting the security of ports, ships and offshore facilities in partnership with industry bodies. It administers the Maritime Security Plan and the Maritime Security Identification Card scheme.

Other Australian Government agencies that have a role in maritime border protection are:

- **Department of the Prime Minister and Cabinet**—manages high level policy advice and coordination
- **Australian Antarctic Division**—operates some of the scarce transportation resources in the Antarctic region
- **Department of Foreign Affairs and Trade**—manages relations with other countries from which threats to Australia's maritime zones may originate and has a role in managing the Torres Strait Treaty Zone
- **Department of Resources, Energy and Tourism**—manages the safety and security of offshore oil and gas operations
- **Great Barrier Reef Marine Park Authority**—manages and preserves the Great Barrier Reef.

All states and the Northern Territory have a role in managing the security of Australia's maritime zones, although the responsible agencies may differ between jurisdictions. In general, those agencies will include:

- **police forces and justice agencies** for investigating and prosecuting criminal activity
- **agriculture and fisheries agencies** for the management of fishing, including recreational activity, in state waters
- **environment departments and protection agencies** for managing and controlling threats to the environment of state waters
- **transportation authorities** for the implementation of state regulations especially those affecting ports, shipping, marine safety and other maritime facilities
- **premiers' or chief ministers' departments** for overall coordination between the Commonwealth and responsible state agencies.

In addition, commercial interests can often play a role, either through effectively implementing government programs and regulations or providing occasional assistance, such as reporting suspected illegal activities.



## Recent improvements in sustaining maritime border security

The maritime border security arrangements have evolved rapidly since the Border Protection Command was established in 2005, with funding for many of the agencies increased from about the same time. Some of the objectives set for the BPC have not yet been achieved but are close to fruition and client agencies are well satisfied with the evolution of the arrangements over the past few years.

### *Integration of strategic decision making and intelligence functions*

The strategic direction of policies and operations has changed markedly with the establishment of the Strategic Maritime Management Committee (SMMC), chaired by the Department of the Prime Minister and Cabinet (PM&C). The committee, which first met in July 2006 after Cabinet directed

PM&C to review arrangements for fisheries compliance and maritime enforcement<sup>3</sup> was one of the initiatives that emerged in an attempt to provide better coordination and more cost-effective maritime border security.

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The SMMC comprises senior executives of agencies involved in maritime border security. Its role is to develop national strategies and mechanisms for managing the deployment of the operational resources supporting maritime border security arrangements. SMMC oversees the development of intelligence, considers the implications of maritime security threats to



An Indonesian fishing vessel is arrested in October 2005, during the height of the illegal fishing outbreak that preceded a review of the high-level management of the border security arrangements. Picture courtesy Australian Customs.



the government's overall policy objectives and oversees the implementation of maritime security programs.

Since all Australian Government departments on the Secretaries Committee of National Security (SCNS) are represented on the SMMC, SMMC can develop advice for Cabinet's National Security Committee (NSC) through SCNS, which forms the NSC's secretariat. SMMC is itself supported by the Joint Agencies Marine Advisory Group (chaired by Border Protection Command), to which a number of specialist working groups report. The introduction of those arrangements has gone some way to overcoming, at a strategic level, a persisting failure of the maritime border security arrangements, which was that they lacked a unifying command structure to establish objectives and achieve results.

#### *Operational level control*

At an operational level, Border Protection Command now provides a capacity for intelligence, operational planning and command that more fully integrates the civilian law enforcement and military counter-terrorism objectives of the arrangements. It was inaugurated under the title of the Joint Offshore Protection Command in March 2005, following the recommendations of the Taskforce on Offshore Maritime Security.

The taskforce's principal objectives emphasised counter-terrorism and it identified legal ambiguity over the security of offshore oil and gas facilities as a major problem. The absence of integrated intelligence, that could allow an accurate assessment of all the activities in Australia's maritime zones, was another.

The first problem has been addressed because, with the Australian Government now responsible for offshore facilities, BPC plans and manages periodic patrols of oil

and gas facilities by naval and civil units. The second problem, related to the integration of intelligence, is being addressed by the development of the Australian Maritime Information System (AMIS), for which \$79.5 million over four years was allocated in the 2007–08 Budget. The AMIS, which seeks to draw information from a variety of sources to identify the position and nature of vessels within 1,000 nm of the Australian coast, is well advanced in its development. Amendments to legislation in September 2007 now allow the AMSA to pass information on the position of ships and their characteristics to AMIS.

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The Commander BPC continues to exercise the former role of Director-General Coastwatch, in charge of integrating surveillance, response and interception activities to meet the range of needs of Commonwealth and state agencies in Australia's maritime zones. The authority of the Commander to deploy ADF assets assigned to him and to direct civilian assets under the control of the ACS was re-emphasised during the change of name to Border Protection Command in October 2006.

Although terrorism might expose maritime security to the most serious range of consequences, the normal range of unlawful, dangerous or unannounced activities continues to provide the bulk of BPC's workload. As well as terrorism, the BPC Intelligence Centre focuses on illegal fishing in

northern waters and the Southern Ocean and on unauthorised maritime arrivals. There has been an improvement in intelligence provided to the BPC by client agencies (who retain the task of providing risk assessment and threat identification reports for their areas of responsibility) with the acceptance of standardised procedures for risk assessment reporting. The continuing importance of fisheries and quarantine management has seen four officers, two each from AFMA and AQIS, embedded within the BPC operational hub, the National Surveillance Centre.

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*The Chief of Navy now force-assigns naval vessels through the Headquarters Joint Operational Command to the operational control of the Commander BPC as Commander Joint Task Force 639.*

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#### *Marine resources*

The BPC has no equipment of its own for surveillance and response operations and calls on assets controlled by the ADF, Customs, AMSA and, occasionally, other agencies to provide it with an operational capacity. The Chief of Navy now force-assigns naval vessels through the Headquarters Joint Operational Command (HQJOC) to the operational control of the Commander BPC as Commander Joint Task Force 639. This arrangement provides for more efficient deployment of resources than the previous, more generalised, allocation of a nominated number of ship days.<sup>4</sup> Those forces generally comprise seven *Armidale* Class patrol boats, a major fleet unit (the hydrographic ship HMAS *Leeuwin* in April 2008) and a landing craft. In 2007 a mine hunter was assigned after \$95.6 million was allocated in the 2006–07 Budget to reactivate these craft as a measure to increase the capacity to respond to illegal fishing

vessels. The major fleet unit continues to support Operation Resolute, which, under the HQJOC, now combines the ongoing elements of the various ADF operations supporting civil maritime security, including Operation Relax, which began at the time of the *Tampa* incident in 2001.

All *Armidale* patrol boats are now operational, performing well and able to operate in a greater range of sea conditions than their predecessors. The commercially provided maintenance and logistic support has developed to meet fleet needs and crews are enjoying greater predictability of working life as a result of the multi-crewing practice, which provides roughly one and a half crew for each vessel. The ADF also contributes 240 days of Regional Force Surveillance Unit time to patrolling the littoral and, particularly in the Torres Strait, offshore islands.

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However, a substantial proportion of the sea time for maritime security is supplied by the Customs Marine Unit (CMU), which operates eight *Bay* Class Australian Customs vessels (ACV), which were delivered in 1999 and provide a total of 2,400 sea days per year. The CMU is staffed by Customs officers but its vessels are supported and maintained under contract. The ACVs were modified during 2005 to mount two 7.62 mm general-purpose machine guns at a cost of \$1 million, in response to some instances of aggression from the crews of illegal foreign fishing vessels. At the same time, an additional thirty-six customs officers were recruited,

at a cost of \$20 million over four years, to increase the crew size to accommodate machine-gun operations.

The CMU manages vessels under commercial contract to the ACS to perform specific operational roles. They carry Customs officers (and officials of other client agencies) but are crewed by contractor staff and commercially maintained and supported. The largest of these vessels is the *Oceanic Viking*, formerly a cable laying ship, contracted to provide 200 days a year<sup>5</sup> for Southern Ocean patrols.

In January 2007 ACV *Triton*, formerly a Royal Navy research vessel, with an experimental trimaran hull form and capable of carrying twenty-eight Customs Maritime Enforcement Officers, commenced a contract to support operations against illegal foreign fishing off northwest Australia. She has supported operations by patrol boats and other fleet units by holding detained fishermen for

later transfer to shore and is contracted to provide 100 days a year. Both vessels had been modified to mount a pair of 0.5 calibre guns.

Under a four-year, \$31.7 million initiative in the 2007–08 Budget, the *Ashmore Guardian* was chartered and located at the Ashmore Reef and Cartier Islands marine reserves in April 2008 to monitor illegal foreign fishing and other unlawful activities. It is intended that the vessel remain in the area for 330 days a year, allowing officers to monitor developments in the region using two fast boats carried on board. Because of the upsurge of illegal foreign fishing activity in 2005–06, Customs commissioned four 12-metre launches as Customs Response Vessels (CRV) from July 2007. Designated the *River* class, they are stationed in Darwin, Thursday Island, Gove and Weipa to transfer illegal fishermen to shore. In addition, twenty private vessels were contracted from



The two large vessels under charter to the Customs Marine Unit are armed with 0.5 calibre guns operated by Customs Maritime Enforcement Officers, while the vessels have commercial crews. Here, *Oceanic Viking* stands by while FV *Taruman* is boarded off Macquarie Island. Picture courtesy Australian Customs.

2006–07 to stand by to tow foreign fishing vessels or transport their crews.

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#### *Aerial surveillance*

The aerial surveillance capability supporting Australia's maritime security arrangements has recently been upgraded considerably. Since 1999 aerial surveillance capacity has been increased incrementally, by ad hoc budgetary supplements, from about 14,500 flying hours to 21,000 flying hours in 2006–07. The service has been renewed on a long-term basis under Project Sentinel through a \$1 billion contract with Surveillance Australia (SAPL) to provide surveillance for the next twelve years.

For the first time, the Coastwatch aerial fleet will be standardised, with the smaller, more simply equipped aircraft being abandoned. SAPL now operates ten Dash 8 aircraft, four of which are the more recent 315 series. All have updated sensors but the major advance is the installation of a surveillance information management (SIM) system that integrates surveillance data and uses satellite communications to provide a direct data feed to the National Surveillance Centre. The SIM provides a communications capability not provided in the RAAF's AP-3C aircraft, which were delivered as recently as 2002. More importantly, it incorporates a data recording system developed specifically to maintain the evidentiary trail to support legal proceedings.

Additional flying hours are provided by tasking AMSA's fleet of five Dornier aircraft,

contracted for search and rescue missions. Since 2001–02 the RAAF has exceeded its nominal contribution of 250 hours per year by a factor of four or greater and, during the surveillance of the Japanese whaling fleet in Antarctic waters in January, several surveillance flights were undertaken by the Australian Antarctic Division's A320 supply aircraft. The BPC also has contracts for satellite data, and covered 7.5 million square nautical miles with this form of surveillance during 2006–07.

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Nonetheless, some of the less conventional forms of surveillance trialled for Project Sentinel have not come to fruition. Surface wave radar proved to have poor productivity because of its high logistics support requirements and no company responding to a tender (released in August 2006) for a midrange unmanned aerial vehicle fully met the tender conditions. Although trials for unmanned aerial vehicles were approved in May 2007, possible implementation of these systems is still some way off. Manned aircraft, albeit with increasingly sophisticated systems, remain the most cost-effective means of providing the awareness needed for managing Australia's maritime zones.

#### *Interagency coordination*

Client agencies are satisfied both with the conduct of operations provided to meet their responsibilities and with the process used to plan strategic approaches to their requirements.<sup>6</sup> Several key agencies

considered that the system had improved markedly since 2005 and were satisfied with the determination of priorities through the SMMC process. Additional funding has allowed several of them to change their procedures. For example, AFMA now has more operational staff based in regional Australia, including in Northern Command.

All agencies considered that the arrangements were now more streamlined and better coordinated and were yielding benefits. For instance, a breakthrough in reducing the level of illegal foreign fishing was achieved when operational procedures were modified to more fully reflect the concerns of AQIS. The generally old and dilapidated wooden fishing boats (potentially harbouring marine organisms, insect larvae and human pathogens) that dominate illegal fishing in northern waters pose severe quarantine risks. The practice of towing the boats to Darwin Harbour and mooring them there to accommodate the crew during legal proceedings did not adequately address

those risks. It was possible to achieve better quarantine security by burning the boats at sea<sup>7</sup> and accommodating their crews elsewhere until they could be repatriated.

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Arrangements were made with the ACS to provide temporary accommodation at designated reception points and transport for those sufficiently fit to travel. Immigration now holds foreign fishermen, usually in their centre at Darwin, to verify their details and provide repatriation. With the adoption of the new operational procedures, sightings of illegal fishing boats in Australian waters fell by 58% in 2006–07. Vessels that may be



An initiative to control illegal foreign fishing in the north has been the introduction of joint Australian–Indonesian fisheries patrols. Here ACV *Arnhem Bay* and the *Hiu Macan* 003 patrol the conjunction of the fishing zones in November 2007. Picture courtesy Australian Customs.



infringing the AFZ are now usually found at the edge of the 200 nm zone.

Improvements to BPC's capacity have been important but, as all agencies recognise, maritime enforcement operations deal with the consequences of fundamental problems that lie elsewhere. The Department of Immigration and Citizenship (DIAC) attempts to control people smuggling by focusing on intelligence and ameliorative programs in host country refugee camps and considers the capacity of the maritime arrangements to apprehend smugglers' boats as security to cover possible systemic malfunctions. A similar approach has been adopted in response to the increase in illegal fishing. The government allocated \$389 million in the 2006–07 Budget to cover a range of initiatives, including programs in the fishermen's home communities.

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One measure was to assist Indonesia to deal with its illegal fishing problems, as much unsustainable activity in its waters results from commercial activities that are often foreign sourced. Cooperation with Indonesian authorities was explored at the Australia–Indonesia Fisheries Surveillance Forum in February 2007 and results emerged in October 2007. In a coordinated operation supported by a Coastwatch aircraft, the ACV *Arnhem Bay* and two Indonesian Fisheries Department vessels patrolled their respective sides of the maritime border in the Arafura Sea for four days. The measures have contributed to apprehensions of illegal foreign

fishing vessels in 2007–08 returning to their usual level.

Participating agencies are concerned that future maritime border security arrangements do not reduce the flexibility and coordination built up over the past two years. This relates to the need for continued efficiency of operations in meeting agency goals and for agencies to have the flexibility to engage the maritime border security arrangements through the procedures that best suit their needs. DIAC finds most value in entering the arrangements through the People Smuggling Task Force, now a well-established interdepartmental committee, while AMSA finds most value in utilising its relationships with state agencies, since the majority of search and rescue operations involve police forces or emergency medical resources.

### **The ghosts of history: lessons for the development of maritime border security arrangements**

The arrangements for securing Australia's maritime zones have developed over time through a series of incremental responses to crises that seemed to expose a weakness in the existing arrangements. Usually, the 'crisis' was defined by the strength of the political reaction generated and the 'solutions' marked by a distinct unwillingness to invest in creating longer term capacity. This process of 'crisis-driven incrementalism' has marked the maritime security arrangements for decades. During this period, several incidents highlighted important principles that should be part of Australia's future maritime security.

Although changes to fishing jurisdictions drew the Commonwealth into maritime border security in the late 1960s, it was concern over quarantine issues that prompted the first major public awareness of civil maritime security in the early 1970s. However,



a compelling requirement to establish civil maritime surveillance emerged during the United Nations Law of the Sea Conference and in 1978 the government declared that it would establish an Australia Exclusive Economic Zone. The advent of Vietnamese boatpeople at around the same time gave political impetus to demands that Australia create the capacity to monitor and manage its maritime claims.

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The Fraser government declined to establish a new agency for this purpose, and decided to contract commercial air operators to provide the bulk of surveillance services. Because quarantine was seen as the major security risk, funding was allocated to AQIS, but because the Department of Transport ran the Aviation Coordination and Rescue Centre and thus had the capacity to plot air movements around many areas of Australia it was given responsibility for managing operations.

Those arrangements established some of the characteristics still apparent in Australian maritime border security: appending responsibility for conducting operations to whatever agency appeared the 'best fit' (that is, an existing government agency that already performed functions similar to those required), dividing responsibilities between operating and client agencies, and avoiding long-term commitments of resources. As the Minister for Transport at the time said, 'the measures adopted at this stage have been designed to provide a high degree of flexibility without commitments to capital expenditure.'<sup>8</sup>

### *Attempts to introduce central control*

These initiatives were implemented very slowly and it was not long before surveillance and enforcement agencies were being criticised for their lack of flexibility. The metronomically regular standing patrols of the coastline, developed to meet quarantine requirements, were deemed inappropriate as public attention was drawn to the control of illegally imported drugs.<sup>9</sup> The Minister for Aviation in the Hawke government, Kim Beazley, reviewed the arrangements in 1983 and concluded they were flawed because there was a separation of responsibility for conducting surveillance operations and for conducting response and enforcement. Surveillance operations were largely under the control of the Transport and Defence departments and response and enforcement operations lay with a number of different agencies. As a consequence, there was no broad oversight of operations and their management did not consider the range of national interests that should be addressed by the maritime security arrangements.

The Beazley review established central control of maritime surveillance, to align and apply priorities to the national objectives, by transferring it to a Coastal Protection Unit (CPU) within the Australian Federal Police. Yet funding for maritime surveillance activities continued to be allocated to individual agencies and the general adoption of 'user pays' principles by the government meant that the better-funded agencies continued to determine the nature of operations. The CPU never established effective control of the maritime security program.

The consequences were demonstrated within three years. In 1987 an underfunded and inexperienced bidder, Amman Aviation, won the contract to provide the littoral surveillance flights but was unable to commence operations. An enquiry found the contract

had been awarded inappropriately because of an overemphasis on cost reduction by the Department of Transport. Although Transport still managed the aerial capacity, it had minimal interest in meeting the objectives of the surveillance system.<sup>10</sup> There was little time to consider the implications of the findings because, in December 1987, the Department of Primary Industries and Energy decided it would discontinue aerial littoral surveillance in favour of more direct surface operations. With ADF flying now significantly reduced, the system faced collapse and the government was forced into a fundamental rethink.

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*Hugh Hudson argued that the role of the surveillance system was to meet national law enforcement goals...*

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#### *The origins of the current system*

*Northern Approaches*, the subsequent report by Hugh Hudson, noted that, while civil surveillance flights were funded against quarantine requirements, the operational priority at the time was for flights further out to sea to monitor an increasing level of unlawful Indonesian fishing. He argued that the role of the surveillance system was to meet national law enforcement goals and that priorities and individual operations should not be subject to a de facto financial veto by whichever agency held funding. Further, appropriating funds to individual agencies had allowed national goals to be ignored to such an extent that Hudson feared Australia could not meet its responsibilities under the UNCLOS regime. Neither did it provide adequate security in the Torres Strait area.<sup>11</sup>

Hudson recommended that an Australian maritime safety and coastwatch agency be established (combining surveillance and search and rescue functions) and that it report directly to the appropriate minister. Instead,

and not for the first time, the government declined to establish a dedicated agency for maritime border security and transferred management of the CPU's functions to the ACS. This time, however, control of the budget was transferred to the ACS and the basis of the arrangements as they now exist was laid.

The Hudson model worked in streamlining the management of maritime surveillance, increasing its capacity and improving flexibility. Nevertheless, some endemic weaknesses persisted. Many of those weaknesses concerned communications. For more than a decade communications between surveillance aircraft and patrol boats around the north of Australia remained difficult because neither had satellite communications. A Customs proposal to establish a national surveillance centre as an integrated command and control system, planned for inclusion in the 1997–98 Budget, was deferred. In 1998 the ACS was restructured and, ignoring the 1988 administrative arrangements, absorbed Coastwatch into its border management subprogram. Two senior management positions created to enable Coastwatch to function semiautonomously were abolished. Coastwatch was now a subsidiary part of an organisation that was one of its largest clients.

Those problems were not rectified until the intervention of the Prime Minister's Coastal Surveillance Taskforce, formed after undetected people smuggling incursions on the beach north of Cairns in March 1999 and at Nambucca Heads in April 1999. The taskforce recommended a significant increase in resources, including the provision of secure satellite communications, improved communications and data processing capacity between Coastwatch and other organisations and the establishment of the previously delayed National Surveillance Centre. Significantly, it re-established the

semiautonomous position of Coastwatch by appointing an ADF officer, with rank equivalent to Rear Admiral, as Director General of Coastwatch, reporting directly to the CEO of the ACS.

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*Twice within little more than a decade, political pressure had been necessary to produce a policy response after inertia in public administration had prevented the resolution of persisting problems...*

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Twice within little more than a decade, political pressure had been necessary to produce a policy response after inertia in public administration had prevented the resolution of persisting problems with the maritime security arrangements. Unfortunately, the focus of the Prime Minister's Taskforce was short lived and there was little opportunity for broader integration of maritime security objectives and procedures before another political crisis brought further confusion to the maritime security arrangements.

In the financial year following the taskforce's report in July 1999, people smuggling increased fourfold, to more than 4,000 landings off the northwest coast, mostly on offshore territories such as the Ashmore and Cartier reefs. The arrangements were adapted by increasing the presence of Commonwealth officials on the inhospitable reefs and gathering individuals for transport to the mainland by chartered ferry for immigration processing. However, this process was turned on its head in August 2001 when, following the 'Tampa incident', the Howard government decided the unlawful immigrants should be denied access to Australia's legal system by preventing them reaching the Australian mainland. The immediate impact

of this policy change was to make the border protection arrangements, and most of the assets supporting them, irrelevant.

Consequently, ADF assets, under Operation Relix, had to be used, at huge expense and inconvenience, to implement the government's new policy. Before this the maritime security arrangements had cost around \$244 million. During the year following the Tampa incident, a full assessment of the opportunity cost of using ADF assets would suggest that something like \$535 million was devoted to the removal of unlawful immigrants, noting that this amount does not include the immigration-related expenses of maintaining detainees away from the Australian mainland.<sup>12</sup>

At the same time, other agencies such as AFMA found there was little capacity to assist them to meet their responsibilities. It was to take several years, and a refocusing on illegal fishing in 2005, before balance in the maritime security arrangements was re-established.

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*Some doubt also exists as to whether the current structure can fully support the robust development of maritime security arrangements into the future.*

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### **Improved arrangements for maritime border security**

There have been significant developments in maritime border security arrangements over the past few years and these should be preserved. Improved strategic direction, effective operational control and integration of agency objectives into the arrangements provide a good basis for continuing surveillance and maritime enforcement operations for the immediate future. However, because those developments have

been made by administrative arrangement, the basis of the recent progress has not been consolidated. It appears that more substantial changes are needed to preserve those developments. Some doubt also exists as to whether the current structure can fully support the robust development of maritime security arrangements into the future.

The strategic policy role of SMMC provides a basis for forward planning as well as for setting priorities for forthcoming operations. Indeed, the extended consultative model used by SMMC, its clear communication to Cabinet's NSC and its supporting structure, have provided a useful operational trial of processes relevant to the government's election policy to establish an Office of National Security under a National Security Advisor. With the SMMC, the higher-level strategic processes to support effective and cost-efficient maritime security are now broadly in place.

The directives accompanying the change of name to Border Protection Command in October 2006 appear to have redressed what was perhaps a too heavy emphasis on counter-terrorism and clarified, if it was necessary, the primacy of the Commander BPC in coordinating the civil and military contributions to civil maritime border security. With the capacity to directly manage HQJOC assigned ADF units and direct allocated ACS resources, the BPC now provides a unified direction of operations that was missing during most of Australia's previous attempts to provide maritime security. The model that now exists is one of an operational agency acting within strategic guidance and that is responsive to, and practiced in meeting the needs of, client agencies.

#### *Management developments for the future*

While those processes support current operations, they are not ideally suited to supporting the arrangements into the

future. Inevitably, operational agencies must adjust to changing circumstances and alter roles, procedures, training and equipment if they are to remain effective. They establish planning procedures to make changes before they are overtaken by events. The ADF is practised in this and has established a process for developing the future capabilities of the Force that includes analysis of the implications of changing strategic circumstances, development of concepts of how best to operate in these circumstances and identification of the types of equipment that will support such operations.

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*BPC's position in the maritime security arrangements has not been formally secured and it does not control the provision of the equipment and personnel that will fulfil the concepts it develops.*

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Former ADF personnel now employed by the ACS and located in BPC have been applying this methodology to identifying the future direction of maritime border security. They have conducted trials and evaluation of technology with the assistance of a Defence Science and Technology Organisation (DSTO) officer seconded to the BPC. A 'future operating concept' is being prepared to identify how BPC capability should be developed up to 2015. Those activities should eliminate the cycle of ad hoc reactions to emerging crises that characterised the development of the maritime security arrangements until recently. It will also support more effective financial planning by allowing longer-range identification of capital and recurring financial implications.

The significant risk to the successful implementation of these procedures is that BPC does not appear to be best placed to

ensure that they are implemented effectively: BPC's position in the maritime security arrangements has not been formally secured and it does not control the provision of the equipment and personnel that will fulfil the concepts it develops.

### *The need for a statutory basis*

The authority of the Commander BPC rests upon directives issued jointly by the Chief of the Defence Force and the CEO of Customs. In its nature, this situation is little different from the position of Coastwatch when it was first located within the ACS. Following the restructure of Customs in 2007, the BPC now sits within the Border Enforcement Program (managed by a Customs Deputy CEO) alongside the Maritime Operations Support Division that supplies the non-military assets used by BPC for the conduct of its operations.

The current heightened awareness of maritime security means that those administrative arrangements should not impede the development of future capabilities. However, history suggests that as this awareness fades there is a real danger that peoples' understanding of objectives will be lost and the maintenance of capacity, let alone its future development, will be overtaken by the inertia of dealing with current problems. A factor contributing to many of the problems that have arisen with the maritime security arrangements is that there never has been a minister with the responsibility for their effective implementation. This has not been a consequence of the complexity of the legislative environment but of a desire to avoid the creation of a central body responsible for enforcement. Repeated earlier crises were seen as systemic failures by operators but not by policymakers and, for this reason, repairing the damage has always been seconded to committees, taskforces and commissioned reports.

Yet there appears to be no necessary reason why enforcement of Australian law on water should vary significantly from enforcement on land and should not be the responsibility of a dedicated agency. To achieve the goal of a dedicated agency and to ensure that Australia's maritime security arrangements retain the capacity to deal with current threats and adjust to future developments, BPC should be established as a statutory authority by legislation. Such legislation could initially build on BPC's current roles and relationships. However, it would aim to reinforce BPC's current position in operations and improve its potential for future development by making it directly responsible to an appropriate minister for intelligence collation and assessment, for operational planning and implementation and for future capability development.

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*...the majority of resources used for that enforcement come from civil sources because of their cultural and legal appropriateness, cost efficiency and access to a more varied labour market.*

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Since many of these functions would continue to make heavy use of Defence resources, an appropriate portfolio for the authority might be that of Defence with responsibility given to a minister assisting. However, the major objective of the maritime security arrangements is enforcement of civil law, even though the ADF may take the lead for offshore counter-terrorism. Similarly, the majority of resources used for that enforcement come from civil sources because of their cultural and legal appropriateness, cost efficiency and access to a more varied labour market. Thus a more appropriate minister would appear to be the minister

responsible for both the AFP and Customs (if that conjunction is retained). This would ensure consistency in portfolio objectives focused on law enforcement and operating in a like environment, including appropriate arrangements for the effective use of classified intelligence.

Conduct of the arrangements nonetheless will continue to require an extensive use of ADF equipment, personnel and resources. However, the authority would not be able to take over Defence assets allocated to the support of maritime security arrangements. Section 9 of the *Defence Act 1903* requires command of the ADF be exercised by the Chief of the Defence Force. There appears to be no such prohibition on a serving ADF officer heading a civilian organisation. Hence, the appropriate leadership of the authority would lie, as at present, with a two star ADF officer, responsible to the minister for the conduct of civil operations and the provision of civil capabilities, and commanded by the CDF, through agreed arrangements, for the management of ADF assets and assistance to counter-terrorism operations.

This arrangement is similar to those now current but improves responsiveness as it allows direct ministerial access for authority management and facilitates the development of maritime security initiatives across the constraints of portfolio boundaries. The SMMC constitutes an appropriate mechanism for facilitating arrangements between departments and seeking Cabinet approval.

The development of the BPC has provided unity of command in the implementation of maritime security arrangements, an important element that had previously been missing. This successful command structure would be put at risk if such arrangements were not replicated in the new agency. The outcome would be an organisation that could, in effect, only develop policy advice

for maritime border security. Further, loss of the joint command may compromise the use of civil assets, such as the ACVs, that have been a part of counter-terrorism prevention measures around offshore installations. Doubts about the legal validity of the joint command and control structure of the BPC have been considered by experienced legal opinion to not infringe the requirements of the Defence Act but rather assist the making of both lawful and decisive judgments in offshore enforcement.<sup>13</sup>

The creation of a dedicated authority for maritime security may seem merely cosmetic. In fact, the value of political leadership in implementing policy is reinforced by the example of the SMMC. In principle, this differs little from the Planning Advisory Sub-Committee and Operational Program Advisory Committee that previously developed objectives and three-monthly programs for maritime surveillance and marine operations. However, supported by Cabinet, the SMMC appears to have had more success in less than two years than had been achieved in previous decades. History indicates that the attention of Cabinet seldom stays fixed for long while that of ministers is more enduring.

### *Improved procedures and practices*

The nature of the new authority should be largely that of the current BPC but, once freed from the confines of the ACS structure, it might be expected to develop a character more reflective of the maritime domain. This would include drawing more heavily on defence concepts, expertise and relationships and transferring more of the relevant aspects to the civil organisation than might be possible under the constraints of a major department. The roles and volume of work performed by Customs indicates that BPC occupies a small part of its responsibilities, even if the ACS does have a consistent and



long-term interest in maritime operations. A branch of Customs supporting maritime security will likely remain a minor part of an organisation whose major focus has necessarily been on the dockside and whose major activities are investigation and compliance.

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*The current diffusion of responsibilities makes these issues ones that are both difficult to address and on which to produce definitive guidance.*

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A statutory BPC would be free to concentrate on the nature of the maritime environment and be more likely to develop a culture reflecting this. It would be well suited to answer questions that do not easily fit the present portfolio structure, such as how to engage the growing coast guard activity in Southeast Asia or consider the roles and responsibilities of civil maritime security forces in time of military tension or conflict. The current diffusion of responsibilities makes these issues ones that are both difficult to address and on which to produce definitive guidance. The statutory BPC would be an organisation able to monitor the maritime security environment and make timely recommendations to government rather than, as with the establishment of the BPC on the recommendation of the Task Force on Offshore Maritime Security, await the appointment of another committee.

A 2004 audit report on the Customs National Marine Unit (as it was then titled), gives some idea of the importance of differences between organisational cultures. The audit reported that client agencies of the NMU were 'more than satisfied' with the NMU's performance. However, it identified some problems, mostly to do with the NMU's capacity to generate future capability. The

report stated that because the NMU had not produced an asset plan or strategy, its evaluation of options to replace its ACVs would be difficult. Financial planning also would be hampered because the NMU could not produce life-cycle costing data. Such management tools are used routinely in the Defence organisation. The report also noted that because the first of the ACVs would reach its half-life in 2004 and could be decommissioned as early as 2009 consideration of the next class of Customs vessel was urgent. Among the issues that would have to be resolved were crew technical standards (the *Bay* Class had been restricted in length so that Customs seagoing crew would not need additional marine qualifications) and the restrictions on boarding capability and for covert operations inherent in the vessel's design.<sup>14</sup>

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*The demise of NORCOM will necessitate a revision of procedures, as the Command controls operations against illegal use of the waters to the north and northwest of the continent.*

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#### *Fundamental issues for decision*

It is fortunate that several developments currently provide an opportunity to improve the maritime security arrangements. In 2009 BPC and the Customs Maritime Operations Support Division will move from their accommodation in Customs House, Canberra, into larger and more suitable accommodation. The management of contracts for marine operations will be centralised as part of the change. At the same time, Customs is expecting progress in developing a program to replace the *Bay* class ACVs and the ADF is moving to disestablish NORCOM.

The demise of NORCOM will necessitate a revision of procedures and the command

control of operations against illegal use of the waters to the north and northwest of the continent. Its commanding officer is designated Deputy ADF Commander BPC and the importance of its role in countering illegal foreign fishing and people smuggling is such that the government will have to take advice and seek client agency responses on proposals for the reallocation of its functions. This is regardless of any intention to reconsider the broader aspects of the maritime security arrangements. The move also necessitates a reconsideration of the nature of the deputy command of the BPC.

The redevelopment of the Customs ACV fleet also requires consideration of some fundamental issues. The ACS has a maritime tradition stretching back to its origins and continues to have specific operational requirements that influence both the nature of its fleet and its operational program. Yet the ACV fleet provides a substantial

proportion of the sea time used to enforce the maritime security arrangements and is involved across the range of operations, including counter-terrorism. Those factors emphasise Customs' unique role in the maritime security arrangements: it is both a major client and a major resource provider.

Such issues are relevant to the replacement of Customs' ACV fleet. The *Bay* class vessels were a considerable improvement on the *Minister* class that preceded them, reflecting the influence of the earlier vessels having been drawn into wider roles as the security arrangements developed. Nonetheless, as noted by the ANAO in its report, the *Bay* class suffer some shortcomings as a result of their design being restricted by Customs priorities, such as the limitation on length. Passing responsibility for the development of the next class of civilian patrol vessels to a BPC authority should ensure that the design will be optimised for national maritime



The RAN considers that, at 57 metres in length, the *Armidale* class patrol boats are the right size for response work in Australia's EEZ. This is HMAS *Maryborough*, last of the class of 14, commissioned in December 2007. © Department of Defence

security needs. Royal Australian Navy (RAN) experience with the *Armidale* class indicates that this should include a length of over 50 metres.

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*Fundamentally, a decision on Customs' place in the maritime arrangements is required before the development of the Bay class replacement...*

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Conversely, these criteria might produce a vessel that was inefficient if dedicated to ACS operations. Fundamentally, a decision on Customs' place in the maritime arrangements is required before the development of the *Bay* class replacement, regardless of whether there is to be any reassessment of the arrangements themselves. Customs will continue to require a maritime capability, and assessing the divide between customs specific requirements and broader national needs seems to be central to ensuring that the *Bay* class replacement delivers a cost-effective enhancement of the maritime security arrangements.

The approach taken in this report would favour a BPC authority developing a design equivalent to a civilianised *Armidale* (or a repeat order if there were financial benefits). Capacity for major ACS tasks would then be allocated by BPC, as for any other client agency, with the ACS retaining its fleet of smaller boats for specific Customs requirements. The present issue, however, is not in the answer but that these questions need to be asked before the *Bay* class is replaced. This paper contends that the answer would better meet national considerations if it were supported by the work of a statutory BPC authority.

A statutory BPC could still find such future capability issues difficult. However, with a strong naval influence it would be likely to take a different approach to some major issues. A military-oriented organisation considers the training of personnel to be fundamental to its efficiency, and the minister could charge the statutory authority with responsibility for implementing training and development regimes for both the effectiveness of the maritime border arrangements and the concomitant benefits for national maritime development. Such a role would not be an appropriate objective for Customs.

It is hoped that current Customs Marine Enforcement Officers and other maritime staff will make the transition to the BPC authority but, in any case, most mariners in the organisation will be civilians. Recruitment of naval personnel is difficult and undertaking maritime training and development supports national objectives. The RAN is currently understaffed by around 1,000 personnel and there is a shortage of some 60,000 international mariners, yet the Australian Shipowners Association notes that it cannot meet the demand from Australians for maritime training because of a lack of suitable berths. Because of the pervasiveness of skills shortages, developing procedures for training its own staff would be a primary responsibility of a statutory BPC, justified by its contribution to national skills development as much as by operational efficiency.

For reasons such as better surety of future capability development and deeper involvement in personnel training, it seems inevitable that there be a significant transfer of Customs Maritime Operations Support Division resources to a statutory BPC. Since much of Customs' marine capability is provided by commercial operators under contract, the transfer of administrative

components would need to include those elements responsible for contracting aerial and marine assets.

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*There are compelling reasons of efficiency for a BPC authority to retain the use of contractor services, which have generally worked effectively in providing surveillance and marine enforcement capabilities.*

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There are compelling reasons of efficiency for a BPC authority to retain the use of contractor services, which have generally worked effectively in providing surveillance and marine enforcement capabilities. There have, however, been spectacular failures to provide services or even to protect lives when contracts have been developed by agencies with no direct responsibilities for outcomes or experience of operational environments. It would therefore be a role for a BPC authority to develop, issue and manage all contracts to provide Commonwealth capabilities for maritime border security.

The authority's direct responsibility to a minister should go some way to ensuring contracts are drafted to prevent incidents such as happened in January 2008 when ACV *Triton* remained moored in Darwin Harbour, unavailable because its civilian crew were on strike as a result of the contractor's attempt to change the basis of their employment.

With such a structure in place, the exact nature of capability transfers from Customs is an issue that can be left to the developmental processes of a BPC authority, guided by the strategic settings generated through the SMMC.

There is, however, one area of activity that might be mandated, as it falls outside the normal remit of maritime border security.

This is that a statutory BPC should play a role in supporting marine research, primarily by providing vessel time. This would reflect another aspect of the naval approach, as navies have long accepted that knowledge of their working environment is important to success. It would formalise a process that has existed since AFMA first chartered the *Southern Supporter* and made space and time available for Commonwealth scientists to undertake work in the Southern Ocean. As on that initial occasion, combined research and patrol functions would justify an increase in operational time to the south of the continent sooner than might otherwise be acceptable. A model that could be followed is that of the Canadian Coast Guard, which operates vessels with a dual patrol and marine research function.

The question of nomenclature for a statutory BPC is one that will probably arise. The name 'Coastwatch' has been used for several decades and is generally familiar. While 'Coastwatch' appears on aircraft, ACS vessels carry the name 'Customs' and the title Border Protection Command now is used exclusively in public communications to avoid confusion. Unfortunately, 'Border Protection Command' is not an entirely instructive title. 'Coast Guard' is a generally accepted term for organisations with a civil maritime security role. It covers bodies with vastly different structures and roles, from the highly complex, powerful and expensive US Coast Guard, through the Canadian version that more closely resembles Australia's AMSA (except in its greatly larger size), to organisations similar in size and function to water police. The name Coast Guard could fairly be applied to an Australian statutory organisation for maritime security that controlled its own assets.

### *Objectives and costs*

The changes recommended above are a logical extension of the improvements in

strategic guidance and operational control introduced to the Australian maritime security arrangements over the past few years. They are not intended to see immediate increases in the quantum of activity in either surveillance or enforcement operations. The contract with SAPL for aerial surveillance is nearing full implementation and provides a significant increase in capability. The last of the RAN's *Armidale* patrol boats, which provide a superior capability to that of their predecessors, was delivered in 2007. The development of the AMIS promises to allow more effective use of such resources.

The principal aim of the changes suggested in this paper is to ensure that these improvements are entrenched and further developed. Despite the attention usually paid to operational capabilities, the effectiveness of their deployment has more often been improved by significant changes to the structure of the maritime security arrangements. Further progress will depend on continuing such structural reform. With a statutory authority able to focus on the complete range of maritime law enforcement issues it should be possible to replace the *Bay* class ACVs with vessels that provide the optimal improvement in national security performance; provide more Southern Ocean patrol days in conjunction with increased maritime research; and assist the development of Australia's marine skills base through agency training and development programs.

Establishing a new basis for the maritime security arrangements carries the risk of discontinuities in operational deployments and management of key functions through the transitional phase. In current circumstances, however, these risks can be reduced by matching organisational changes to the developments that are already planned or projected. The transfer of BPC to new accommodation allows for the relatively

painless relocation of the new statutory authority. The contemporaneous move of important ACS functions should make the establishment of the new organisation easier. There may be some delays, especially in recruiting skilled staff. However, this risk could be managed by delaying the full transfer of operational capabilities until the replacement for the *Bay* class is phased in and by coordinating the timing of training programs.

In present circumstances the cost of the proposed changes to the maritime security arrangements should not be great. There will be start-up costs for the new organisation and some costs for a degree of reorganisation within the ACS. There will be an inevitable increase in personnel costs to flesh out the BPC organisation, particularly if the government accepts that its role includes an employee skills training program. There will be no requirement for capital expenditure until the replacement of the *Bay* class and this is a cost that is already anticipated. Unless there is an unexpected upsurge in illegal maritime activity there should be no need for budget initiatives such as the \$388.9 million allocated in 2006–07 to fight illegal fishing or the \$79.5 million in 2007–08 for the development of the AMIS over four years.

The changes proposed in this report are important for ensuring that the intent of recent improvements is carried forward and that there is an improved capacity to build upon them to provide future capability. With these changes in place, the capacity will exist to develop an organisation that provides effective civil control of Australia's maritime zones by utilising best practice in relevant naval personnel, developmental and organisational fields in a civilian organisation that incorporates the efficiency of commercially provided assets with its own sense of purpose.

## Endnotes

- 1 Recognition of these claims was granted by the UN Commission on the Limits of the Continental Shelf. The Hon. Martin Ferguson, Minister for Resources and Energy, Media Release, 21 April 2008.
- 2 Bureau of Transport and Regional Economics, Australian Transport Statistics 2007, Table 16 'Summary of Australian shipping activity', Canberra, June 2007, p. 20.
- 3 From 1997–98 until 2000–01 apprehensions and legislative forfeitures of foreign fishing boats working illegally in Australian waters remained at around 100 per year. In 2001–02 numbers began to creep upward, with 367 vessels eventually detained in 2005–06, indicating a significant change in the nature of the illegal fishing threat.
- 4 This was generally 1,800 patrol boat days. The assignment of half the *Armida* patrol boat fleet to BPC represents an equivalent amount of the predicted annual output of the new patrol boat fleet. The allocation of other assets has developed in response to specific peaks in workload associated with increased people smuggling around 2000 and unlawful foreign fishing around 2005.
- 5 During 2006–07 *Oceanic Viking* also spent sixty-three days on fisheries patrol in north Australian waters.
- 6 Drawn from opinions expressed to the author during interviews with officers from various agencies and from annual reports.
- 7 Depending on circumstances, some boats are incinerated on shore but in restricted designated areas and under the control of AQIS officers.
- 8 Peter Nixon, Minister for Transport, 'Australian Civil Coastal Surveillance', Press Statement, Canberra, 9 July 1978.
- 9 The most prominent criticisms of the conduct of surveillance operations were contained in the *Australian Royal Commission of Inquiry into Drugs* (Williams Report) of 1980 and, later, the *Royal Commission of Inquiry into Drug Trafficking* (Stewart Report) of 1983.
- 10 A C Menzies, *Review of Tender Processes For the Transport Contract, Final Report*, Canberra, November 1987. Indeed, Menzies commented that no agency had sufficient stake in the effectiveness of the surveillance system to ensure a workable outcome: Menzies, pp. 70 ff.
- 11 By 1988 civil flying hours were down 56% and military surveillance was less than 30% of the level introduced a decade earlier.
- 12 These estimates are an attempt to identify the opportunity cost of diverting ADF units from their normal activities; the government used a budget-based method of identifying the additional cost to revenue of the operation. For more detail see Derek Woolner, 'Australia's Border Protection Regime', in Martin Tsamenyi and Chris Rahman (eds.), *Protecting Australia's Maritime Borders: The MV Tampa and Beyond*, University of Wollongong, 2002.
- 13 Cameron Moore, 'Turning King Canute into Lord Neptune: Australia's new offshore protection measures', *University of New England Law Journal*, 3(1), June 2006, pp. 68–71.
- 14 For a discussion of the issues surrounding the replacement of the *Bay* class ACV see; Australian National Audit Office, *National Marine Unit Australian Customs Service*, Audit Report No. 37 2003–04, Canberra 2004, pp. 88–90.





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## Acronyms and abbreviations

ACS	Australian Customs Service	EEZ	Exclusive Economic Zone
ACV	Australian Customs vessel	HQJOC	Headquarters Joint Operational Command
ADF	Australian Defence Force	IMO	International Maritime Organization
AFMA	Australian Fisheries Management Authority	nm	nautical mile(s)
AFP	Australian Federal Police	NORCOM	Northern Command
AFZ	Australian Fishing Zone	NSC	National Security Committee
AGD	Attorney-General's Department	PM&C	Department of the Prime Minister and Cabinet
AMIS	Australian Maritime Information System	RAN	Royal Australian Navy
AMSA	Australian Maritime Safety Authority	SOLAS	International Convention for the Safety of Lives at Sea, 1974
AQIS	Australian Quarantine and Inspection Service	SCNS	Secretaries Committee of National Security
BPC	Border Protection Command	SAPL	Surveillance Australia Pty Ltd
CMU	Customs Marine Unit	SIM	surveillance information management
CPU	Coastal Protection Unit	SMMC	Strategic Maritime Management Committee
CRV	Customs Response Vessels	UNCLOS	UN Convention on the Law of the Sea
DIAC	Department of Immigration and Citizenship		
DSTO	Defence Science and Technology Organisation		

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