



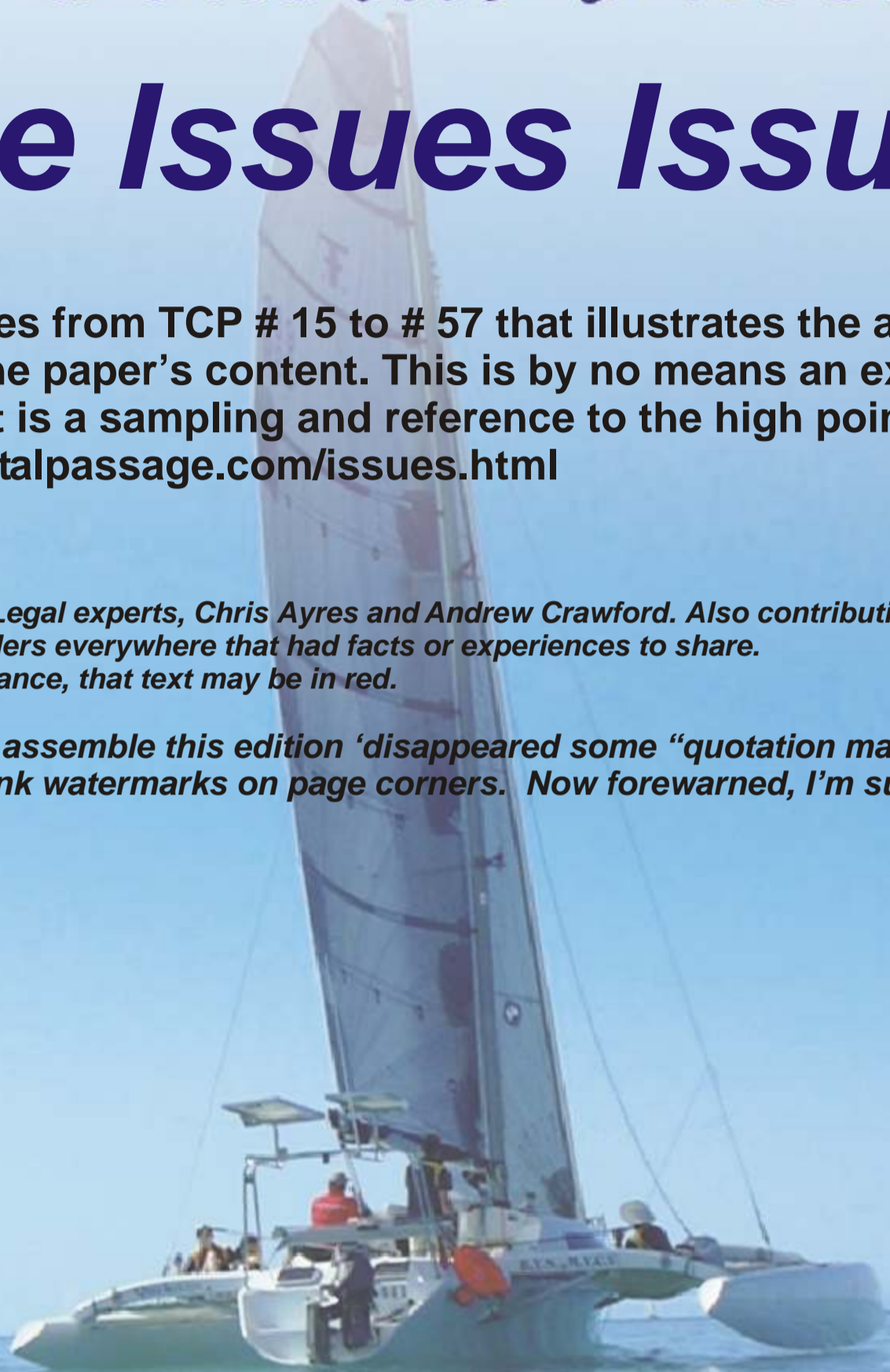
The Coastal Passage

The Issues Issue

This is a collection of articles from TCP # 15 to # 57 that illustrates the advocacy and educational thrust of the paper's content. This is by no means an exhaustive or complete assemblage. It is a sampling and reference to the high points. For more see www.thecoastalpassage.com/issues.html

By Bob Norson with contributions by Legal experts, Chris Ayres and Andrew Crawford. Also contributions by boating authority, Alan Lucas and readers everywhere that had facts or experiences to share. Where a small part of a page has relevance, that text may be in red.

Please note; the program used to assemble this edition 'disappeared some "quotation marks" and apostrophes '. It also left some pink watermarks on page corners. Now forewarned, I'm sure you will work it out!



TCP took on the job of holding government accountable not just because it was about boaties rights but because it was about human rights and because no one else would!

MSQ..Many claims but few facts

TCP ask's MSQ to show it's hand...

MSQ seeks to eliminate or restrict recreational vessels over 15 metres

By Bob Norson

A letter was sent to Queensland boat owners of craft larger than 15 metres Recently. The cover letter, signed by Captain John Watkinson of Marine Safety Queensland, outlined a plan to amend marine legislation. The accompanying seven page "information sheet," outlined the justification and proposed new requirements for this class of craft. The prime justification used for example was the grounding of the vessel MV Karma several years ago, on the beach near Agnes Waters. The information suggests that larger craft are often operated illegally, operating charter business's while registered as a recreation craft and usually are hard to trace ownership when liability for salvage is required. It is also stated that there are 91 vessels (as of 2001) that have been identified as "abandon, wrecked or derelict vessels spread along the coastline. The common pattern with these vessels is that they are unregistered or inappropriately registered - for example, an ex-commercial vessel registered as a recreational vessel." Six of these vessels were listed as in Mackay. To verify the claim, TCP contacted the local harbour masters office 12 August but as of publication they have not responded. The only abandon vessel in Mackay that TCP is aware of was a trawler (licensed commercial) that was recently auctioned at the Mackay marina boatyard for a reported \$12,000.

Other requirements are to include survey and commercial vessel type rescue and safety gear including emergency generators, lifeboats, radios and liability/salvage insurance. Skippers will be required to have a commercial ticket.

There is apparent support for the legislation from the marine insurance industry.

A boat broker consulted for this report says he believes the value of many craft over 15 metres (50 ft) will plummet as a result.

Comment and response:
This proposed regulation change (and the poo laws) appears to be an attempt at social engineering by means of a rather inarticulate statement most likely developed by a combination of MSQ management and lobby groups benefiting from the changes. Included in the "information sheet" defending the proposal is a claim that under existing law there is no means to enforce the commercial rego requirements.
"A vessel is being used in a commercial capacity but is registered as a recreational vessel. Under the current legislation it has met its obligation to be registered, but it is clearly not registered appropriately for its use. As such, it cannot be challenged as the requirement to register a vessel has been satisfied."
Only half true. A vessel found to be engaged in charter can be booked for a multitude of offenses, including but not limited to: no commercial rego, incorrect safety gear, incorrect certificate for master and crew and others. And what does all this have to do with a vessels size or configuration??

Allen Southwood of 60 ft. MV Solaray, contacted TCP to complain of the proposal. He has operated charter business's as well as private craft and he strongly disagrees with the assertions presented and the proposal.

Sam Chambers of SV Priority 1 writes:
Herewith the latest attack on the boating community initiated by that "Captain John Watkinson."
I confess that at this moment I'm so outraged that I'm almost lost for words that you could print.
I think that as in any investigation one has to ask - "Who or What benefits?"
Not the boating community - that's for sure.
Not the Queensland Government in any real way.
Not the people of Queensland.
Not the environment.
The Insurance Industry - YES
The Legal Fraternity - assuredly.
Boating Industry suppliers - Oh Yes
Improves boating safety - NOT BY ANY STRETCH OF THE IMAGINATION. Who suffers - 650 people.

Any review of the Poo legislation along the above lines might bring to question possible connections between members of the Beattie Government and it's bureaucracy with the manufacturers of a certain brand of marine effluent treatment systems (that don't work) I suspect that this is no different. This government is legislation MAD. Regulation MAD. Individuals freedoms are being eroded minute by minute by sledgehammering small groups who do not have the resources or political clout to fight back.
Sam Chambers

Continued next page...

Whilst I have been looking for some time for any/all information regarding marine sewerage as a pollutant, I have been able to access volumes of info regarding land based sources but nothing of substance regarding boat sourced sewerage as an environmental threat. I figured there had to be something of substance somewhere because I found it difficult to believe that government could be undertaking this kind of legislation in a vacuum of information or worse, relying on urban myth or so-called common knowledge. So, I was in contact with a "media adviser"/spokes person for MSQ on another matter so took the opportunity to ask about the foundation of the poo laws... and here is what I got:

July 18, 2005

To Jamie Collins, ("media advisor" MSQ)

I have a matter that I would like to ask the MSQ about. I would like an explanation as to the urgency of the marine sewerage legislation. Queensland boaties are being asked to relinquish important civil rights and large sums of money without compensation for the sake of a goal that does not seem to be clearly defined or justified. Surely for enforcement as radical as is the case of this legislation, a great justification must be involved. Please inform the readers of TCP, what event has occurred that might have caused such a drastic, many say, draconian response? In absence of that, what study has been made that would infer such drastic future consequences as to justify the act? If such a study has been made the public should have access to the entire report. Can you supply me with, or direct me to such a report?

I look forward to your reply,
Bob Norson

July 18, 2005

Bob,

Marine sewage legislation - please (a) enlighten us as to why you think these laws were urgent and "draconian" and (b) specify the civil rights to which you refer. I seem to recall you addressed this issue in an edition of your publication last year. The sewage management laws have more impact on commercial operations than the owners of most recreational boats, who are welcome to contact the agency to get accurate information about whether they need to upgrade and if so, to what extent, depending on their particular boating activities. They can also check the agency's website at <www.msq.qld.gov.au> for information. It contains fact sheets for the owners of recreational vessels and provisions as they apply to particular areas.
Jamie Collins

July 25, 2005

Jamie,
Lets not allow the important question to become lost in a dispute of semantics but to indulge your inquiry, I do infer urgency in the legislation in that Queensland Transport has spent many thousands of dollars in an advertising campaign to convince road users that "Every K over is a killer." That's a strong statement and the fine for such transgression is about \$150 for up to twenty (over the legal limit) of those killer "K's." In that kind of context, or in any context, I think it fair to assume there must be some compelling urgency to legislation that specifies fines of any kind, let alone over \$60,000 for having a bowel movement. As far as the "draconian" quote, that is the word that shows up with regularity in the flood of letters received at this office regarding the laws in question. (Several of those were copies of letters sent to the office of the minister, so am surprised you express ignorance of the subject.) While I believe the fines just mentioned are included in that description, I think it refers mainly to the act of boarding to inspect without warrant, as this is widely considered home invasion by boaties. This also address's your inquiry about the civil rights matter. The sanctity of ones home from invasion by arbitrary officials is understood by boaties, or anyone really, to be a fundamental right and the marine sewerage laws are seen to violate that.

Regarding your comment that the laws have more impact on "commercial operations," I beg to differ. Even if you say there is a different standard for the discharge from private craft, which I don't know to be the case, the expense incurred by individuals is, per person, far greater than that of commercial operators. A charter operator may spend little more to equip a boat to handle, say, ten passengers than the cruiser with a crew of two must spend. It gets worse for the cruiser, the charter operator will pass their operating expenses on in the form of increased fees, the cruiser can not. All this does not yet account for the space issue. A cruiser with a typical, say, 11 metre mono hull sailing vessel that must install a treatment system and/or holding tanks, (Provided my information is accurate.) is asked to sacrifice space in the vessel that would be equivalent to that of one of the smaller rooms in a suburban house. I could develop this argument further but I hope I've made the point.

So.. I've given what you want first and now for our readers, the question still stands, what event has occurred or what study has been made to justify the implementation of this act?

Since you have invited inquiry regarding requirements for boats, here is mine. I have a 12.2 metre sailing vessel with a normal pump marine heads. I intend to sail, as I have for years in past, the Queensland coast from Tweed Heads to Cairns including, but not limited to, The Great Sandy Straits, Morton Bay, the Barrier Reef and various Islands and inland water ways such as the Brisbane River. I welcome that "accurate information" you mentioned.
Sincerely,
Bob Norson

July 26, 2005

Bob

Be assured it's nothing to do with semantics. The state government is serious about protecting our waterways from vessel-sourced pollution and places a priority on minimising the risk of negligent and/or harmful discharges that threaten the health of the marine environment.

The legislation applies to certain clearly-defined areas, and therefore the general use to which a boat is put will determine what equipment might be required to comply with the law.

Maritime Safety Queensland extensively consulted boating and marine industry organisations and clubs about the legislation before its introduction at the beginning of 2004

etc

Comment by Bob Norson

It has everything to do with semantics. The response appears to me to be very carefully crafted and well practised in delivery. In part, word for word from letters received by boaties and quotes from those "consultations" mentioned. Heavy on inference but no foundation or support for the assertions at all. I edited out the remainder of the last letter as the content is very familiar by now and even defamatory to boaties. There was certainly no attempt to respond to my questions even though one of them was invited! If you look at the wording of the first paragraph above (Be assured..etc) it uses buss words .."vessel-sourced pollution..negligent.. harmful.." but stops short of actually stating that vessels do pollute but that MSQ is "serious about protecting".. "minimising the risk." Very careful wording that in my opinion could be in place to preserve deny-ability. And well they should because (I am now satisfied) there is NO research that proves boat sourced sewerage is a threat to our environment. I also doubt there has ever been in the history of Australia, an event involving marine sourced sewerage that would reasonably be considered to "threaten the health of the marine environment."

TCP has published reports by marine scientist, boating industry experts and notable boating community spokespersons all condemning this legislation as erroneous in fact and abusive in enforcement.

THE CURSE OF POLTER-GUY

MSQ seeks to eliminate or restrict recreational vessels over 15 metres

comments continued from page 14

This is a matter of concern for all boaties as the precedent set if this proposal becomes law, will make similar abuses of the rest of the boating community an even simpler matter. Is MSQ attempting to re-shape the boating community from one of dedicated cruiser to marina bound weekend warrior whilst benefiting some private business interests? Don't be too smug if you are 14.5 metres... it might just be a matter of time.

If you have something to say to MSQ, you can send letters to:
Captain John Watkinson
GPO 2595, Brisbane, 4001
FAX 3120 7499 or email;
msglegislation@msq.qld.gov.au

To deal with a few of the arguable points in the information sheet on the proposal:

1.... I think it wrong to trust the numbers given by MSQ to demonstrate the urgency in this... I know Mackay and would like to know where these 6 "abandoned, wrecked or derelict vessels" are. I know the area well and know of none. MSQ has a poor track record when it comes to "facts" presented to further the policy of the day.

2..... There are strong laws in place now regarding the use of a recreational vessel for commercial purposes. Few would try to get around it. You couldn't succeed. The licensed boats would do you, random fisheries examination would bust you and the first beef you had with a client would finish the whole thing. The claim is not credible and wholly unfounded.

3... I am familiar with the incident of the "Karma"... As I recall from reports at the time, due to an error in navigation it wound up on a sandy beach. Before the next good tide could float her QLD transport ordered her fuel (5000 litres as I recall) offloaded, foiling that idea as the vessel would not have power to assist the salvage. The vessel was not in danger of "breaking up" the fuel load was nothing more than an average trawler might have and the action prevented the forthright salvage. All would have been best served by letting the boat refloat. The risk of a spill of fuel was only when it was being transferred.

4... to say that vessel owners can not be identified is exaggerated in that the owner is on the rego (private or commercial) and if the vessel is not registered then the existing laws, again, are sufficient for the resolution of the problem.

5... assigning fees to other vessels of a type to cover liabilities of one is incredibly unfair, undemocratic and certainly un-Australian.

6... Converting to survey for most 15 metre plus vessels is not possible as a practical matter and inappropriate for the converted commercial vessel. Commercial rego should only apply when the craft is engaged in commerce... thus the name. A commercial craft is a work place and possibly passenger service as well. Survey standards are something reasonable to have in that case but wholly inappropriate for recreational craft.

7... Creating insurmountable obstacles to registration whilst ruining the resale value of a vessel, is not the way to eliminate abandon vessels, it's a way to create them.

By Sue Osier, SV, "Peregrine"
Poltergeist: n. a supernatural being supposedly responsible for throwing objects about. -- Origin from German poltern, 'make a disturbance' + Geist 'ghost'

Polter-guy: n. a supernatural being who lives exclusively on sailboats and who is supposedly responsible for everything from a lost do-hickey to broken booms -- Origin S.M. Osier, Mexico 2000

In Indonesian waters, we were made nervous by small, fast, multi-hulled fishing boats that would travel at Hobie Cat speeds straight at us and then turn away just before we thought collision was eminent. The explanation we got for this frighteningly bizarre behavior was that the fishermen were dumping bad spirits off from them to us. At the time, I didn't really believe that explanation. I figured we were just cheap entertainment. In Bali, I lost some of my skepticism. Keeping away bad spirits was a daily ritual. Hundreds and hundreds of tiny shrines are scattered on the roads, and in the towns. Most businesses have one. They are usually on a pedestal about 4 feet high, are made of stone (cast cement), and are about one square foot, or less, in size. These can be a small temple, a Buddha, or Ganesha (the Indian God with the elephant head), etc. The temple (or icon) sits on a platform so there is a ledge around it. The ledge is where the offerings are put. The offerings are flowers, incense, food, glasses of water or tea, money, all sorts of things. Even the western oriented Yacht Club and adjoining restaurant participated. Every morning, a small, wiry old man left offerings of flowers and incense in strategic places in and around the building. The offerings came in 3x3x1/2 inch cardboard dishes. Small blossoms of many different kinds and colors were artfully arranged (all looked identical) in the dishes, and sprinkled with water. They were placed at the entrance, one on each side, inside on several small shrines, on the reception counter, etc. An incense stick burned at each one. One morning I asked him why he did this. One of the security guys translated for me. It was to keep the bad away. There seemed to be a little trouble getting the translation just right, so I'm not really sure if the "bad" referred to spirits, luck or just plain evil. In any case, I thought it sounded like a worthwhile and important job. More people should spend time repelling bad. I thanked him for his time and donated a bit of money for incense and dishes. I'm sure that

many people offer many things for many different reasons; a prayer for a loved one, asking a forgiveness, a hope for a successful business day, asking for help in finding the lost car keys, but a lot of those incenses were burning to keep the bad away. Distilled, I guess that's asking for tranquility.

By now you're wishing I would get to some kind of point, and so I shall, now that I've laid the groundwork. One of those fishermen dumped something on our boat. I'm calling it a polter-guy. (For you non-sailors, some sailboats have equipment on them called fore-guys and after-guys. I first thought up the term Polter-guy five years ago in Mexico when I felt as though something below decks was shoving me around when the boat lurched.)



Sue Osier (at left with daughter Bonnie and Gene) Has been a regular contributor for TCP. Her and Gene are doing a circumnavigation that began in San Diego and should they survive the Red Sea (next issue of TCP) may get to the Med this year!

The first four years of our circumnavigation were relatively problem free. Since Indonesia, we have hit a reef,(TCP # 11) had our alternator (and therefore, engine) die, surfed a tsunami, (TCP # 12) lost our fresh water when the electric pump went, had our boom snap in half during a violent, lightning filled squall, had our fuel pump (and therefore, our engine) die, had our autopilot die, and, in Aden (where we still sit), had a pugnacious fellow cruiser denounce us, very publicly, over the VHF radio as "complete disasters" I know, I know, after reading the previous few sentences, how could any sane person disagree. For the last five months, we HAVE been a complete disaster. However, he was referring to our trip from Oman to Aden. That was not a complete disaster, only a partial one. (This episode is a story in itself, so I will not elaborate now; I'm just illustrating another black event.) After the dressing down, Gene was

very cool and didn't respond except to say that opinions were allowed and to pass on a message we had received from another yacht for Mr. Pugnacious. I felt gutted. It seemed the entire anchorage was avoiding contact with us. We were pariahs. Just when I thought we couldn't be more embarrassed or humiliated, we were. That very night, in winds of thirty-five knots, Peregrine dragged We NEVER drag. Well, hardly ever. At two in the morning, I had a psychic flash and came on deck to see Peregrine bearing down on a hapless victim. I yelled for Gene who was asleep, climbed out the hatch, jumped to the engine, fired her up, threw her into gear, and put on the throttle (thank God I've learned how to do something on this boat). We averted disaster by a few feet. In a heartbeat, Mr. Pugnacious was as credible as Mother Theresa. I'm sure we were better entertainment than David Letterman for the late night crowd.

You must know and understand, that I am not a superstitious person, so the exorcism that Peregrine received the next day was simply a way for me to fill the gloomy, solitary hours. I got out my statue of Ganesha and my Polynesian Tiki, lit some hand rolled Indian incense, and put on a CD I got at the Nature Company that musically takes you through a Shaman's healing journey. When that was through, I played Handel's Messiah, Beethoven's Hallelujah chorus, Schubert's Ave Maria, and Wolfie's Requiem Mass. I took out my hand fan and fanned the pungent smoke out the companionway and hatches. I'm sure that if we did have a polter-guy, it went out with the smoke.

Before I chased away the polter-guy, I got a bad case of Ali-Baba Belly (my term for the Middle Eastern version of Bali Belly, or America's Montezuma's Revenge), and Gene got a nasty barnacle gouge in the foot. We have been convalescing for about a week. I am now able to be more than 10 feet from the head, but Gene's foot is still a mess. We had to wait in Aden in any case because we ordered a new autopilot from the US. I'm sure the polter-guy is gone because we got the part and Gene installed it without a hitch. It only cost us an extra \$200. American in baksheesh to lay our hands on it.

We plan to leave in the next few days. I don't know if we will go to Massawa, Eritrea or not. It's approximately 400 miles from here. If winds are favorable, we may just keep going...

Continued later!..

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This issue, last issue, etc.

This issue; The big news is the potential reorganisation of GBRMPA (Great Barrier Reef Marine Park Authority, see feature within somewhere). The federal Government wants to change the structure so instead of an independent authority that can develop and implement its own policies; it will have oversight of parliament. While some may have concern of the government's intentions in the long run it may be that GBRMPA has brought this on itself by its close association with the extreme green lobbies. The GBRMPA squandered its reputation for fairness to many users by its treatment of recreational and commercial fisherman in the recent RAP debacle. Even if you are happy with the result, the way it was brought about was at least questionable. GBRMPA is alleged to have been guilty of gross miss-information in its dealings with fisho's and has shown it has an agenda that is at odds with its own charter and the interests of those who live here. The submissions made to the government concerning the issue tell a story. While letters like the seven page submission from Senator Boswell of Queensland seem clear and to the point in message and includes supporting documents, GBRMPA's rambling forty three page submission wanders aimlessly. "Recognising that climate change is a global concern, the GBRMPA will continue to manage to increase the resilience of the marine park." This would be the famous shade cloth over the reef, right? Don't be too smug if you think "I don't like fishermen anyway." If some greenies from the Gold Coast or Los Angeles take a notion to limit yachts in the park (and why would they care) these people might do it. A very common suggestion from the green lobby was that anyone with a "vested interest," (fishermen, tour operators etc) should be excluded from the process altogether. Not very democratic guys! If GBRMPA hadn't done such a great job of alienating half the people that live on the reef coast, the Commonwealth wouldn't have had a look in. But now? We wait to see. Thanks to Peter of *Naiad* for the tip.

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Don't miss a chance to tell them you saw their ad in TCP!!!

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Fishermans Wharf Marina
- *MARYBOROUGH
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- *TINCAN BAY
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- *MOOLOOLABA
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- *SANDGATE
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Seaway Marine
Wynnum Manly Yacht Club
- *BRISBANE
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Cruising Yacht Club of S.A.
Royal S.A. Yacht Squadron

Last issue; I am glad to see that my article on the latest proposal from Maritime Safety Queensland has had some reaction from Boaties, though some report a "deafening silence" when inquiring to government. We'll see what happens but keep in mind it has become very fashionable in government(s) to throw out wild proposals to check reaction and if there is negative press they sometimes backtrack with statements like, 'we were misreported/misquoted etc by the press or the incompetent opposition' or whatever and then deal down to the best they think they can get away with. In any case, anyone with a 15 metre + boat has direct reason to be concerned about that little bomb and everyone with a boat has an indirect concern. If MSQ tries to claim that the proposal would only affect boats they DEEM (very popular word in Brissy lately) to be "inappropriately registered," I'll have to ask who decides what the difference is then? A fisheries officer!? My rego still says "steelcraft open runabout." A funny way to describe a 40 ft steel ketch rigged sail boat. I tried to get the mental midgets at Queensland Transport to set that right years ago but finally gave up. The example of what MSQ claims is an "inappropriately registered boat" on a photo on page 4 of their "information sheet," looks like many boats in the marina beside me, and every one of them is private. Hopefully soon, there will be a statement issued condemning the biased press and "clarifying" the issue, assuring that 15 metre boats will only have to have insurance.. That will be the last thing they agree to give up I'll bet. A foot in the door for mandatory insurance of boats may be the primary goal after all.

The Northerlies; Can anyone out there remember a season like this? As sustained but difficult as the early season southerlies were, the late season northerlies have been unbelievable. 10-15 knots NW-NE for over two months now. A lot of boats may return early to Moreton Bay because they figured they should take the gift while they have it. It's been different! Some sailors are also talking about the possibility that the change in weather pattern may bring on the cyclones and huge rains we haven't had for a long time. As I edit this just before printing.. the wind has come up hard but still from the north and it is raining.. hard.

Communes? Have you been looking for property in the country somewhere where there are no close neighbours? A hundred acres in the cane fields somewhere that you might share with another boatie or two? High prices and bad neighbours seem to be motivating many people to consider such a situation. It's a very hot topic up here in the north. I'll be sampling opinion on whether I should create a community bulletin board to connect like minded cruising folk. Meanwhile, if someone out there has a piece of land within an hour of Mackay they can share, ring me! Not kidding.

How do you feel?; A little cruise among the islands and chatting at the anchorages reveals an anxiety among cruising folk. Maybe it's the boardings or watching the TV news but for whatever reason I didn't have to prompt people to talk about the subject. There is a sense that the country is going the wrong way in a hurry, that the better days have gone. There is a strong sense of cynicism about the leadership. Thus.....

Australian Bill of Rights; Check out the web site www.rightsaustralia.org.au for info on an organisation that can help you direct your angst if you want to feel you are doing something about it. I took a cruise through it and it had much in the way of free info and access to statistics and articles.

Avertising/Propaganda?; ("Back in the USSR.. You don't know how lucky you are..") As I was having a look at a weekend paper, noting the profound lack of coverage on the new Industrial relations bill, I choked on the four page government piece of blatant propaganda and decided to add up the dollars spent on this one weekend paper. After checking on the web site of the paper in question to get ad rates, I added up the cost to us tax payers of government ads in just the first two sections. Here is the result as near as I can determine without being able to peruse an actual contract if there is one. Commonwealth = \$387,689! The various states and territories = \$60,014! Like I said, that is just two sections out of many in one edition! One paper! The Commonwealth may pay up to half of the entire advertising income of many Australian papers. So how come in New Zealand our new laws are front page news (according to their web sites) and in this paper... a couple columns buried in the back. I'm sure that swag of cash doesn't affect editorial content... does it? By the way.. want to know how much in government advertising TCP has had so far? That's easy to add up... \$000.00 Principals can be expensive things.

We have a Web Site!! Finally. I apologise for the delay. I have had a full plate lately and if it wasn't for the help of WEBIT studios in Eden Valley, SA it would have been even longer. The latest edition of TCP will be available to download from the site so no matter where you are you can get your fix. There will also be space made available for discussion of issues like the hot topic of a boating organisation. I will try to cover some of this inside this issue but suffice to say that there are qualified and keen boaties out there that have some very good ideas. TCP hopes that an organisation can develop and will try to assist with publication and information but it is going to come down to you out there, to make your decision whether or not you want to stand up to government on issues of privacy and fairness. Boaties do bear an unreasonable burden it seems. A soft target. www.thecoastalpassage.com

I Hate 24 Pages!! It's a couple days before printing and I have decided to do 24 instead of the 20 planned. Damn! 20 pages is a nice size for me to deal with and well supported by advertising BUT.. There is a bunch of material that needs to be published.. so tough shit Bob! The quality of contributions and the need in the community of a forum demand it. So be it!

NEW LOCATION!

Fishermans Wharf Marina office, Urganan
 thanks to several anonymous sailors and keen staff



The Coastal Passage

The Voice of the Great Barrier Reef

Bob Norson: Publisher, Editor, journalist, advertising, photographer, computer & marine heads technician & tinnie adventurer.
 Kay Norson: retired production & guideline apprentice, now postie expert & apprentice organiser...

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Information you wish you didn't need to know....

Right to Board?!?!?

By Bob Norson

If you are boarded by any official without a warrant (except in the case of a police officer who reasonably expects to find evidence, contraband or a person sought for crimes etc) you may have a case against the individual(s) involved that could cost them many thousands.

This subject was discussed in previous issues of TCP and it has had an effect out there but you should know the up-date and how the officials are responding.

Trespass is a serious crime which can be compounded by an ignored request for the perpetrator to leave. It is regrettable that this is information that you should know but since the Dollop Wallopers are intent on abusing your rights you may need to do your homework to protect yourself. Did I say it has had an effect? Oh yeah! We have several accounts of boats that have refused boarding and have been successful in keeping their floating home safeguarded. We have reports that "fisheries" and some others are now openly tape recording contacts. I believe this is likely a means to insure your permission, if granted, is secured on record.

These people practice on how to trick you into giving permission to board and you may not even realise they have done it. It can be very difficult for people brought up to a standard of courtesy to not respond positively if the question is asked just so. Don't be induced into a conversation that may be disguised as congenial. An example of this idea that you may be familiar with..you have been stopped by a cop for speeding on the highway. What's the first question the cop asks? "Why were you going so fast?" You are meant to believe that if you have a good enough reason the cop may let you off, so, you say something like.. "oh, not to fast was I? I'm a little late for my daughters wedding!" While you are grovelling, the cop is writing in their notebook, "driver admits not knowing his speed and was in a hurry to get to wedding." You were done the instant the lights came on and if you contest it later the cops note will probably prevent you from winning. Say nothing and watch them freak out, or I like to respond; "you mean your case is so poor you feel you have to trick me into an admission to make a conviction?" That's beside the point but the idea is don't say anything except "I do not give permission to board my vessel." In short, since there is no successful answer to an "are you still beating your wife," question, don't answer. Watch every word.. they are!

"They boarded my vessel anyway!" An important case to refer to is that of "Plenty V Dillon" decided in the supreme court of South Australia in 1997. The web has many references to it. Essentially, two cops came to a home with a summons for a person not there. The resident asked them to leave and they did not. The resident then raised a piece of timber that the cops claimed was a threat so they "disarmed him" (I can imagine how!) and arrested him, charged with assault. The supreme court found that the resident had the "entitlement to resist the officer's entry on his land." The court found for the resident and assessed \$146,000 in damages and interest. There is more to the case of course but the point is, **you do have rights!** If you think you may have such a case you should talk to a lawyer for advice. As the man says below, this is merely information.

Myself? If I had a job that required me to invade a fellow citizens home... I would refuse or quit on the spot. As a matter of principal and because if there is a suit, it is against the individuals not the boss! The defence of "I was just following orders," hasn't worked since the Nazi's tried for it.

A few words from those more informed than myself;. The late US supreme court justice Jackson;

"Among deprivation of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government... But the right to be secure against searches and seizures is one of the most difficult to protect. Since the officers are themselves the chief invaders, there is no enforcement outside the court."

As Lord Denning MR said in Southam v Smout (1964) 1 QB 308 at 320, adopting a quotation from the Earl of Chatham:

"The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter - the rain may enter - but the King of England cannot enter - all his force dares not cross the threshold of the ruined tenement. So be it - unless he has justification by law."

Following is an excellent letter from SV Lady Lonsdale that appeared in a previous edition of TCP. The original subject was the pool legislation and I have edited out those specific references to broaden the scope of the information.

"Your vessel is your home! What to do when the dollop-walloper visits."

My name is Chris Ayres, I am a retired lawyer, my areas of expertise are administrative law, taxation law and human rights. Being retired I cannot appear in court for anyone, nor can I give legal advice. Should you require legal advice or representation you must seek the aid of a practising lawyer either through a community legal service or private solicitor. What I outline in this article is merely legal information. You should seek legal advice from a practising lawyer and should not rely on what I have written.

Under common law, your vessel is your place of residence if it is as a judge once described it "The place of residence of an individual is determined ... by reference to where he eats, sleeps and has his settled or usual abode... he may also reside where habitually lives, even if this is in hotels or on a yacht or some other place of abode..." A houseboat is also included in the definition of a 'premise' in Queensland under the Residential Tenancies Act (Qld) 1994.

In taxation law, a vessel has long been seen as a place not just of residence (capital gains tax legislation is expansive and includes a vessel as a place of abode, goods and services tax law specifically includes a floating home and the Income Tax Assessment Act (1997) includes a "houseboat or other mobile home" as a 'dwelling'. Under taxation law, it is recently been decided that you can even have a 'home-office' for which you can claim a taxation deduction on a vessel!

Finally, the Criminal Code of Queensland also gives a lot of defence of a vessel:

278 Defense of possession of real property or vessel with claim of right

When a person is in peaceable possession of any land, structure, or vessel, with a claim of right, it is lawful for the person, and for any person lawfully assisting him or her or acting by his or her authority, to

use such force as is reasonably necessary in order to defend the person's possession, even against a person who is entitled by law to the possession of the property, provided that he or she does not do grievous bodily harm to such person.

So your vessel is not a vehicle, it is a place of residence. As such you may claim the legal protection normally accorded a place or residence.

So what can we do?

1. Do not allow them right to board until the following steps are followed. These do not amount to obstruction, merely reasonable conditions to protect yourself (yes) and your place of residence from unlawful intrusion.
2. Request identification of the officer(s) concerned. They must produce it.
3. Make a note of date, time, place, name(s) or persons concerned, vessel used by the officers seeking to board and details of all questions asked and of your responses. Perhaps you partner could do this or you may choose to use a tape recorder. Remain calm. The log is a legal record that you may need to produce in court.
4. Photograph the officer(s) concerned and their vessel. Digital cameras are excellent for this. The photo is a legally admissible record of the parties concerned and is usually time and date stamped. It can be used to send through to Fisheries for confirmation that

the officers concerned are acting lawfully. The photo can if you choose - be posted on a website or printed and displayed in public places.

5. Request the officer(s) produce a lawful warrant to enter, duly signed and prepared by a Magistrate or Justice of the Peace (under Section 77 (4)) "Unless entry is authorised by warrant, an authorised officer may only exercise the powers mentioned in section 125 for a place if its occupier consents to the use of the powers when consent for entry is given." A Harbour Master requires a duly executed warrant and I suspect it would be a brave magistrate indeed who would allow a mere Fisheries inspector to board a vessel and seize property without a warrant.
6. Do not resist or obstruct any officer(s) who still persist, but remind them that:
 - They are civilly liable under Section 76 for acts or damage caused through their negligence.

Failure to obtain a warrant may be seen as negligence. Explain you are simply trying to protect them!

- You are also entitled to compensation for damage under Section 110. Nervous shock claims can be rather large!
- Any 'evidence' obtained without warrant may not be admissible in court. The first thing a good criminal lawyer does is question the validity of a warrant, ask any policeman!
- Once aboard, photograph and record anything and everything that occurs.
- Offer them a good cup of tea and remain calm and polite at all times.

Chris Ayres BA(Hons)MA Med (Hons)LLB GradDipLegPracM. Tax
Solicitor of the Supreme Courts of NSW and QLD Solicitor to the High Court of Australia





By Capn Stuart Loo
SV Floater

On account of general stupidity and obvious lack of education on the matter, I have long harbored the mis-begotten belief that all shit (and we're talking of the alimentary kind here!) stinks! I mean... my shit, your shit, Bob's shit...it's equally...well...shitty? Quite so! you say. Think again me old china plate! I am afraid that according to the NSW Waterways Poo Police...we're suffering from a misapprehension on this score. What gives you ask. It's a bit of a story.

One fine day, we're tootling along under motor and I am hearing something odd from the gearbox, a noise that I know isn't right. And the engine doesn't seem to be fully engaging the drive shaft. It's funny how your mind works in these situations. Part of the brain is saying "...God no...no...not that!... not here!! And from the other side of the brain-box there's a little voice grasping at straws "relax buddy...it's probably just the linkages". The hell it is! Linkages feel different. I know about the feel of mechanical things. I read 'Zen and the Art of Motor Cycle Maintenance' 30 years ago. Naturally, this little scene is being played out with exquisitely ghastly timing. We are steaming up the Clarence River, to do a bit of sightseeing on our way north. Right now to be precise, we ain't steaming nowhere; rather we're being shunted upstream by the tide at four knots, like it or not. Two miles ahead is the Harwood Bridge, booked in advance to open, but how the hell to negotiate the opening span with no motor?

Little did I know that this was merely the preamble to the mother of boating nightmares for 2004. My Hurth gearbox I discover to be a basket case, needing a complete overhaul, costing almost as much as a new one. While at anchor in front of the Maclean Court House (a most unfortunate place to drop the pick I soon discover) I extract the box, find the local dealer and arranged for said unit to be collected. Three weeks later, after the usual quotient of begging & pleading, the renovated unit is finally back on my back deck. I have two hours to re-install the box, up anchor and motor against the four knot tide to catch the pre-arranged Harwood Bridge to get out of this hellhole. But that's another story.

But ah! Maclean...the 'Scottish town', it says in the town promo stuff, meant I suppose to encourage people, even yachties perhaps to come and visit. And well, here we are, prisoners of the town's hospitality you might say; swinging up-stream on the incoming tide and down-stream on the ebb, the Maclean Court House just a biscuit toss from the stern cap-rail.

One dewy morning I row ashore, alighting on the boat ramp. I am standing at the tap, filling the water bottle. Startled! I look around and there, silent, right behind me (how did he get so close without me hearing him?), is the local NSW Waterways Boating Services Officer. He manages to effect the 'pasted on', obsequies smile. It must be in the BSO Manual; 'smile as you approach the customer'. "It's OKdon't get nervous now, we're with you on the water!" The BSO opens with a disarming question about my boat and

the purpose of my visit and then switches without a flicker to my marine toilet. It's so smooth, so practiced. I am stuck here I tell him, until the man fixes my gearbox. "Our boat has a conventional pump out marine toilet" I am in other words, open and truthful in the face of the BSO's questioning. Bad mistake! "Do you realize" he says, switching octaves, his voice all harsh and punitive now: "...do you realize that the Clarence River is the biggest prawn fishery in the country?" I get it, I am thinking....I have crapped in my toilet and by so doing I have placed in jeopardy, the biggest prawn fishery in the country, the country's balance of payments and the stability of the world monetary system! He adds, "if there's an incident...you can expect to be in big trouble!" I say "Are you telling me that you're issuing an infringement notice?" "No ...I am not going to do anything", he says "I am going to discuss the matter with my superior".

Well, my Sydney address never did get the original infringement notice for \$700 for 'pollution of the waterway' (sic). But I did get the threatening letter of demand for the same plus costs etc, some months later. Of course this is an old intimidation trick; I assume reserved for boaties having prior form with NSW Waterways. Some years ago I wrote a letter to the Sydney boating magazine "Afloat" regarding Waterways BSO bullying tactics. This little bit of correspondence earned me a notation on the Waterways database ("What notation & what database?" I hear you ask). It's the file note that means you get 'special service' from Waterways.

But the funny thing is while idling my time waiting at Maclean, I did get to speak to some of the local fishermen who trawl the river for a living. And did they (the local fishing boats that is) have poo tanks and ...well...you know ...comply with the law? "Geezuz mate!" one knarled chap about 6'3" in his blue singlet says, fixing me with his beetling gaze ... "you'd have to be f---n jokin wouldnya!" Well I'm thinking... looking up as he unravels his huge frame in my direction.. "I won't be contradicting him on that score!" And in this sentiment, it seems that the lightfooted local BSO and I are at one and in total agreement. Funny that!

Perhaps the explanation for this apparent partiality and inconsistency in the application of NSW Waterways poo laws in Maclean, lies in the fact that all shit ain't equal. Perhaps shit sourced from out of town boaties really is toxic to the prawn fishery and a danger to the ecology of the planet, whereas local shit isn't. Or could the real toxic issue here be ...'shit sourced from boaties who write letters to the Editor about Waterways?' Look I'm just a dumb yachtie.

Stuart has been sailing since the age of 12. With his partner he is cruising somewhere on the Australian coast. He now asks to not have his name printed on any material critical of the gov...

Bobs note; The Clarence River is lovely but if you cruise it you see that most of the banks are cane fields or cattle paddocks.... so it has a wonderful mix of cow shit and herbicide...num num!! Maybe the prawns are better off with the good captain .

continued from page 14



In search of a cruising adventure...

Sailing further on up the coast without serious problems we were greeted by family and friends at various spots along the way, all wishing us a safe journey. Our next "hairy" experience was coming into Lancelin in a following sea. The swell had built to 2 metres and was promising to visit us in the cockpit. The following day out we were truly "tested". With Jurien our destination we had put one reef in the main and later wished it was two or three. The S.S.W. wind strengthening and now with a 3 metre swell teasing the transom. One giant wave "dumped" in the cockpit and dinghy and gave everything a good splash inside the cabin. Even the auto pilot had a hard time of it. Brian commenting "I have never seen a swell that didn't look like more than it is forecast to be..."

At Jurien we anchored in the lee of Boullanger Island. It proved to be a nice spot with heaps of bird life, big friendly seals and lots of debris washed up from a recent storm. What more could an addicted beachcomber

wish for! We also met a team from U.W.A. who were monitoring Dibblers on the island. This shy little marsupial is found only here and in the Fitzgerald National Park. Annabelle, the team leader, was studying the effect of a large mouse population on the Dibbler. We were invited to watch as they checked the traps. Of the 30 we saw opened they had caught 2 skinks, 2 Rail, 30 mice and 1 precious Dibbler. Everything was meticulously weighed, measured, tagged, recorded and released. The Dibblers have microchips inserted. It was interesting but you would have to be very dedicated to spend day after day in the field recording such repetitious details. Annabelle comes back every 6 weeks and does it all over again and again.

Sailing on to Greenhead then Leeman we dodged craypot lines and floats all the way up the coast. One night we sheltered behind the reef off the Beagle Islands in a howling storm. The island was covered in seals and

many had pups. The big bull seals lolloped along the beach keeping watch while fighting off would-be suitors and rounding up females. The bulls had fearful yellow fangs with blood dripping from their jaws where they had been fighting with the lesser males. Many played around the boat and enthralled us with their agile antics in the water. We felt privileged to witness such wonderful wildlife.

Entering the calm of Port Dennison harbour we were greeted by the local ranger. He offered us a berth on the jetty for just \$11 a night. Dennison is a lovely clean, friendly town with a shopping centre close by, what more could cruising yachties, (for that is what we are now,) want!

Next stop: Geraldton & the Abrolhos Islands

Bobs Note; Watch for future articles from SV Platypus. Including photos that will amaze you. The west coast has a lot to offer!

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By Chris Ayres, SY "Lady Lonsdale"

As we all should know, Customs have the right at law to intercept, board and search any vessel entering Australian waters. Foreign yachts must report to Customs and meet all lawful requirements under the various Acts governing customs, excise and quarantine legislation. These requirements are essential to the protection of not just our society, but the rural industries, wild-life, law and order, the protection of our children from narcotics traders and the overall safety of our community in fact everything we value. It is a vital role Customs play. We need an effective and professional Customs service.

However, what happens if you happen to be an Australian registered vessel, clearly not having come from overseas, anchored in calm anchorage in the Whitsundays? What is the role of Customs? Perhaps to record your presence on their database and if necessary, speak to you personally or call you on radio maybe. Above all to behave in polite and courteous manner. To be professional.

Well, 'Lady Lonsdale' was peacefully at anchor at Keswick island. She is Australian and Queensland registered and clearly marked. We were the only boat in the bay after a smaller sloop had departed. We had been ashore for a swim and an explore and were now enjoying a quiet lunch down below. Suddenly I saw a face peering in through the portlight and my partner thought she heard an outboard motor idling. In alarm I shot up the companionway and saw four people dressed in black or dark blue with baseball caps and sunglasses in a large un-marked RIB. At a glance in the bright light I could see no identification as to who or what they were. They made no effort to tell me. I asked who they were. I received the reply from one grinning individual "guess". I asked what they wanted "what do you think?" came the reply from the same articulate being. "Are you Customs?" I asked. It seemed a good question. After all in Queensland waters, you can be visited by one or all of the following:

1. **Federal Police usually identified by the fact they are boarding the wrong vessel to the one they are looking for;**
2. **Fisheries clearly identified by uniform and vessel;**
3. **National Parks and Wildlife clearly identified by a similar uniform and differently marked vessel;**
4. **EPA similar uniforms but different type of vessel;**
5. **Marine Parks - very different uniforms and larger vessels and helpful people;**
6. **State Police obvious uniforms and very different vessels, clearly marked;**
7. **GBRMPA no uniform, different type of vessel, usually very friendly;**
8. **AQIS usually in aircraft but afloat they wear different uniforms and are usually in the company of (9) below;**
9. **Customs different uniforms to those worn elsewhere and apparently-without the name identification badges normally worn at airports and other points of entry and also driving unmarked vessels without registration or name identification. Sometimes such vessels carry hand-written notices marked 'customs' (eg Magnetic island). Consistency?**

Good news for the boat-builders, bad news for the taxpayers funding this amazing diversity of law enforcement agencies and their respective fleets. Where else other than dear old Oz?

Back to my story. The four individuals continued trying to be smart so I asked them "Do you see a Q flag? Am I foreign registered? Do you have reasonable cause to investigate me? If not, go away. Now!" At this point one of the individuals sheepishly identified himself as "Michael from Customs". I asked for ID. They refused. I queried the fact they were in an unmarked and apparently unregistered boat. At no time was I told who might be in charge or what they were doing. I told them to leave. I can be not nice when I have to be. It came with the job I did. Still they hung around and I was at a loss to fathom why. Were they just having a nice day out? Were they filling in a lunch break? If so, why hover around? Surely they were not waiting for 'little presents'? But in a country where Federal ministers wander around foreign capitals with bundles of banknotes, where Australian companies pay bribes to dictators and in a state where business was once done by passing brown paper parcels to premiers, who knows? I gave them my card (it has the vessel details, my marine and professional legal qualifications and address). One of them then apologised



Chris, retired lawyer & smuggling suspect

Rhonda, prop inspector & accomplice

and they left. At speed. I recorded the conversations, description of the vessel, descriptions of the individuals and time and place in Lady Lonsdale's log. I then reported the matter to the local Coastguard who, despite the fact that 'Michael - from Customs' had told me they worked closely with the VMR - had no knowledge of any customs vessel in the area. A lone voice then came in after my call and advised that a large customs vessel was in the area. By now, everyone in a 60 nautical mile radius was aware. If they wanted a clandestine operation, they were now out of luck. Shortly after the mother ship roared past the bay, sending in a one metre high swell. That carelessly driven vessel was, indeed, marked 'Customs' and called 'Roebuck Bay'. I also recorded this incident in the log.

At no time did I consider the behaviour of these people to meet the standards of professionalism required by a member of the Australian Public Service. Having worked in that organization and having at one time assisted in the drafting Codes of Ethical Behaviour for APS departments, I considered these officers had no idea of the standards required of them, lacked leadership and behaved in a supercilious and offensive manner.

The Minister, when I made formal complaint to him about the behaviour of his officers, offered another apology and promised his staff would receive 'public relations training' However, he was quite uninterested in the alleged breaches of the Public Service Code of Ethics his employees are required to follow. I considered his officers to have breached the following conditions :

- **To act with probity**
- **To treat members of the public with ... courtesy, sensitivity to their rights;**
- **Not to harass a member of the public;**
- **Not to unlawfully coerce a member of the public;**
- **To comply with any lawful and reasonable direction given by a person having authority to give the direction**
- **Not to make comment that he or she is not authorised to make.**

Where breach has occurred, there are remedies available to a person who has suffered as a result of that breach. As they had not boarded our vessel nor attempted to board, I considered it not worth pursuing

an allegation hardly helps the credit of the relevant authority nor does it offer much protection to the employee. Such looseness in the law puts not only yachtspeople at risk, but also the employees of the plethora of state and federal organisations who might want to drop in on you and look over your bedding, your unwashed dishes, oily tool-kit and general reading matter.

It all gets down to what sort of a country we want to live in. If we want a society where unidentified persons can enter our homes at will (at common law our boats are residences), turn our property upside down, intimidate and threaten us, bring weapons on board our vessels, then all well and good. Accept it and lie down. Australia was founded as a prison so maybe people feel safer that way. That's fine if you are happy with it and the confusing law that endorses such actions. But **bad law makes bad people. And abuse of authority is one step short of a police state.** How can any yachtsperson, quietly enjoying the environment we love and look after, possibly know what the legal situation is governing a visit, (all in the one boat for the sake of economic rationalism this time) by Federal and State police, Customs and Quarantine, Fisheries and EPA etc etc none of whom have a warrant and all wish to come aboard your 35' boat. Remember they travel in pairs like on the Ark, two by two from each department. What happens if one of them gets injured? Are you insured? What if they discover something you didn't know about and they still don't have a warrant but remove it as evidence anyway? What about the damage they may do to your vessel or to you? Are you expected to cruise in company with a.. with a ... lawyer!!! for Christs sake?

And that is the bottom line. How safe are we from the Guardians? Why is that government is now such a terrible threat to civil liberties and the right to enjoy the seas? People seem to have rejected the Welfare state that once looked after us in time of need. In place we now have, if not a police state yet, an extremely authoritarian state. Once it was pirates that threatened the seas, now it is MIB - Men in Black/Blue/Brown.

We need an honest and open police force (I think we have one). We need laws governing the operation of our vessels, and restricting the abuse of alcohol when we use our vessels. Remember it is volunteers who risk their lives to make rescues and the police who have to remove the remains from the water after death occurs. Too often the police risk their lives to save lives and when they have to deal with a fatality, it is they have to break bad news to loved ones. We need an efficient and professional Customs and Quarantine service. We need laws to protect the environment that can be reasonably enforced and readily complied with. We need to regulate our own behaviour. But to do so, we must also be able to comply with the laws, to be able to understand the law and have confidence in our law enforcement agencies no matter how many of these there are. **It seems business can be trusted to self-regulate; what about some self-regulation for yachtspeople?**

If the authorities insist on alienating us yachts people they run the risk of losing the greatest source of intelligence they have to do their jobs.

It really is our choice as to what sort of a country we wish to live and sail in.

Conversely, what happens if some yachtsperson later makes complaint that property has been stolen from his vessel? Even if employees of these authorities hide behind anonymity, a court order soon rectifies the issue of identification, and such

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By Brad Stephenson, SY, "Volare"

My wife and I along with our two children aged 10 and 15 have been living onboard our 40ft yacht for the past four years. We always travel in calm conditions, never at night and are always anchored up by dark. We always use Shoalwater Bay on our way north as a safe anchorage between the Keppels and the Mackay area.

After a few nights at Keppel Bay Marina we had two days until the next 25kt front was due. We decided a week or so in the Shoalwater Bay area would be a pleasant alternative to being tied up in a marina. After checking with Keppel Bay Marina and VMR on the 12th July we were advised that they had not received notice of any closures to date for that area. Closures usually take place after a 28 day notice to mariners.

So we left the marina on that morning and headed for Island Head Creek. We had been getting the weather daily from the HF radio as VHF had no signal. On the 18th July a strong wind warning was issued for the next few days with a 30kt S.W. coming. We decided to work the morning tide to the head of Island Head Creek as it would be a better anchorage given the forecast weather conditions.

While listening to the 3.30pm weather update we heard a helicopter approaching. It came towards our yacht and started to circle us very low. It then hovered off our stern 100m or so behind us. The noise was deafening and the wind the helicopter generated sprayed water everywhere. We tried to make radio contact with them but received no reply. At this stage the children were hysterical as they could see the men inside the helicopter with their guns. We were trying to work out what they wanted.

Keppel Sands VMR heard me on the radio. I asked the operator if he knew of any closures or military training in place at that time. He told us they had not been advised of any apart from the permanent restrictions around Raynham Island that we knew about anyway.

I came back on deck; the helicopter was now about 20 feet above the water off our stern and hovering in an attack position with a weapon mounted on a metal arm out the side of the door. Another Army officer had a rifle on his lap showing us he meant business.

You can't describe the fear our two young girls were experiencing at that time.

The helicopter flew off for a few minutes and came back. The soldier then held up a hand written sign on a body stretcher that said, **MILITARY LIVE FIRING GET OUT.** Then through a broken transmission between myself and Thirsty Sound VMR they advised us the Army had just been in contact with them and had issued a notice of closure on the 14th July to come into effect on 17th July, three days later. They were not giving the usual 28 days notice. We had to get out! There was no way we could have known the area was closed as we had been there since the 12th July.

I told Thirsty Sound VMR that my crew consisted of my wife and two young daughters and that I wasn't happy about going to sea with a strong wind warning in place. This was relayed to the Army through Thirsty sound VMR. We were told we had to leave immediately. We were forced to head out in terrible conditions and decided Rosslyn Bay was probably our best choice. To travel north was the logical direction but for our first night sail, 135miles to Mackay was daunting and to try and anchor at any island on the way in a 30kt sou-wester in the dark was what I considered too dangerous. The conditions were appalling. I would not have travelled in those conditions in daylight hours let alone night. We were getting 20 25kt on the nose and slamming into 1.5 2m of sea for 13 hours to cover only 52miles.

Shoalwater Bay, Keppel Bay Marina and the Keppels are a beautiful part of Australia and a place we visit each year. It is unfortunate that Australian Defence Force personnel can treat a Queensland registered, boating family with such contempt in Australia.



Volare crew from left; Mum, Karen, Isabelle, Brad and Amy

Editors comments;
I received the story at left via email but was fortunate to happen upon the family in Mackay. Brad was at first very reluctant to have a photo taken as he felt he and his family had been well abused by authorities and media and believe it or not, some sailors!! Truth! In my research of this matter I found nothing that creates doubt about his account, but Brad reports that he had been confronted by sailors who criticised him for not being comfortable sailing in high wind. It is my personal belief and the position of TCP that you do not tell a skipper how to run his ship. If it is being done safely and enjoyably, it is being done correctly. Thanks to "Volare's" courage in speaking out, the military has brought about changes in it's policies and attitude that all coastal sailors may benefit from. See the letters section for more information on this important matter.

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Brutal Customs.



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Yachtsman Ashamed to be Australian.

By John Hayward, SY "Interlude"

On Friday (November 10th) I sat through a court case and came out of it ashamed to be Australian. In the past I've always felt proud to be an Aussie. I've cheered on the Aussies all my life and was honoured to represent Australia in my sport of sailing on several occasions. However on Friday I felt helpless.

Bram and his wife Magda, an elderly Dutch couple had been enjoying the same hospitality as we had whilst sailing on their retirement cruise around the world....until they reached Australia. They made the usual radio contact with the officials as they approached the Port of Brisbane, after a rough, thirteen day voyage from New Zealand. Customs officials took their details and directed them to the quarantine dock for yachts. Everything seemed to be routine. On arrival at the dock, they passed Quarantine inspection and had their passports and visas ready for the Customs. However the Customs officers 'greeted' them on board by reading Bram his rights! Bram was confused. 'What have I done?' he asked. He was then told that Australia had recently (June 2006) introduced new laws making it compulsory that aircraft and shipping entering Australia must give between four and ten days notice of their impending arrival.

Perhaps this Law was drawn up with commercial ships and airlines in mind where crew and passenger lists can be forwarded as matter of course, to give Customs and immigration time to do preliminary anti-terrorist checks on the vast number of tourists etc traveling into Australia. However for this time frame to apply to private vessels such as cruising yachts, with two or maybe three persons on board, is ludicrous. In all thirty countries we had visited on our recent circumnavigation, we had not had to give more than the usual VHF radio contact with the officials as we approached a recognized Port of Entry. Even if a yacht skipper was aware of this unusual Australian requirement in most cases the skipper would not be able give notice as required 'by fax, telephone or email' between four and ten days before arrival because, a) The voyage takes an indeterminate time due to the weather conditions and from most countries this would be more than ten days, and b) most cruising yachts do not have fax, telephone or email facilities on board, in fact many yachts have nothing more than line-of-sight VHF radio communications which is quite adequate in nearly all countries.

Fortunately for me I had heard of this new law by word of mouth from other Aussie cruisers in New Caledonia and had been able to comply, as it took us only six days to sail from New Caledonia, otherwise our welcome home after five years would not have been so joyous.

However Bram had been in New Zealand and had heard nothing of this new law. He had on board a recognized world cruising guide book which he had purchased before he had left the Netherlands and had read the relevant Procedures on Arrival in Australia. He logically believed that VHF radio contact would be sufficient to give the required 'three hours' notice which his guide stated. In fact he announced his arrival twelve hours before sailing across Moreton Bay to tie up at the Quarantine dock. It is interesting that the Customs official who Bram and his crew had spoken on two occasions, twelve hours before did not come back after checking. He could have been warned of the new requirement and so given the choice of returning to sea. In fact when I questioned a Customs official about this unusual requirement on our arrival, I was told that 'offending yachts usually get a warning'.

However, Bram was treated like a criminal. He was asked to go to the Customs office for

a recorded interview by two customs officers and told that charges may or may not be made. He later received notice that he had to appear in court to face not one but two charges: one that he had failed to give notice of the arrival of his yacht, and the other that he had failed to give notice of the arrival of his crew. The maximum penalty for each breach was \$6 600! Bram and his wife now had to hire the services of a barrister and spend the next three weeks agonizing over the prospects of facing criminal charges in a foreign country and as an elderly retired couple having their savings decimated. I could well imagine how an Australian couple, spending their retirement cruising the world would feel in the same predicament in some foreign country and not having a good grasp of the language in that country. We had visited only two English speaking countries.

In court, the Magistrate listened to both sides of the case. Bram's young barrister had convinced Bram to plead Guilty of the charges and hope for a warning or a small fine. The magistrate and the two lawyers debated the outcomes of only two other cases tried under this new law and whether the defendant should have a criminal record added to his name.

I believe the Magistrate was still ignorant of many facts when he told Bram to rise and told him that he found him guilty of the charges laid, and he would now have a criminal record, but due to his age and the fact that English was not his first language he was being very lenient in imposing a fine of just \$2000!, plus court costs of almost \$1000, (plus barristers fees of \$?).

Many people see yachtsmen as extremely rich people, sipping champagne on the aft deck. However Bram and his wife are typical of most 'yachties'. After retirement they decided to embark on a lifetime dream. In reality it is a lifestyle of hardships, frustrations and pleasures. A lifestyle often fraught with danger and a project which takes most of their savings. They have been five years away from home but still try to fly home once a year to visit their children and grandchildren. Will they see their grandchildren this year?

It is not surprising that more and more cruising yachts are giving Australia a wide berth as they cruise around the world. We of course proudly told the many yachtie friends we made of our wonderful beaches, the wonders of the Great Barrier Reef, the Red Centre and the hospitality of our people. Many are not convinced, they fear regulations applying to yachts are becoming unreasonably strict. Is Australia gaining a reputation like old communist Russia?

Yachties also point to the dangers of crocodiles in our northern cruising waters, and many of the most poisonous and dangerous creatures of anywhere on earth. One wonders if our two legged officials will be soon added to this list!

The following is an account by Bram himself.

TRAPPED BY CUSTOMS

The Dutch sailing yacht Saluut came from New Zealand to Brisbane. At arrival on the quarantine dock, customs boarded it and without introducing themselves started to read the rights to the skipper. The skipper was demanded to go to court. According to the law, on the complaints against him a total fine of maximum \$ 13200 was an option.

What did the skipper do wrong? Did he smuggle drugs or people into Australia or did he pollute the Australia waters? No he unintentionally did not report his arrival between 10 days and 96 hour in advance of arrival. Before leaving New Zealand the skipper checked his cruising handbook, but according to Customs he should have checked internet instead of a Handbook that

is not up date.

On two occasions before arrival (12 and 10 hours) the skipper had contact with the Australian Customs. According to the Cruising Handbook at least 3 hours is required. On both occasions, the Customs did not inform him that, should he proceed, he was breaking the rules instead he was directed to the quarantine dock.

At court the lawyer brought up that the very law passed the parliament with the remark that it was specially made for fining shipping and air companies. He also brought in that the skipper had limited knowledge of English and not too much experience with internet. But, while sitting with his head on his hand, the judge announced these arguments not of relevance. Only the fact that the skipper does live on a retirement pension did hold. The judge came to his decision on basis of a similar case that happened before and made the fine \$500 less than it was for wealthy Americans some months before.

*Bob's note: The above letter from John of "Interlude" with notes from Bram, surprised me and I wondered what was going on here! It seemed odd enough in fact to require verification or corroboration. I didn't have to dig to get it. The first mention of the incident on a marina pontoon got an immediate referral to one and a brief mention on a web forum, another. Though there are differences in the three (so far) reports, the common points are important to note. In the case of American vessel SY **Sohcahtoa**, (AKA "the rich Americans") this is their largely unedited report. To insure accuracy, course language and slang has been left in place.*

The Harbor Control advised us to stand off until morning when we could get the Coast Guard to tow us in, so we floated around until 7am or so and then began the cluster fuck. There was still the 20 knots of wind with a pretty good wind wave and we wrangled and jostled around with the big yellow coast guard cutter until they could heave a line over to us and we got it attached to our burly anchor cleat. The channel to Cairns goes straight up a river delta, so is about 200 feet wide and 15 feet deep with mud on both sides. And the wind comes right down the middle, so we would have had to tack about a hundred times to get up there, if we could make any progress in the current. EVEN with those considerations it is still a bit of a blow to the pride of a sailor to be towed in by the Coast Guard when it is windy. "Hey. why don't you use those big flappy sail thingys?" We were towed to an anchorage where the friendly customs Nazis showed up with 5 people and a drug sniffing dog. We had unknowingly violated Australian customs law by not notifying customs of our arrival 96 hours in advance. So in turn we won the full "crawl up your butt with a magnifying glass" customs treatment. This included a taped interview with two customs agents regarding why I was such a negligent ship's master. Our World Cruising Guide said that we needed to give customs 3 hours notice (which we did). So after having all of our cupboards emptied and the dog run through all of our stuff, we had to explain that YES we could afford the boat and NO I don't have any business card to PROVE that I used to work at this obviously fictitious company "Cypress MicroSystems". We are currently under Customs Control and can't leave the Harbor. . .which is easy since we can't leave the anchorage due to the fact that we still have no engine. That and we have no battery power left, so in the evening, we have romantic candlelight to see by. All in all, we could be fined about \$8000 Australian dollars if they chose to prosecute us AND all of our new Fijian injectors for our diesel are right now being rebuilt for the second time in a month."

And then there was the trial...

"So, here is the detailed story about our little trip to court in Australia.

Matt and I headed up to meet with the

customs agent and the prosecuting attorney (solicitor) at about 9am on the morning of September 7th. I didn't really think about it, but I realized in the morning that I should wear nice clothes, since this is court. I rummaged around the boat for a bit and finally found my "never use" duffel bag that had a pair of "wrinkle free" khaki pants in it. These pants had been crammed in a ball for over a year and looked more like crumpled up news paper than business casual wear. I tried to rub a wet towel on them to take some wrinkles out (since we left the iron at home) but that didn't really work, plus it kind of made it look like I hauled off and whizzed all over myself. Then I also realized that my footwear selection left a bit to be desired. I had a pair of well worn sandals and a pair of ratty old Nikes that had last been worn hiking to a waterfall in the Marquesas. I threw on the sandals and put the Nikes in my backpack. . .just in case. Matt meanwhile was going through ALL of his t-shirts trying to find one that didn't have a stain. This proved to be an impossible task and he chose one that was dark, and that had a stain on the side that could be easily concealed by his arm.

We met Gary the customs guy (actually a very nice guy despite the whole "pressing charges" thing) at the courthouse. Matt couldn't bring his camera into the courthouse (we tried for the website's sake), and had to check it at the front desk. We had a quick meeting with the solicitor who presented the case and recommended that we opt for the "plead guilty" so that we can get it over with, instead of the "plead not-guilty" and have to go to a real trial that would take lots and lots of time. Matt and I talked it over, and decided that. . .well, we WERE guilty, and let's just get this fucking thing over with. I also asked the prosecutor if my footwear selection was acceptable, and he just said that it was up to me. The sandals looked much better than the dirty old Nikes so I went with option A.

We were instructed to bow slightly to the Judge when we entered the courtroom and then headed up to the Defendant side of the big long table in front of the Judge's bench. After a bunch of formalities and paper signing, we began our trial. The judge had to order all the reporters out of the courtroom, because she was going to be DAMNED if this turned into a media circus. Anyways, we were quite surprised when right out of the gate the solicitor started talking about 'terrorists' and 'living in a post-911 world'. . .really driving the point home about the need for strict customs enforcement. We were hoping that this wasn't going to end up with us in the Australian version of Gitmo. He then spoke about the 'book', and showed the judge the paragraph in the Cruising Guide that said that the information was 5 years old and that everyone should get the updates and not take anything in the book seriously. I obviously did NOT pay much attention to that warning prior to our entry into Australia. He also made a VERY big deal about pointing out that all the up to date information was on the customs website and that we ourselves had a website detailing our trip, so we were Internet savvy and should have been able to find this out ourselves. All of this I agreed with.

He did however kind of omit a few things when describing our entry into Australia to make it seem to the judge that we were amazingly and grossly negligent assholes. We even noticed that the customs guy had a bunch of evidence bags (the big ones like on C.S.I.) that had our immigration cards and our original entry forms, as if somehow the whole thing was going to come down to DNA evidence."

continued next page.....

“...Like old Communist Russia?”



The solicitor had advised us previously that it would be best to not speak in our own defense, but after some of the omissions, I thought that we needed to be heard. We had copies of all the documents that were given to the judge, and they were all spread out before us just like the solicitor had his. The judge asked if I had anything to say, and I stood up and said yes. I had been jotting down notes during the whole thing and tried to address some of the things that I thought were either left out or exaggerated. Pretty much I tried to show the judge that everything was a cascade down from the original bad judgment of believing the Cruising Guide (which I fully admitted to and said was a mistake). The judge was very friendly and was also very forgiving of my ignorance of the formalities and customs of Australian court. She asked some good questions, and even stopped the solicitor a few times when he started comparing us to other cases that really weren't the same. In the end, even though the maximum could have been around \$13000, the prosecution asked for a \$4000 fine plus about \$1500 in court costs. The judge decided that the law did need to be enforced and that we were good people, so she fined us \$2500 plus \$900 in court costs. We were able to pay the fine on the way out and I think Matt even got R.E.I. points on his credit card. The solicitor and the customs guy wouldn't pose for a picture outside of the 'ourthouse' even though Matt asked. After that, we had lunch, changed out of the life draining khakis and had a beer or five. So now, any boats that violate the 96 hour reporting law will have the case of "Customs vs. Sohcahtoa" referenced.

Leaving Australia

Nov 21 I've been a captive of the boat for the last few days in Cocos Keeling. My visa ran out on the way here. I thought we all had 1 year visas to match our cruising permit, but apparently that was not the case. Jeff and Casey's visas didn't expire since they flew back to the States and their 3 months started anew when they came back. So when we arrived at Cocos Keeling we were informed by radio that I was not allowed to go ashore and that we'd only be given enough time to provision and then we had to leave. So Australia struck again. Next stop is Rodriguez Island, about 2037 miles west.

Here is an Ayn Rand quote from Atlas Shrugged that describes how I sometimes feel about our experience in Australia: "**Did you really think that we want those laws to be observed?... We want them broken... We're after power and we mean it... There's no way to rule innocent men. The only power any government has is the power to crack down on criminals. Well, when there aren't enough criminals, one makes them. One declares so many things to be a crime that it becomes impossible for men to live without breaking laws. Who wants a nation of law-abiding citizens? What's there in that for anyone? But just pass the kind of laws that can neither be observed nor enforced nor objectively interpreted - and you create a nation of law-breakers - and then you cash in on guilt.**"

Bob's note: Our thanks to Matt, Jeff and Casey for the use of their web text. For more information on this subject or just to have a visit, they do have a fine web site. See... <http://svsohcahtoa.com/>

Our next contributor is; Sean Small is the skipper of "Karma Winds" that currently lives in Cairns. I was alerted to his struggle with customs from Brian Wilson of Schionning cat "Hybreasail". When asked Sean wrote a rather lengthy article for me that I just could not fit in here in entirety. Next up is an edited version of his statement.

"Customs officials arrived, stepped aboard and stated that MY boat was now under their jurisdiction and anything we say and do could be used against us in a court of law. It was as if we were under arrest. What was

this about I wondered. We were instantly forbidden to leave the Cairns area, a line drawn between Yorkeys Knob and Cape Grafton. This is an area of approximately 20 square kilometers. We were basically under house arrest.

The customs officials went on to question me as to why I hadn't emailed them of our impending arrival within the 96hour time line. "Well firstly I don't have sail mail and Secondly no one told me it was necessary to do this until one of the cruising yachts passed a message to us on the Dim Dim net. The only yacht in my vicinity that had sail mail was a German yacht named *Baumi* who said they would. Outside communications from Samarai were simply not possible. Thirdly, everywhere else on the planet the customs agency's communicate to each other, as was the case when I left Nelson New Zealand to cross the Tasman, the official himself told me they contact Australia and inform them of our destination and expected time of arrival."

Bob's note:

Sean goes on to explain the difficulties in transmitting anything out of Samarai due to non-existent internet access and third world phone service. An option was to sail to Port Moresby where facilities would be available but that would leave the craft in a situation where they either had to sail to weather or make for Torres strait where he believed the customs issues would be even worse.

"So I took the obvious choice with safety in mind and hoped *Baumi's* email went through. It did, Rainer had the confirmation on board. It was sent on the 21st, 6 days prior to our arrival and well within the required time limit. The customs officials were using anything they could to discredit and harass us. They stamped us in with the provision that we did not leave.

The quarantine officers arrived with a black Labrador and made sure he could get into every corner of the boat for a good sniff. There was of course nothing to find. As he left Joli asked if she could film the dog. I was not surprised that the answer was no. They could gather evidence against us but we couldn't gather any against them. Then another officer proceeded to go through every locker. Most countries take fresh vegetables, eggs, honey and meat. And he did, he also took flour, rice, dried milk, peas and beans, bags of sugar and most surprisingly of all, our supply of canned food. After he had thoroughly gone through the boat he made me sign a declaration that there was nothing else to declare that I had not declared on the list of declaration.

Bio fouling was to be there next target on yachts entering Australia. Incoming yachts will be checked for any growth at a cost to the yacht. If there was any fouling they would have to be hauled out and decontaminated. Understandable that they want no foreign water borne creatures introduced but the truth is that there is little in the Louisiades that isn't here already. **Eventually it will become to expensive for the average yacht to come here, it will virtually eliminate the cruising lifestyle as an option for any but the rich**, not to mention the fact that if you slip up they have the power to confiscate your home. The yacht was cleared from his perspective, the bill SO FAR was more than \$300. They hadn't finished with me yet though. The following day customs called and wanted to come over to speak to me. My guess was they wanted to reprimand me for not sending this ridiculous email, how very wrong I was. **On face value these officials are all very nice, friendly, happy, easy going, in a sense a pleasure to be involved with. However**, and all to often there is a however, Australia is a land of rules, for every rule there's a few clauses and these have to be chased down with a dash of protocol. The authorities on the sea have more power than even the police, they'll take control of the boat on a whim, they can board at their leisure and search the vessel, impose fines for an entire book of reasons without even a good reason. On land the police need a search warrant to enter a premises even of a known criminal, not so on the sea and you

need not do anything wrong.

The ultimatum was this. The boat had to be imported within a week, no ifs or buts. This they said was generous they could ask for it to be done within a day. I guess we weren't on PNG time anymore, there is NO time now. Duty and GST added up to 15%.

Our hopes to sail around the world on Karma Winds were annihilated in one fell swoop.

Day 3 and customs wanted to speak to me again. This time it was about the email. I was served with a section 64. I was made to sign it with no option. This meant if I left the country and returned without sending an email in the 96 hour time limit I would get an instant fine of up to \$6600 without a trial. At this stage I hadn't been able to contact *Baumi* and get the confirmation for the email but they later emailed it to me. The customs either didn't have it together or more likely they were harassing me."

Bob's note:

Because Sean had been to Australia before, customs made him import the boat immediately. Paying GST and duties and all costs involved in valuation and documentation and stamp duties. He was also required to have the boat inspected for pests as his was a timber boat. This was done well after entry by an official he says came from Brisbane to do the inspection.

"Finally all the paperwork had gone through so I paid the inevitable visit to the customs office to pay the inevitable stamp duty. While I waited for the transaction to be processed a senior official came forth with a rule book. Once again he mentioned the lack of email notification. So I pulled out the laptop and showed him the verification.

He was immediately on the offensive. "This could have been forged; you could have put in the dates yourself and altered another email."

"Why would I do that, then you'd bust me for fraud" I was amazed he couldn't just see they'd made a mistake. "Surely you can just check the numbers on the email."

He went through picking holes in the document on screen, "why don't you have the original, what are all these other numbers and text"

"Its just part of the hotmail forwarding details, you should put a confirmation number in the email so you can back check on your data base, and why don't you make it a read only document as well." Once again I explained that it had been sent on our behalf by another yacht as we didn't have sail mail.

"This wouldn't stand up in court" he stated

"You people are impossible, what more do you want, why would I bullshit something like this I have nothing to gain I'm just trying to help you sort out the glitches in the system" I was starting to lose my cool.

There was no convincing him though, "Swear again and I'll have you thrown out of the building."

We were back to his doubts about the email. He told me I was lucky he didn't fine me for non compliance and it was only because they chose to enforce the importation that they let it go, and then he added that they had some doubts about whether it had been sent or not, or whether I'd been informed of the requirement. As of last week any yacht that didn't give 96 hours notice was immediately charged. Last week an offender was fined \$3500 for failing to send the email. In the end he said he'd follow it up and that's all I could expect I guess. My own costs had now already exceeded \$3500 anyway but at least I had the freedom to move around again, still the government would get more from the registration and the tax received from the gas alterations, but they'd have to wait as I was ticking up the credit on the plastic card.

The tax had been paid and I'd never get it back but the truth is they punished me for not sending an email that I had sent. A few months later I heard from them about their

checks with Canberra. They agreed the email was sent but as we hadn't included our passport numbers the section 64 notice still stood.

Bob's note:

I must state here that there are many assertions and claims in this material that I cannot substantiate at this time. It seems unlikely though that all of these parties would be fabricating their experiences. A retired Dutch couple having been half way around the world. A high tech team of US sailors and finally a Kiwi with a small boat purchased in the Caribbean and sailed to Australia. All of these vessels have entered numerous other ports. On dealing with officials of Australian Customs it is well to keep in mind that it now is apparently a very adversarial situation and everything you say should be assumed to be used against you. Criminal interrogation may be disguised as casual conversation as made example by the manner in which SY Sahcahtoa's web site was used against them in court.

Whilst the only info that Customs regards as 'bona fide' is sourced from their web site, caution should be exercised in that web sites can be easily changed from day to day. Also if that info is accurate it proves that Australian customs is singling out yachts. See www.customs.gov.au/site/page.cfm?u=4224 On this page that directs you to arrival info on "yachts" is a button for arrival "Information for Ships Masters." It seems "ships" have a far less burdensome regime to follow than a private "Yacht." Below is a quote from the customs web site pertaining to arriving "ships."

"Non-military ships and persons on board

First-port arrivals

The master or owner of a ship arriving in Australia is required to provide Customs with a notice of the ship's impending arrival. An impending arrival report can be made by document or sent electronically. The impending arrival report must include the estimated date of arrival of the ship at the first Australian port or any subsequent port that the ship intends to visit. (editors emphasis) **The report is required 48 hours before the nominated date of arrival indicated by the impending arrival report. If the journey from the last port is likely to take less than 48 hours, the report is required 24 hours before the estimated date of arrival.**

Ships carrying cargo must communicate the impending arrival report, actual arrival report and cargo reports to Customs electronically. All goods intended to be unloaded from the ship or remaining on board must be reported.

Ships not carrying cargo may report information manually or electronically to Customs.

Shipping representatives or agents in Australia can also assist on how to meet electronic reporting obligations determined by Customs legislation.

Ships will be required to produce the following reports on arrival:

- Ship's Report of Arrival
- Passenger and Crew Report
- Report of Ships Stores
- Crew Effects declaration"

There you have it. According to Customs own web site shipping is treated with far greater ease than a private craft. This was verified January 27, 2007.

Just as in the Quarantine "Bio-Fouling" protocol (See TCP# 16 or the web site) there is an inexplicable emphasis on private vessels whilst shipping has it far easier even though shipping is a recognised bio-transfer risk. Ostensibly, this Customs protocol is an anti terrorist device yet a large ship that would provide the better opportunity is let off with little regulation by comparison.

Brutal Customs: A Real and Present Danger to the Yachting Community

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I read with concern the articles "Brutal Customs" or "like old Communist Russia" published in TCP #23 2007. The threat posed to overseas yachtspeople as well as local cruising folk is serious and represents a profound abuse of human rights and freedom of travel. My short advice to overseas visitors is, Give Australia a miss. Go somewhere else and tell the government that's "where the bloody hell we are"! Take your foreign currency to administratively friendlier places.

Unlike the police, who, usually in my experience, respect the law they enforce and are trained professionals with an understanding of criminal law and of civil rights, Customs and AQIS personnel tend to be largely amateurs with ostensibly enormous power but little knowledge of the actual law they attempt to enforce. They are, in my experience having worked with the APS, basically public servants, transferred often from other Australian Public Service departments with little understanding of the complexities of international law, criminal law and maritime law and in these days of tight budgets given minimal training. Of course, those that handle the vessels are required to have the appropriate maritime certificates of competence but from what I have seen their competence in actual boat handling leaves a little to be desired.

However, make no mistake they have the power to board, seize property, detain and question people without the legal niceties required by the police. Treat them with caution and great suspicion.

The 96 hour rule requiring notice of entry is both impractical and unworkable. In any other environment, commonsense would see it as an absurdity. But the

Australian Customs and AQIS are strangers to commonsense. The Magistrates before whom "offenders" are forced to appear are also limited in their knowledge of the legal complexities posed by this branch of the law (they have to deal with everything from drunk-driving to DVA's and now international law?), and unless the defendant is represented by a legal expert in maritime law and administrative procedure, the chances of the facts being properly determined by the law are limited and the bellicose voice of the prosecution will prevail. No, justice is not done nor even considered.

In a perfect world, common law rules of natural justice clearly state that a person cannot be denied a right to know the case against them (Kanda v Government of the Federation of Malaya [1962] AC 322), that they have a right a fair hearing (Russel; v Duke of Norfolk [1949] 1 All ER 109), that any law that is so absurd that it cannot be reasonably complied with by a reasonable person is a breach of natural justice (Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223) and finally a person cannot be expected to comply with a law that cannot be reasonably and practically complied with (Cooper v Wansworth Board of Works (1863) 14 CBNS 180). But all these nicely reasoned decisions may be overturned by statute law. Then there are international rights, such as the Articles under the Declaration of Human Rights. But these have to be imported into domestic law where they readily acquire exemptions giving the state supreme power. We are not in a perfect world I regret to say. And not in a just world.

So what do you do? Avoid confrontation where possible. Keep out of Australia after all, that's the message of the 96 hour rule. If not, then collect your own evidence. Write

down everything said. If possible tape record all conversations (mobile phones can be used to do this) and photograph what you can. Although I can't advocate it and wouldn't dream for a moment of suggesting it, the use of a hidden miniature digital camera linked by Bluetooth to your laptop sending an email directly to a third party recipient, might do the trick. As to the admissibility in court of such evidence? Well, stranger things happen. Remember the authorities have all the power, the force and the implied threat of violence. You are alone with them on the boat with no witnesses and they know that. To have a chance of defending yourself, you simply must have a record, your own record of what happened. Pad and paper are the safest. They are also the most obvious. Often these interrogators feel threatened by you writing everything down. They may threaten severe penalties if you continue to write down what they say. Then they will say it is not necessary, you will be given a copy of everything... oh yeah. And what about an interpreter if English is a second language to you? These guys are not cops, they see no limit to their power. But never be deceived by the "laid-back" or "good-cop-bad-cop" posturing your interrogators may adopt. They are not paying a social call. Admit nothing and deny everything. Trust no-one. Trust anyone in uniform even less. Finally, contact the consulate or embassy of your country of origin. Ask them for legal assistance.

But safest of all is to stay away. There are plenty of friendlier cruising areas still around in this world. They need your cash more than Australia it seems.

Chris Ayres.
SY, Lady Lonsdale
Retired (and loving it) solicitor

My Opinion.....by a sailor who fears retribution if I give my name!

Readers of the last edition of The Coastal Passage (#23) would have been sickened by the reports of the blatant abuse of power by Australian Customs in regard to a totally unfair, unjust and un-Australian prosecution, some might say persecution, of some of our overseas cruising brethren for failing to meet new arrival regulations.

These unprincipled and vindictive actions by Customs make one ashamed to be an Australian, what ever happened to a fair go? Admittedly there may have been a small infraction in the letter of law but if one considers the reports that state that the law in question was new and unknown to most people including other Government Departments, Customs web pages were less than clear and had to be amended, other Australian Government agencies were unaware of Customs new requirements and gave erroneous advice and no consideration was given by Customs to the limited communications abilities of the average yacht let alone their reliance on fickle winds and an inability to provide exact ETAs, these surely raise some mitigating circumstances. Taking all this into account any fair minded person would have to think that a warning by Customs would have been more than sufficient penalty. But no, all the wealth and power of Government was brought to bear on those without the capacity to adequately defend themselves.

These actions bring into question the capacity of Customs to develop sound policy and legislation backed by community consultation and their ability to properly

disseminate critical information to those who need to know including other Government Departments. Also such a blatant, unbalanced misuse of power raises the question of whether or not Customs can be trusted to wield such power in a democracy. This last begs the question whether the decision to prosecute or not in Customs cases should be handed over to a far more responsible body, one that understands the meaning of natural justice, such as the Attorney-Generals Department or the Federal Police prosecution section for example.

Customs actions in these matters also bring into question their capacity to think beyond the immediate. Any manager worth their salt would understand the critical importance of strategic alliances, which are about building relationships with those people or groups that can help you achieve your organisational goals and is sound business practice, something that Customs seems to have forgotten.

Now, most boaties would have had visits from Customs as they cruise along the coast, you know those nice polite people in their black rubber boats who give you pens, stickers and fridge magnets and ask you to help them out by reporting any suspicious activity. Well, guess what, in one fell swoop Customs appalling behaviour in these cases has managed to totally alienate the boating community, the very people whom they rely on to assist them to do their job and to be their eyes and

ears and in the process they have severely damaged one of their most important strategic alliances. The result of Customs venal behaviour is that the good will that has been built up by the troops on the ground has been totally undone by these callous prosecutions.

Now, no one is suggesting for a moment that if you were to see Osama bin Laden with an AK47 tearing past in a big Riviera you wouldn't report it but from now on the boating community will treat Customs with suspicion and much more warily as they have clearly demonstrated that boaties cannot have confidence in them to act fairly or justly and will be less likely to co-operate with or trust them in future.

Customs have clearly demonstrated by their actions that they are quite prepared to abuse the power given to them in the worst possible way. If their goal was to drive sailing tourists and the money they bring to Australia away from our shores then they have succeeded beyond their wildest dreams.

The damage to Customs reputation will take a long time to recover from this unprincipled vindictiveness, if it ever does. We shall have to wait and see whether or not any new, more enlightened leadership in Australian Customs has the foresight to try to regain the trust and support of the Australian boating community that they previously enjoyed.

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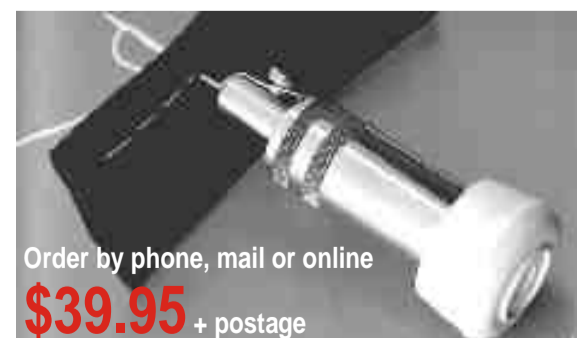
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Australian Customs....

Modern Day Wrecking in Australia

By Jim and Dorothy Manzari SV *Oceanus Bundaberg, Australia*

Since ancient times all seafarers have feared shipwreck. Even today with modern charts and GPS the worst nightmare of a modern-day ocean cruiser is the possibility to be shipwrecked on a strange and unfriendly coast. In times past professional wreckers moved navigation markers or lights so ships would be lead on to a reef or spit of rocks. The wreckers would then loot the ship. Whole villages at various times in history thrived on this gruesome trade. Now the wreckers and looters move the law to set traps for the unsuspecting seafarer.

This is a story of modern-day wrecking at its best. It is the story of how the Australian Customs Service and the Australian Consular Service bureaucracies recklessly mislead our boat on to the judicial reefs of Australia.

Our voyage began six years ago in Germany, when we purchased a small steel sailboat to use in our retirement. Our plan was to sail around the world. Dorothy is a citizen of Switzerland and Jim is an American. We had lived for nearly twenty years in Switzerland after returning from a previous stint of sailing in South America and the Caribbean. We have both been long-term sailors since before we met on a passage from Bermuda to the Chesapeake Bay back in the middle 1970s. We are both retired from many years working in the information technology field and were looking forward to fulfilling our dream of sailing around the world. Thirty years ago we purchased and sailed a small boat to South America from Great Britain. Those six years spent in some of the world's best cruising grounds convinced us that a voyage around the world would be a rewarding project for our retirement.

This story of ship wrecking begins with a visit to the Australian Consulate in Noumea the capital city of French New Caledonia. We had heard a few stories about how bureaucratically difficult Australia had become for visiting private yachts. Many cruising couples had warned us to stay away from Australia. An Austrian couple who have been cruising in the South Pacific region for fifteen years told us that they no longer visit Australia, because every time they had arrived they were treated like criminals by Customs and other officials. We heard a story of a sailor who was sailing directly from New Caledonia to Madagascar, more than 6000 nautical miles, without touching Australian waters to avoid the intimidation experienced by other visitors.

In spite of the heavy-handed behaviour by Customs we will go away from Australia with a very good impression of the people. Everyone we've met has been very friendly and supportive. Bundaberg is a wonderful town with its many shops, palm trees, and bird life. Sadly we've been essentially under boat arrest since arrival, so we have not been able to see other parts of the country.

In spite of what others had told us, we believed that if we were armed with proper information and instructions obtained from official Australian Government sources we could safely visit Australia to wait out the cyclone season before continuing our voyage to South Africa and beyond. How wrong we were!

On August 22 of last year we made the long hot walk across the city of Noumea to pay a visit to the Australian Consulate. We expected to receive up-to-date information from this source regarding visa and other regulations. We wanted to make sure we complied with Australia's requirements for a visiting private yacht. We found that the Consulate had only one copy of an undated document titled "Information for Yachts Travelling to Australia". This document was produced and published by the Australian Customs Service, the Quarantine Service, and Australian Immigration Department.

The Consular clerk was very reluctant to do the work necessary to make a copy of this 30-page document, but after some insistence on our part she agreed. This document was not dated. There was no way for us to determine if it was up-to-date. We rightfully assumed the Consulate would provide us with correct and timely information. This became a crucial issue in our subsequent legal battle with Australian Customs.

This document gave us four methods to report our impending arrival to Customs and Quarantine. We elected to use the first method listed. The first method given was to report at the port of intended arrival, Bundaberg, by calling a radio station call sign VMR 488 on VHF channel 81. The impending arrival report, according to this document, must be made at exactly 48 hours (this turned out to be wrong) prior to estimated time of arrival. This is similar in every aspect to the method we used the previous year when reporting impending arrival to Customs in New Zealand. The person or committee in the Australian Government who wrote this document must have known that VHF marine radio cannot be used beyond a point where line-of-sight communications can be established.

It should be noted according to International Law the Flag State dictates the type of radio (if any) that is required to be carried by ships under its flag. Our boat, *Oceanus*, is a US flag recreational vessel and is not required to carry any kind of radio whatsoever. With the exception of EPIRB, we have heard the same is true of recreational vessels flagged by Australia. The choice of radio type is completely optional for foreign-going recreational vessels in both countries. In more than twelve accumulated years of sailing throughout the world we have never found the need for more than a simple hand-held VHF radio.

We found after arriving in Bundaberg and being charged with violating the Custom Act that a new up-to-date "Information for Yachts Travelling to Australia" document has been published by Customs, Quarantine, and Immigration. This new document offers only three methods for reporting impending arrival. VHF radio is no longer an option. Had we seen the up-to-date document and its reporting instructions we would have reported prior to departure from Noumea, since we have none of the equipment needed to communicate by email, fax, or telephone from sea.

This new up-to-date document is dated October 2005. We're still mystified why this up-to-date document was not handed to us in Noumea. The new document had been published by Customs nearly a year before we visited the Consulate. Our dispute with Customs concerns the timing and method of reporting our impending arrival and the different instructions given in these two conflicting documents.

It needs to be emphasized that Customs hadn't gotten off their collective backsides two months after we became enmeshed in this dispute. In spite of the fact that the front-line Customs officer stated on the day of our arrival that the old document had been superseded and was no longer valid, in spite of a lengthy submission given to Customs by our solicitor pointing out the mistaken information in the out-of-date document and the new reporting methods in the new document, no one in Customs had bothered to inform the Consulate in Noumea that they were still handing out the wrong document until at least November of 2006, two months after charging us. Canadian friends of ours visited the Consulate in early November 2006 and were given the same defective and out-of-date document that caused us so much trouble.

We discovered on the day after we arrived in Australia Customs and Quarantine published an authoritative Hydrographic Service Notice to Mariners amending the List of Radio Signals instructing ships without fax to report at the port of intended arrival just as we have done. Obviously ships were having the same

difficulty reporting with the mandatory signature when they did not have a shore-side agent to do the work. This is the fundamental problem in the way that Customs attempts to bend the requirements of the Customs Act to apply to both commercial ships and private yachts.

The lack of distinction between ships with their shipping agents, ship service companies, and shore-based computer communication facilities, and pleasure craft without any of these capabilities is at the root of our difficulties with Customs. Add to this mix the abysmally poor information given to the public outside Australia, even by official sources such as the Consular Service, and one can easily understand why our situation arose. We are the experimental guinea pig to resolve this muddle in the implementation of the Customs law through the court system.

We have been prosecuted for reporting to no one prior to arrival in Bundaberg. This ignores the fact that we followed the Customs instructions to the letter and reported to VMR 488 on channel 81. We asked VMR to please report us to Customs and Immigration as is the standard practice throughout the world. VMR then asked us a series of questions which were obviously items of information that VMR intended to pass to Customs and Quarantine announcing our arrival.

The prosecution convinced the magistrate that we had made no report to any official government agency! The prosecution argued successfully that VMR 488 is only a volunteer organization and not an official arm of the Australian government. This is in spite of long-standing agreements between Volunteer Marine Rescue Inc. and the local Customs and Quarantine officials. This is in spite of the fact that the government has shutdown all official radio stations along this coast.

As a result we have been convicted of a serious crime attracting a 9 month prison sentence or fine of \$4,000 and prosecution costs of \$15,000. Our personal legal costs are now approaching \$40,000.

The Australian Customs Service made many mistakes in their rush to prosecute. We discovered, unfortunately too late to use in our defence at trial, that the offense we were charged with should not have been prosecuted at all!

In 2001 the Australian Parliament, under pressure from shipping companies and import brokers amended the Customs Act to downgrade impending arrival reporting infractions to the level of Infringement Notice. The relevant section of the Customs Act is titled "Penalty in lieu of prosecution". This would have given us 28 days to write directly to the CEO of Customs giving exonerating evidence of why we were misled into committing the infraction. In all likelihood the CEO would have agreed that we were misled by the out-of-date document and would have withdrawn the infringement notice. That would have been the end of the matter.

Had the CEO disagreed with our reasoning, we would have paid a penalty of about \$1300. And the right of Customs to prosecution would be extinguished. By law there would be no publicity or criminal stigma attached to the payment of this penalty.

As far as we can determine Queensland Customs is the only region in Australia that is prosecuting the weakest targets they can find. We have been told by many sailors that if we had arrived in Coffs Harbour this dispute would not have happened. The front-line Customs personnel would have used their discretion to understand the misleading instructions given in the out-of-date document. At most they might have issued an infringement notice.

It must be noted that we are not unfamiliar with procedures for entry into a foreign country by private pleasure craft. We have accumulated more than twelve years experience on two

different boats in almost all the oceans of the world. Jim served honourably for four years in the US Coast Guard and has several years of experience on a research vessel. We have in the past entered and cleared from more than 25 countries without any kind of problem.

Furthermore, we strongly believe all countries have a moral and legal right to protect their borders from illegal activities. Movement across the border into and out of a nation state has always been controlled, so far as possible. A core function of any state is to protect its own political authority and to protect the society under its authority. For most threats, that protection requires control of the border. Conceptually, this protection is integral to the notion of the political sovereign and political authority.

Powers that might not be justified as part of the normal citizen/state relationship within a society may well be justified at the border, because of this integral protective responsibility. This does not mean the power is without limits. All power is subject to the law and to general considerations such as human rights protection, reasonableness, the laws of natural justice and so forth.

Our dispute with Australian Customs arises where over-zealousness, inadequate or poor training, misunderstanding and misapplication of the Customs Act, mismanagement, incompetence, or malicious enforcement by front-line Customs officers in Queensland creates a situation where the probability is very high that innocent persons will be prosecuted for something that is not their fault.

Once the legal system begins rolling downhill it is virtually impossible to stop. Its like an avalanche destroying everything in its path. Reason and logic, common sense and basic fair play all get plowed under by the legal rush to judgment. Our solicitor believes there are a number of substantial grounds for appeal and we have therefore filed an appeal.

Many readers will wonder why we didn't just plea guilty like the two or three other prosecutions here in Queensland and continue on our way. There are two reasons. First, we do not like being marked as a criminal. We have managed to live to be 65 years of age without breaking the law. In our 65 years of life we've grown accustomed to our good reputation. Our good name actually means something to us.

Secondly, we discovered within a day or two of arrival in Australia, Customs operates an international watch list for terrorists, drug smugglers, and other so-called "persons of interest". We had fear that our names and the name of our boat would be placed on this watch list if we were convicted of a border violation. That would have serious long-term consequences with regard to continuing our voyage around the world. More than twenty-five countries have access to this database, including the USA.

In the interests of sound border security there are a large number of things wrong with prosecuting the wrong people, a prosecution that is founded on an issue of incorrect and misleading information handed out by government departments. Wasting time on the wrong people, persons who have been vetted and issued a visa as acceptable to enter Australia, is a failure, not a success, of the border security system. Wasting taxpayers money over what is essentially administrative infractions that should be dealt with by the Infringement Notice scheme is a failure of the border security system. We are still mystified as to what is the objective in prosecuting the weakest possible targets. Alienating the very people who could help Australia protect its borders is a very poor public policy.

Entering Australia... do you feel lucky??

Research and comment by Bob Norson

In last edition of **The Coastal Passage** I published the accounts of three sailing boats entering Australia and the difficulties they had with Australian customs. The first letter to arrive was from John Hayward concerning his friends Bram and Magda of the Dutch boat "Saluut". It was hard to believe. If it wasn't for the corroborating accounts I may have dismissed it as exaggeration. When I did investigate I found much similar detail between the accounts. The worst of it was discovering the plight of Jim and Dorothy Manzari who's story is on the previous page. These people had been warned of the difficulties with Australian Customs but had faith in the notion that if they were very careful to follow the procedures (however irrational they might be) to the letter they would have to be OK. And now they find themselves branded as criminals, a state of affairs they will not accept. How could something like this occur in my country? Where did all this come from? Why hadn't I heard of this? And many more questions.

What I have found is legislation that seems unclear and then the enforcement is handed to an agency that has suffered a serious decline in international reputation typified by their "Integrated Cargo System" debacle that recently caused Australian ports to seize. (and at a reported cost blow out of \$200 million!). Domestically there is the documented decline in professionalism and overreaching of jurisdiction. (see; "Dangerous customs", TCP web site under "issues") In short, Customs are interfering with domestic craft and a foreign flagged vessel entering Australia is taking a real crap shoot. Do you feel lucky?

Lets start at the beginning and ask **why the legislation in the first place?** Reacting to, or capitalising on fear, this is all under the heading of "Border Protection Policy" which sounds good except in spite of much research I have not found an example or suggestion of there ever having been a threat to Australia or anywhere else via yacht. But for the sake of argument let's say there may be suicide Beneteau bomber out there somewhere. If any one would have had to deal with such a threat I imagine that would be someplace like Israel. Except for their relatively large coast line, they are literally surrounded by hostile nations dedicated to their destruction. So what is their entry policy for yachts? Give a hoy on your VHF as soon as you are in range thanks. Most boats report that they are met at about 40 miles off by a patrol craft anyway. And what of the post 9/11 US customs entry policy? Upon arrival please report to the nearest customs office, that's it. The only country that has anything remotely similar to Australia's policy is New Zealand and they seem to have a relaxed enforcement attitude. I called myself and asked and I was told that as long as you give an estimate of arrival at least 48 hours in advance (no maximum period as in Australia) via fax from your last port and call with VHF when in range you are OK. In fact in all the searching I've done, no country on earth is as dangerous to enter by yacht as Australia. Hey! We're number one!

Why no notice of this new policy? No press releases? I was shocked that I had not heard of the policy prior to the first conviction reports. I have yet to talk to anyone who found out about this through what one would consider a "normal channel." Even the government friendly press were mute on this. I saw ads from customs extolling the virtue of dobbing in anything you see that is suspicious while out on the water but not one mention of this radical change to customs enforcement.

Why so harsh? Thousands of dollars and a criminal record for this minor infringement? This does not appear to be meant to educate and persuade as much dissuade people from the cruising lifestyle.

Dorothy and Jim Manzari of SV Oceanus, are not rich, just principled. The battle they are fighting is one that will have importance to any private vessel that will enter Australia in the future... maybe you!

Do you think that these brave people deserve help?

Would you like a way to express your anger at the injustice?

If you want to help the victims of our "border protection policy", make a statement and protect your boating future, your freedom, then please contribute what you can to help offset the legal costs they face and fines already paid and let them know you care. I believe their case is good. I believe that given the right legal venue they will succeed. I have put my money where my mouth is. To start this off **The Coastal Passage** has donated \$500. Whether you can afford \$5 or \$1000, all donations are welcome.

To donate by cheque, make payment to "Dorothy Manzari" and mail to:
Dorothy Manzari
C/O The Coastal Passage
P.O.Box 454
Bowen QLD
4805

For direct deposit:
account name: Dorothy Manzari
account number: 734122-765485

Westpac Bank
100 Bourboug street
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4670

"**Border Protection Policy**" as it applies to pleasure craft appears to be a sham. In spite of considerable time spent in search, I can find no evidence or even suggestion that yachts deserve the attention that they now "enjoy". If ever there is a serious threat to our shores it is most likely a yacht that will make the first report... providing the yacht is inclined.

Why does customs work so hard at image control? It's easy to get the impression that Australian Customs spends an inordinate amount of time and resource in message control, even to minutia degree. It is obvious (in my opinion) from a thorough web surf that Customs commits a large effort to it's web presence and search engine placement. And be wary of trusting their web site for information as it seems to change often; perhaps in response to publicity? A whole page of information that I pointed out in last edition ("information for ships masters") that contradicted what customs had been stating in public and in court, has simply been removed from the site for "travellers" and other small but important details change from time to time. I also advise caution in taking the terms they use at face value, like "Border Protection policy", Remember the "Iron Curtain" or the "Berlin Wall"? Well to East Germans it was the "**Anti-Imperialist Protection Wall**". Have a familiar ring to it?

Customs officials at risk... Customs officers that cause harm in violation of law may be held *personally* responsible for those damages. Just because superiors order a thing to be done and assure it is law is not necessarily protection.

Pariah State? Us?? Australia?? How can this be?! But it is true already. Reports have been coming in for months, even before the latest outrage. Some Australian cruisers are leaving their boats in foreign ports and flying home for a visit or business. Many foreign flagged vessels are by-passing Australia in favour of countries like Indonesia where it is considered "safer" than here.

What of the boating industry? The last few years have been good but there may be storm clouds on the horizon. For those that remember the controversy in New Zealand a few years ago, it was industry pressure and a brave yank that took it to court to overturn a law there that saved the day. (New Zealand passed law that required safety equipment on departing yachts that was at odds with international law and common practise.)

How attracted are people going to be to cruising when Customs states they can "board any vessel, anywhere, anytime". Might be bad for business.

Questions, questions, and few satisfactory answers... My mind keeps returning to a brilliant quote from the book "Atlas Shrugged" by Ayn Rand that one of the first victims of all this, American Yacht "Sochatoa", had in their report last issue...

"Did you really think that we want those laws to be observed?... We want them broken... We're after power and we mean it... There's no way to rule innocent men. The only power any government has is the power to crack down on criminals. Well, when there aren't enough criminals, one makes them. One declares so many things to be a crime that it becomes impossible for men to live without breaking laws. Who wants a nation of law-abiding citizens? What's there in that for anyone? But just pass the kind of laws that can neither be observed nor enforced nor objectively interpreted - and you create a nation of law-breakers - and then you cash in on guilt."

How do other countries handle entering yachts?

Entry standards as posted on cruising web sites. These examples have been edited for brevity and should be sufficient for comparison but for more complete information refer to the countries in question or www.noonsite.com

Russia: Get a visa in advance and contact by radio upon approach. Next port requires 3 day notice and 1 day (24 hour notice) is required for departure.

USA: You should notify customs immediately upon arrival at a clearance port. Formal clearance required within 24 hours at INS office after arrival. There is a 96 hour requirement for notification from ships over 300 tons but this does not apply to "non commercial pleasure vessels."

UK: "On arrival in a place where there is a customs house, the captain must notify customs in person or by telephone. Notification must be made within two hours of arrival, unless arriving between 2300 and 0600, when arrival need not be notified until 0800 the following morning..." EU residents need not make formal entry.

Portugal: Use port of entry and clear in upon arrival.

Canada: Use port of entry and clear in upon arrival.

Croatia: Use port of entry and wait till customs come to you. (marina or harbour staff usually take care of notification) If no one shows up for a period of time, report to nearest police with passports.

Cuba: As soon as Cuban territorial waters are entered 12 miles off the Cuban coast a yacht must contact the port authorities or coastguard (Guarda Frontera) on VHF Channel 16 or HF 2128KHz.

Israel: From 40 miles off the coast, a position report with the yacht details and ETA should be sent via VHF radio to the Israeli Navy.

Philippines: Yachts, especially those with animals on board, are expected to contact the quarantine medical officer 24 hours before arrival, but this is often waived as impractical provided the yacht proceeds to an official port of entry.

Mexico: On arrival in Mexico, yachts must go to the nearest port of entry, with the Q and courtesy flags flying.

Sri Lanka: On arrival in a Sri Lankan port, the captain should report to the harbour master, or report to the nearest customs officer or police station immediately.

India: Enter any major port, when approximately 10 miles offshore, you should call first Coast Guard on Channel 16 and then port control on Channels 16 or 12. Various details will be asked including an ETA. Once at the port entrance, permission to enter must be requested. Port control will advise where to moor.

Norway: Yachts from Nordic countries do not need to make a customs declaration provided they are not carrying an excess of dutiable stores and equipment and do not remain in Norwegian waters more than six months. Yachts from other countries should report immediately on arrival at a port of entry. Customs clearance is not strictly necessary if one has nothing to declare, but is recommended.



Bob Norson (right) with Dorothy & Jim Manzari

THE CULTURE OF CUSTOMS

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By Alan Lucas, SY, Soleres

As Australian society rails against the avalanche of suffocating rules and regulations promulgated by quasi-public managerial-style bureaucracies, it is worth noting that Australian Customs has a long history in acting this way or so it seems, because its oppressive culture is not new, as we will see.

If you have a copy of Joshua Slocum's *Sailing Alone Around the World*, turn to the Melbourne section and see what he thought of our front-door officials there. His comments were low-key and only based on unfair taxes, but he was nevertheless thoroughly unimpressed. That was in 1896. Now look at Alan Villiers' wonderful 1930's book, *The Cruise of the Conrad*, and see how things had actually gotten worse in the ensuing forty-odd years. The following quote is just part of his lengthy comments about Australian Customs. His 212-ton full-rigged ship *Conrad*, was anchored in Double Bay, Sydney, where customs clearance was carried out in those days.

After a short prologue, Villiers wrote ---- *entering the ship in and swearing this and that, and filling up always more and more copious forms until I began to fear there would be a paper shortage in Australia; later, with more difficulty, entering the ship out again. The regulations for the management of ships in Australia are voluminous and apparently unending; supervision is strict and, I suspect, costly; the passion of a new people for government seems combined with an undue emphasis upon the complete satisfaction of their insularity to such an extent as to make the visits even of non-commercial overseas ships a from-riden burden to those who bring them.*

Alan Villiers' remarks about 'a new people' and 'their insularity' are very insightful because Australia's isolation from the rest of the world did indeed produce a 'new' society that prided itself in being a free country, yet was paradoxically blindly obedient to excessive rules and regulations. TCP's list of the much easier customs protocols in other countries is proof of this, as my wife and I well knew. (See TCP # 24, pg9)

When Aden was still a civil-war-ravaged Muslim city shored up by the USSR for its naval 'window on the Indian Ocean' during the cold war, entering harbour was intimidating because every ship, merchant and naval, flew the Russian

hammer and sickle flag. Were it not for the victuals needed for the long beat up the Red Sea we would have fled back to sea. As it was, we steamed timidly up harbour until a launch rushed out to meet us with a smiling official in the cockpit. 'Welcome to Aden', he said holding out a piece of paper, 'please fill out this form and bring it ashore to the custom's gate'.

The 'form' was, in fact, a small card requesting basic details of yacht and crew. The whole process took just minutes before all formalities to enter a Marxist nation during extreme paranoia of the cold war were complete!

In the Mediterranean Sea the only official boarding took place in Israel where, far from being treated as unwanted aliens, the officers handed Patricia and me a can of beer each and an ice cream for our son. This friendly, generous gesture was during the Israel-Lebanon border war when all visitors, you would think, would be treated with suspicion. But they weren't. Yes, we had already been questioned over VHF by a patrol boat 30 miles offshore and, yes, while we had our beer and ice cream, a diver checked underwater to see that we didn't have any mines attached to our hull, but at no time were these sinister activities reflected in officer attitude. They all did their job in a most pleasant manner.

Later we cleared in or out of Italy no less that eight times with formalities never more than a request that we check in at the nearest office at our leisure. And the nearest France came to rattling its armour was when we were delivering a motorboat through the canals to England where official doubt was expressed about our presence on someone else's boat. When a letter of authority was shown, the officer apologised and wished us a happy stay in his country.

And Australians think they have a free country?

I digress: Now let's look at the late 1960s in Australia when I first put pen to paper in protest against our customs culture. In those days there was nothing like the strict rules of entry that prevail now, but a few overseas sailors had experienced rudeness and none could come to terms with our absurdly high import taxes. They were as high as 60%, making Australia a pariah country to those needing to - or just wanting to, quit the cruise, sell up and fly home. But as if that were not unfair enough, there was also the threat that an Australian vessel remaining out of the country longer than five years would be treated as a foreign import on its return!

Deciding on a crusade, I wrote an article for the Sydney magazine *Seacraft*, stating the case and severely criticizing customs' import laws. In the same period, as a skipper of a Townsville VIP vessel, I chatted to a guest who was none other than the Attorney General. He sympathised with my concern and confessed unfamiliarity with customs laws. He suggested that I write directly to the Minister for Customs, Don Chipp, who was then in the ruling Liberal Party (but would become disenchantend and start the Democrat Party).

To Don Chipp's credit, he responded immediately to my letter and organised a meeting with the local chief of customs. However, whilst the chief was attentive and polite, the policy did not change and the customs department then declared in a letter to *Seacraft* that much of my information was exaggerated or simply incorrect.

That was probably the silliest thing the department could have done because far from ending the matter, it encouraged a landslide of supportive letters from local and visiting sailors who had experienced the exact circumstances described in my article. One reader (now world famous in movie production) sent correspondence between customs and himself proving beyond doubt that my criticisms were valid and correct. It exposed beyond doubt that customs officials could, and did, make up their own rules as they went along and then sidestepped them when confronted.

Sadly, my actions and the support I enjoyed from outraged *Seacraft* readers achieved nothing beyond reminding us all that in those days bureaucracies were at least obliged to respond to public outcry because they were, public servants not the other way around. So, somewhat exhausted by my futile efforts, I pulled the hatch on all the stuff that was going on and pretended it wasn't happening. But in 1987 the Irish in me was forced to emerge again when Australian Customs hit a new low with its notorious 'labelling laws' in the 1980s.

After spending much of that decade circumnavigating, we were amongst the last to be cleared into Australia by the now defunct Maryborough Customs. Our treatment was polite and friendly giving rise to speculation that Australia's frontline troops were softening up a little. Perhaps, I thought, they were learning a few tricks from third world countries like Aden.

continued next page>>>>>>>>

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Then a few months later, in Cairns, I witnessed how badly foreign yachts were again being treated under a new rule that branded them in much the same way as we do cattle. It was an outrage that had me again writing a contentious article about Australian Customs for the magazine *Offshore*.

Talking to an American sailor in Cairns at the time, very upset because he was to be branded by two big Dayglo stickers the next day, I discovered that this disgraceful new law came into being on 1 September 1987 as a means of keeping track of all visiting yachts. I asked if I could take a photograph of the process to use in the magazine article. He enthusiastically agreed.

Rowing over to his yacht in time to snap the demeaning act of an officer placing a large sticker on the American yacht's topsides, the officer stopped work and brusquely insisted that the procedure could not be photographed. 'Does that mean you're ashamed of your action?' I asked, adding that as an Australian I was under the impression that I lived in a free country. I kept snapping and he got nastier but eventually ignored me and got on with his job of defacing a visitor's yacht with a large number on each side.

This new law made me so ashamed of my country that the first draft of my article had to be toned down lest I be thrown into jail for libel. The piece that appeared in the 1987 summer edition of *Offshore* was tame by comparison, but at least it drew attention to the subject. And knowing that rules and regs never change in favour of social values, I wrote a letter to the Minister for Customs pointing out that large stickers on topsides may leave adhesive residue behind after a year and they will also prevent equal fading of the paint beneath them, thereby obliging owners to repaint their topsides after leaving Australia. This, I pointed out, might produce a flood of litigation against his department.

To my utter disbelief, the labelling laws were scrapped soon after, giving me some hope that the democratic process in Australia was still breathing. But soon after I met other sailors who had coincidentally expressed the same concern to customs and knew that the department's response was not based on any democratic principle; just the fear of litigation. Democracy was no longer based on rights, but on money.

So this is how the New World Order works. Assumption of innocence has been replaced by assumption of guilt. Forget

the grand principles laid down in the Magna Carta a thousand years ago, they don't make money. Continual presumption of guilt does.

The problem is Australia's insularity. It makes us perfect targets for unfair, money-grubbing rules and regulations. Our greatest writer, Patrick White, got it right when he described this condition as Australian's 'penal mentality'. We think we're free but our convict background and insulation from the rest of world helps us believe that our lawmakers know what they are doing. Undemocratic laws have us rattling our cage but beaten by the knowledge that true people-power doesn't really exist and this makes us perfect clay in the hands of the autocrats who now mould us.



Noam Chomsky put it well when he said: *The smart way to keep people passive and obedient is to strictly limit the spectrum of acceptable opinion, but allow very lively debate within that spectrum.*

Under the circumstances, it came as a real surprise to note in the latest TCP that the United States still has lenient clearance laws despite the atrocities of 9/11 and the misdirected military reaction. We experienced them in Fort Lauderdale twenty years ago when, being good timid

Australians with tails between our legs we circled around an unmanned customs dock for ages before daring to go alongside without permission. Then, having gone alongside, we found no human presence at all so used a free customs phone. An official at the airport answered saying, 'Welcome to the States Mr. Lucas. Go and settle in somewhere and pop out to the airport with all your papers in the next couple of days'.

The fact that incidents like this strike Australians as being examples of extraordinary freedom is proof of how over controlled we are in Australia. It is also a reminder that when a stranger sails to our shores, he or she comes from a much freer culture and simply cannot believe how tough our laws are. As a result, there is every chance that the most law-abiding visitor might transgress without knowing it and then pay a terrible fine for acting, from their point of view, normally. So, should we make allowances for them, or stick to our guns and treat them like criminals?

To any free thinker, the answer's pretty obvious, but with no evidence that Australian Customs is listening, don't hold your breath waiting. However it should be pointed out that the department itself has abused the spirit of international law with its 96-hour notice rule. The fact that we are talking about small recreational boats coming from overseas whose ability to make a timetable arrival may be limited by difficulties in communication, rigging failure or weather variations. And in the worst-case scenario of a vessel arriving in a state of distress after drifting jury-rigged for weeks, have we really stooped so low as to make our first reaction that of fining or jailing the owner?

I suspect a few international human rights groups would be interested in the answer, not to mention those lawyers involved in constitutional and maritime law, which, one hopes, still supports the right of a foreign vessel to arrive at a customs port according to the dictates of weather, not to the timetable of an out-of-touch bureaucrat. If the vessel cannot be immediately cleared, then the onus is on the visitor to remain aboard until legally entered into the country. Penalties should only be levied against vessels failing to clear or if their crews venture ashore before being cleared. This is how it used to work in Australia, so why the shameful sledge hammer tactics of the latest law? Is it insularity, paranoia or economical? I suspect a mixture of the lot because it is certainly not fair.

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Customs Backdown! TCP response line by line..

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The following press release was issued on the eve of the last edition of TCP. The paragraph numbers are inserted by TCP for referral and discussion of this surprising development to the right on this page.

Customs media release; Customs reminds yachties: report your arrival - Wednesday, 21st March 2007

- (1) Customs is reminding yachties of their obligations to report their impending arrival into Australia as the 2007 cruising season approaches.
- (2) Under Customs legislation small craft masters must provide Customs with a minimum of 96 hours notice of their intended arrival at an Australian port.
- (3) If the transit to Australia is less than 96 hours, shorter reporting time frames apply.
- (4) For journeys of between 72 and 96 hours, yachties must provide at least 72 hours notice of their arrival; for journeys of between 48 and 72 hours, at least 48 hours notice; and for journeys of 24-48 hours, 24 hours notice.
- (5) For journeys of less than 24 hours, yachties must provide a minimum of 12 hours notice of their arrival.
- (6) Customs National Manager Enforcement Operations, Brian Hurrell, said yachties could report via phone, fax or email.
- (7) "We recognise not all yachts have access to communication facilities at sea.
- (8) "In these cases, masters can have a third party pass the required information to Customs. This can include friends, the master of another vessel, or marina operators at the port of arrival," Mr Hurrell said.
- (9) Yachties can also make a report earlier than the statutory maximum 10 days prior to arrival, recognising that this allows for reports to be made at any port of call on the journey.
- (10) "In the current security environment Customs has an important role to play in checking all vessels arriving from overseas. A failure to report at all, or to report within the minimum timeframes, can result in heavy penalties," Mr Hurrell said.
- (11) The most current information on reporting requirements can be found on the Customs website,
<http://www.customs.gov.au/site/externalLaunch.cfm?exturl=http://www.customs.gov.au> (link to Travellers, Yachts travelling to and departing from Australia) or accessed by emailing yachtreport@customs.gov.au
- (12) "Don't rely on publications you may pick up overseas or on private internet sites, as these may be out of date," Mr Hurrell said.

This section is for direct response to the corresponding numbered lines at left.

- (1) No comment required.
- (2) That does appear to be the rule.
- (3) This is entirely new. This is not mentioned on the web site in the section for arriving yachts.
- (4 & 5) This appears to be an admission that the 96 hours is not necessary to process arrivals. Message to smugglers? Take a fast boat from PNG.
- (6) We have seen from the experience of vessels like "Karama Winds" (See TCP # 23, article "Brutal Customs") that using a means of notification that can't be verified outside of customs is fraught with danger. A phone call or email may just be denied to have arrived. The fax is the only relatively safe means. Emailing in any case, but particularly over radio as is common with the few boats that have email, is not secure. The personal data that customs requires could be easily converted to criminal use. This may be very dangerous advice from customs. This also wrongly assumes that boats have access to these communication systems.
- (7) Especially since customs stopped responding to HF! (Just in time for the new rule?) Yachts may not have access to those communication facilities at their last port either. The Louisiades is an example that comes immediately to mind but there are others in the south Pacific.
- (8) Advising a yacht master to put their financial security and criminal record in the hands of some unknown marina staff or neighbour at the anchorage, is doomed to open a Pandora's box of "he said, she said" accusations with very high stakes. If this were an issue of a warning for failure to comply, it would be different but the responsibility placed on third parties is unworkable. Marina staff would be at liability for a failure of the message.
- (9) Legislation by press release?! This is an absolute 180 degree turnaround that is astounding to find on this document. Besides that this appears to contravene the law from parliament, this opens up the possibility of a traveller providing notice a year ahead or?
- (10) What security environment is that? The rest of the world recognises that yachts are a very low risk traveller. "...to report within the minimum time frames can result in heavy penalties,..." HOWZAT?? I wish someone would check the wording of that little nugget or explain it to me at least. Lines 2 through 5 indicate minimum times that this line says "can result in heavy penalties"! This is very sloppy, exactly the kind of ambiguity that causes the troubles.
- (11) Customs web site may be riddled with obsolete or misleading information. When preparing for an article in TCP # 23, the customs web site was investigated and found to have a page titled "information for ships' masters, Non military ships and persons on board". A yacht could easily have interpreted that as applying to them and the fact is that page of info was out of date for anyone who would have used it, ship, yacht, anything. According to that page the Manzari's, for example, were doing exactly as the rules required. Shortly after that article was published, exposing that little misstep, the page was removed with no replacement or explanation. Much of the new information on this press release, I could find no where else on the customs web site except on this release.
- (12) I would amend that statement to read, "Do not rely on publications you pick up overseas, including from any Australian government office or the customs web site as they may be out of date." The Manzari case revolves around their seeking information from a government office in New Caledonia prior to sailing to Australia. They were given obsolete information and charged upon arrival.

TCP hopes to engage with Customs to discuss and perhaps bring about changes in policy that reflect the actual stated goals of customs regarding the protection of our borders whilst not alienating the marine community in the process. TCP contends that these are not necessarily opposing interests but the opposite, that effective border control is indeed, dependent on the cooperation of the community. To that end, a letter was sent to the attentions of M. Carmody, CEO of customs and Ms. Jenny Eutick, Queensland Regional Director. The letter asked for Customs response regarding any errors of fact that may have been published by TCP regarding the customs controversies and to answer a series of questions regarding the "96 hour" policy and enforcement. A lengthy reply was received that could not be addressed and inserted at this late date in production without substantial editing which I would prefer not to do. Though no errors in reportage were brought up by customs, other, very interesting issues were brought up that deserve more attention and further investigation. Look for the TCP letter and the response from customs next issue.

Eds note: The following is an attempt to make political change to remedy the controversy by the respected legal expert, Chris Ayers. Recent polls suggest this is a worthwhile area of effort.

10 April 2007

Kevin Rudd, Leader of Australian Labor Party
P.O. Box 476A
Morningside
QUEENSLAND 4170

Dear sir,

I am taking my time to write to you because I want you to be our next Prime Minister and to repair the damage done to this country during the last decade. I raise one important issue.

About the Problem

Customs have recently adopted what is known as the '96 Hour Rule', a mandatory requirement that all vessels including private yachts advise Customs no less than 96 hours prior to their entry into Australia. The legislation has simply transplanted International law with regard to the entry requirements for commercial vessels into domestic law. But the legislation has failed to also implement the accompanying qualifying clause applicable to non-commercial vessels under 300 tonnes namely visiting private cruising yachts.

It is technically impossible to comply with such a requirement. There is no longer a Federal coastal radio service on HF (with a range of up to 2,000 nautical miles) available to yachts (the only service is a limited HF DCS service, satisfying a minimal international legal obligation. It offers no person-to-person contact). However, Customs keep a limited watch on VHF radio (not HF) which has a range of 60 nautical miles, and rely on fax and email. Small yachts cannot carry email or fax equipment with which to communicate and their radios are either not monitored (HF radio) or not within range (VHF). At 96 hours prior to arrival a yacht travelling at 6 knots would be some 500 miles away. Neither can a yacht travelling from a foreign location meet

the '10 Day Rule' of advanced notice since this would require a specific time of arrival, impossible for a small yacht to provide with any degree of accuracy. Should such a yacht be overdue, or arrive early, it may be in further breach of state and federal law. Furthermore, no proper effort has been made to publicise these changes to entry requirements.

As a result, prosecutions including criminal convictions have been brought against the crew and masters of several overseas visiting private yachts. Recently an elderly Dutch couple took a 'David Hicks Plea', paid the fine and left Australia, bitterly distressed. More prosecutions are pending.

Two issues emerge:

The apparently uncompromising and insensitive behaviour of Customs officials. This reflects both a lack of training in the law and in consumer relations as well as bad management practice.

The lack of a national coastal communications and search and rescue facility (a national Coastguard, a Labor policy?).

A suggested solution:

The Australian Customs Service if it is to operate effectively, needs professional training of the highest order and requires effective management cognisant of international law and of the distinction between individuals who mean to harm this country and those who do not. It is a vital role that in my opinion it is failing at present.

We also need a National Coastguard to replace the numerous state and federal authorities, quangos and volunteer groups who currently handle coastal surveillance, communications, registrations and rescue. The volunteer organisations perform a superb job but it is neither fair for them to carry the legal responsibility of forwarding vital communications to Customs nor do they have the resources to meet this added burden to their already phenomenal workload during emergencies. We need a national HF and HF DSC coastal radio service and an expanded VHF service. We need to amalgamate Coast Watch and certain Navy and Customs functions under one centralised Coastal Protection body.

The cost of doing nothing

There are many thousands of yachtspeople living on boats in marginal seats who are incensed by what they feel are the unnecessary and intrusive activities of Customs officers. Rather than assist Customs, many now frankly resent the aggressive behaviour of the Customs service. The present Minister Ellison brushes off their complaints. But they float - and they vote.

Overseas yachting organisations are now warning potential visitors to avoid Australia and travel from Pacific countries directly to Asia. Should the international yacht rallies also avoid Australia or restrict their visits millions of dollars in foreign earnings will be lost. Local boating industries will lose potential work and earnings from visitors and the coastal tourist industry will also suffer.

The overseas reputation of Australia is unnecessarily but seriously maligned. At one stroke the Customs service by targeting harmless and helpless retired visiting cruising folk has damaged Australia as a tourist destination. These are not drug dealers, terrorists or people smugglers Customs is attacking. They are most often retirees trying to fulfil a life-long dream! It seems only in Australia are visiting yachts treated in this way.

Ordinary overseas visitors are suffering criminal convictions at a time in life when they should be able to enjoy their passion of sailing the world.

Whatever happened to the Australia of the 'Fair Go'? Has it become a xenophobic country following a leader who apes America?

Please rescue our overseas yachting visitors and the reputation of Australia.

Yours faithfully,
Chris Ayres
Solicitor of the High Court and Supreme Courts of NSW and Queensland (retired).



Skippers Call for Shoalwater Shelter

Bob McCollough of Mackay VMR reported To TCP that he had talked to a Marine Safety Queensland representative concerning the need for smaller vessels especially, to have shelter in the Shoalwater area, regardless of official weather terminology or military live firing exercises. I contacted Peter Irwin, Senior Project Officer with MSQ who did confirm this good news. Effective now, any skipper who determines that the safety of his vessel/crew may be at risk, may use the anchorages in the Port Clinton area, (south arm) Island Head Creek or Pearl bay if required. Vessels must contact VMR Roslyn Bay during the day or Gladstone nights. If out of range, Hay Point, Thirsty Sound or Mackay VMR may be able to relay notice to the relevant authority. Let them know you are there. Peter also stated that there is a radio repeater being installed in the vicinity now but it won't be done until it's done! We'll let you know. It is emphasised that this is for genuine situations as determined by the master of the craft. It's your call.

Island Head Creek or Orgy anchorage?

For a report and guide to this destination go to the TCP web site. Click on "Destinations". The Shoalwater anchorages are controversial in that they represent a wildlife refuge of some importance yet they are used for military "live firing exercises".

New, "Notice to Mariners" page on TCP web site!

TCP now has a web page that takes the information that the migratory fleet needs most from the official sources, including Shoalwater closures, and distills those announcements for easy access and downloading. See the TCP home page and look for the link there.

What's with Creal Reef Weather station?

Many boaties use the weather service observations of off shore locations to size up conditions for coastal passage. Creal Reef being a key source. BOM reports that the structure itself on the island is rooted and unsafe for personnel to service the gear! Because of the remote location, reconstruction will take some time but the project is under way and it will be restarted immediately upon completion.

New \$15,000 Fine for Gladstone Harbour

The following is an edited version of the "notice to Mariners".

QUEENSLAND NOTICE TO MARINERS

**244 (Permanent) of 2007
GLADSTONE PILOTAGE AREA
LOCALITY:
GLADSTONE PILOTAGE AREA
ACTIVITY: REGIONAL HARBOUR MASTER'S
DIRECTION TO ALL SHIPS
10 METRES OR MORE IN LENGTH**

This Direction applies, until further notice, to the masters of all ships that are 10 metres or more in length that are:

- (i) underway and entering, or about to enter; or
- (ii) at a berth, or at anchor in the Gladstone Pilotage Area and are about to be operated in, or leave; the Gladstone Pilotage Area.

Action required:

The master of any ship to which this Direction applies must contact "Gladstone Harbour Control" on **VHF channel 13** prior to entering, departing from or operating in the Gladstone Pilotage Area. It is an offence to fail to comply with the above Direction without a reasonable excuse (maximum penalty \$15,000 for individuals and \$75,000 for a corporation). If you fail to comply with the above Direction then prosecution action against you may be commenced.

Any queries concerning this Direction may be directed to:
Captain Mike Lutze
Regional Harbour Master (Gladstone)
Maritime Safety Queensland
GPO Box 123 Gladstone QLD 4680

MSQ provides a "chart-lette" on it's web site to show the perimeters of the Pilotage area but roughly described it is the area north of Tiber Point on Hummock Hill Island all the way to Connor Bluff on Curtis Island and all the way up the narrows past the cattle crossing and extending over 15 miles due west of the port. This includes Facing Island anchorages. TCP has many questions regarding this new direction and will be asking them before the next edition of the paper. For example, what constitutes a "reasonable excuse"? What about boats that are not equipped with vhf radio? What about vessels that do have vhf but can not monitor or respond while under way, especially in area's of high traffic. And why this incredibly large fine? Whilst in contact on the Shoalwater issue with Peter Irwin of MSQ I had a chance to briefly discuss this and he assured TCP it was purely a safety issue reflecting the increased ship traffic in the port and that this practise was common in Australia and many international ports. TCP will keep you posted.

TCP has shifted anchorage!

So don't stop in to Bowen to say G'day cause we aren't there! The rise in property values in Bowen has allowed many in town to consider their options and so... a little sea side ranch is in our future. Being a few minutes away from the Susan River anchorage and the Urangan/Hervey Bay harbour insure TCP will be in regular contact with the community while we organise a boat for ourselves. The new place is required to have a bloody big shed! I am confident the move will further enhance the progress of the paper by increased accessibility to the larger southern markets but don't even think that TCP has abandon the north! No way. All the old contact details will work for a while but advise using all the new gear posted on page 5. Cheers, Bob



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Yachts entering Australia, TCP ask's for facts The Questions

And the response...



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Notice! As is regularly stated in TCP and as is usually expected by readers, "all contributions that purport facts in a matter of contention should be ready to provide support for their assertions.." As statements in this letter were either unclear or in conflict with other sources a letter was sent to customs asking for additional information. This request (copy on next page) was flatly denied. Readers should consider this in perusal of this material and note that TCP does not endorse this information provided by Customs. I have decided to publish this anyway but along with the additional questions that were posed to Customs and other information. You decide.
This response was delivered to TCP by Mr Simon Latimer, "Director Customs Corporate Communication" on behalf of Ms Jenny Eutick via Email

TCP invites Australian Customs to reply to inquiries that are reflective of issues raised via letter and personal contacts to TCP.

May 8th, 2007

To: Mr. Michael Carmody
Chief Executive Officer
and to: Ms Jenny Eutick
Queensland Regional Director
Australian Customs Service
From: Bob Norson
Editor, The Coastal Passage

Re: Yachts entering Australia

Greetings,

I am writing as a result of intense interest of my readers regarding the enforcement and prosecution of yachts entering Australia that have been found in violation of a newer notification requirement, AKA, the "96 hour rule".

There are some questions that naturally arise from the circumstances we have had reports from that have not been addressed by the ACS in any material I have been able to source. If you or any representative of the ACS could bring about an understanding of these issues it may go a long way to restore the boating communities goodwill that I assure you, has suffered otherwise.

For example; why the rule applied to yachts in the first place? No other country in the world, as far as I have been able to determine, places such regulation on personal craft. The United States of America has a 96 hour rule but only applied to craft 300 tonne or over which seems reasonable but no notice requirement for yachts. New Zealand has a 48 hour rule but thus far has only issued warnings for infringement of them. I am not clear on how this rule benefits Australia?

Why was there no notice given of this important new policy? The ACS spends large sums of advertising dollars to persuade yachties to assist in observation of suspicious activities at sea but I don't recall one ad educating the fleet of this issue.

Why are yachts being singled out for prosecution? The shipping and freight industry have negotiated a compromise deal that allows for a reduced fine and no criminal record (the "infringement notice scheme") whilst yachts bare the full burden of large fines, criminal convictions and the risks of future troubles with countries that may have record of a customs breach in Australia.

I would like to invite ACS response to discuss any errors of fact in reportage thus far. To that end I provide the following web site link that makes available, the two recent editions (in PDF) that cover the issue, TCP editions # 23 and 24. See: www.thecoastalpassage.com

I am looking forward to a meaningful interchange that I hope can explain and perhaps rectify policy matters that affect yachts. I can see from the record that the agency has quite a bit of flexibility in its enforcement and perhaps a less antagonistic approach can be organised from consultation. Readers have come up with a few very interesting suggestions that may address customs concerns whilst not alienating the yachting community. I believe a civil debate on these issues with some genuine consultation could resolve the problems. I will hold space for a response as long as I can. Hopefully we can talk within the week?

Sincerely,
Bob Norson
Editor and Publisher
The Coastal Passage

Information for The Coastal Passage

Why is it important that yachts report their arrival in advance to Australian Customs?

Customs is responsible for clearing all goods, vessels, passengers and crew entering and leaving Australia. A primary reason for our presence at the border is community protection preventing prohibited, harmful or illegal goods or persons from entering Australia. While the vast majority of smallcraft are travelling legitimately, criminal syndicates have used them to try and breach Australia's border security. There have been numerous detections and seizures of prohibited items imported by smallcraft in the past, including the seizure of over 1.2 tonnes of illicit drugs in the past decade. In the light of this and other evidence the Australian Government, through Customs, has decided that all vessels, regardless of their size or the purpose of their travel to Australia, must be fully risk assessed prior to their arrival and must therefore provide the pre-requisite information needed to make this assessment. Customs risk assesses every smallcraft and commercial vessel in advance of its arrival in Australia. The assessment takes into account available information and intelligence in relation to a range of border security issues, including: drugs, terrorism and people-smuggling. It is important that this assessment take place in a timely manner, which allows Customs to organise its resources to provide the required response to the threat identified.

What are the reporting requirements for yachts?

There are essentially three common elements that every vessel, whether a smallcraft (eg. yacht) or a commercial vessel must report to Customs in advance of their arrival into Australia.

1. Impending Arrival Report of the vessel;
2. Passenger Report for passengers on the vessel, and
3. Crew Report for crew on the vessel. These reports are detailed in government regulations. Customs recognises that these prescribed forms are tailored for commercial vessels and have therefore made concessions for yachts travelling to Australia by only requiring the following information to be reported:

- o Name of the yacht
- o Intended first port of arrival
- o Estimated arrival date/time
- o Last four ports of call
- o Details of all persons on board including name, date of birth, nationality and passport number
- o Details of any illness or disease recently encountered
- o Details of any animals on board
- o Details of any firearms on board.

These reports are required under the *Customs Act 1901* and must be communicated to Customs within prescribed time periods before the vessels estimated time of arrival at their first port in Australia as follows:

- If the voyage exceeds 96 hours - not later than 96 hours, or
- if the voyage is less than 96 hours - not later than 72 hours, or
- if the voyage is less than 72 hours - not later than 48 hours, or
- if the voyage is less than 48 hours - not later than 24 hours, or
- if the voyage is less than 24 hours - not later than 12 hours.

While Customs notes that smallcraft differ from commercial vessels in the amount and type of communications equipment many of them carry, it is significant that the majority of the more than 700 yachts arriving in Australia from overseas each year are able to comply with these reporting requirements. These timeframes came into effect in October 2005 when, in a climate of heightened border security, the Government determined that advance notice of the arrival of vessels and people to Australia was an imperative. In the air environment, Customs obtains advance passenger information on all travellers prior to their arrival in Australia, enabling us to pre-screen and risk assess all travellers in order to ensure that they do not pose a threat to Australia's security. In the same way, the Government recognised that passengers, crew and vessels of all sizes (whether it be a yacht, commercial vessel or even an offshore drilling rig) should be assessed prior to their arrival in Australia. After careful consultation with border agencies, the Government determined that passengers and crew should report to Customs no later than 96 hours in advance of a vessel's arrival at the first Australian port. This rule applies to vessels of all sizes ranging from large cruise ships to small pleasure craft. The timeframe of 96 hours was considered appropriate in order to provide sufficient time for Australia's various law enforcement agencies to conduct a thorough risk assessment and to organise an appropriate response. Prior to October 2005 all vessels, including smallcraft and commercial vessels were subject to the following reporting timeframes:

- If the voyage exceeded 48 hours - not later than 48 hours, or
- if the voyage is less than 48 hours - not later than 24 hours

The pre-arrival reporting requirements for yachts did not first appear when reporting timeframes moved from the '48 hour' regime to the '96 hour' regime. Yachts were not excluded from the previous '48 hour' regime and have had to provide some form of pre-arrival notification for several years now.

Where can yachts find out about Customs reporting requirements?

Australian Customs Internet site details what yacht masters are required to know and do prior to their arrival in Australia. Given that the yachting community is international by nature and the impossibility of our making individual contact with all yachts, our Internet site is regarded as the best way we can communicate our requirements. Customs issued two Australian Customs Notices in 2005 (ACN 2005/31 and ACN 2005/47) to advise of the commencement of the new '96 hour' reporting regime. It should be noted that these notices did not specifically mention smallcraft.

The Customs Information Centre (1 300 363 263) also provides details of these requirements for those wishing to make contact by phone.

What action does Customs take when vessels fail to meet their reporting obligations?

Customs treats non-compliance seriously. The measures available to Customs are the same, regardless of whether it is a yacht or a commercial vessel. Action is determined on a case-by case basis, and can range from a warning letter through to prosecution. Factors that may influence Customs decision on what level of action to take in the event of a failure to meet

reporting obligations may include:

- What attempt, if any, was made to obtain the correct information relating to Customs reporting requirements?
- What attempts, if any were made to report to Customs prior to arrival?
- Did the vessel actually arrive in Australia or the crew go ashore before it made a report of it's impending arrival to Customs?
- What communication options did the vessel/master have available to facilitate the report of pre-arrival information, either from the vessel itself or at the last ports of call?
- Were there any safety/emergency issues that contributed to the reporting issue?

Each decision to prosecute is only taken after careful consideration. This is reflected by the fact that during the past two years Customs have completed five prosecutions in relation to vessels who have failed to comply with the pre-arrival reporting requirements (vessel, crew or passengers). Yet during this same period we have seen more than 20,000 vessels (both commercial and smallcraft) report their arrival in Australia. Yachts have also not been "singled out." For example, on 2 March this year in Tasmania, a shipping company was fined \$2,500 with costs of \$2,867 for failing to report to Customs the impending arrival of one of its vessels, a tug supply ship, and failing to provide a crew report.

Can Customs use the Infringement Notice Scheme (INS) to deal with noncompliance?

Within the *Customs Act* (and other legislative instruments) there are "strict liability" offences. A "strict liability" offence means that regardless of whether the person committing the offence acted intentionally, recklessly or otherwise, the fact the action occurred is sufficient to establish that the offence was committed. Under the provisions of the *Customs Act* some, but not all, of these "strict liability" offences can be dealt with by what is known as the Infringement Notice Scheme (INS). The INS allows certain senior delegated Customs officers to serve an infringement notice in lieu of taking prosecution action in certain situations. In relation to the three common pre-arrival reports required for all vessels arriving in Australia (as described above) only one of these reports Impending Arrival Report - can be dealt with via the INS. The other two reports Crew Reports and Passenger Reports cannot be dealt with via the INS. This applies for ALL vessels - commercial vessels or yachts are NOT treated differently when it comes to the INS. Put simply, Customs options for dealing with vessels failing to report their crew or passengers does not include the INS.

Why should the yachting community continue to support Customs and its Hotline program?

Customs officers are at the forefront of efforts to stop drugs, people and weapon smuggling at our borders. This is a formidable task when you consider the vastness of our coastline and the sparseness of our population. For this reason Customs has always sought to work cooperatively with the Australian yachting community. As extra pairs of eyes and ears on the water, often in remote locations, they can help us better protect our borders by reporting any suspicious incidents to our Customs Hotline on 1800 06 1800. Border security is about everyone, not just Customs, but yachties too, playing their part in helping to keep our country safer and protecting the lifestyle that we enjoy.

More Information please...

To Simon Latimer
Australian Customs service

Emailed 11-07-07

Greetings

The letter I received dated the 14th of May brings some questions to mind. I would appreciate a response to the following;

Could you define "smallcraft" as used in the first paragraph of your letter, "**Why it is important...**", and also could you provide an example (preferably recent) of a yacht involved in major drug importation? Or people smuggling? And have you ever had a yacht involved in a "terrorist" activity?

Does the airline industry have the same requirements for notification as yachts? Was the descending scale of notification schedule (as per notice ACN0547) as a result of consultation with the Airline industry?

From your letter, "Yachts were not excluded from the previous '48 hour' regime and have had to provide some form of pre-arrival notification for several years now." Were there criminal prosecutions of any yachts as a result of that period of the 48 hours rule? If so could you direct me to records of that.

"Crew Reports and Passenger Reports cannot be dealt with via the INS. This applies for ALL vessels - commercial vessels or yachts are NOT treated differently when it comes to the INS." Are you stating then, that every vessel that has violated this "strict liability" offence has been criminally prosecuted? Or is this "strict liability" offence still a matter of discretion to the ASC? As in... "Action is determined on a case-by-case basis, and can range from a warning letter through to prosecution."

How many INS actions have been taken against ships in the last year? How many to yachts?

And finally, An important question from my original inquiry is yet to be addressed so I reiterate here, "why the rule applied to yachts in the first place? No other country in the world, as far as I have been able to determine, places such regulation on personal craft."? What special circumstance or condition creates the need to take Australia so far out of step with the rest of the world?

Cheers

The Coastal Passage

Editors note; In addition to the above TCP was informed that all or some of the statement from customs could be attributed to a Brian Hurrell. As this seemed unclear, a request was made to confirm the true author of this material. This request was also refused.

This is the notice that Customs expects you to know about.

The minister for Customs is quoted as stating the "96 hour" rule is, "widely publicised and the internet site is regarded as the best way Customs can communicate their requirements".

To find this and other ACS notices or ACN's, you must have web access. Go to their web site at www.customs.gov.au That will open the home page, then on the right hand side of the page you will find a list of "quick links". Click on the one that says "media room". At that page you will see a list of about 30 small buttons on the left side of the page, click on the one that says "customs notices". On this page you can look on the left side again or in the centre of the page to find the phrase, "Australian Customs notices". Click there. On that page you will find a list of years. This particular ACN was issued in 2005 so click on that year. Now you will find a list of all notices issued in that year. The one relevant to this report is 2005/31 which, for your convenience is duplicated below. ACN 2005/47 mentioned in the customs response is also interesting reading and can be found on the customs web site. This is as of 27 July 07 but is subject to change at any time.

AUSTRALIAN CUSTOMS NOTICE NO. 2005/31

Commencement of 96 hour Pre-Arrival Reporting

On 26 April 2005 Customs advised industry that from July 2005 vessel pre-arrival and passenger and crew reporting would be required 96 hours in advance of a vessel's arrival. It was also the intention that shorter periods would be prescribed depending on the length of the voyage.

Since the date of that advice the Minister for Justice and Customs has agreed with industry to seek a longer transitional period for the purposes of the Integrated Cargo System (ICS). The cut-over to the ICS is now planned to be 12 October.

In examining the legislative implications of this transitional period it is now apparent that requiring 96 hour pre-arrival reporting from July 2005 would need a series of amendments to be made to the Customs Regulations. In view of this Customs believes that matters will be simplified for industry if 96 hour pre-arrival reporting becomes effective from 12 October 2005.

A fact sheet on the ICS transitional arrangements is available at www.customs.gov.au, following the links to the CMR pages.

Customs is examining the forms currently used to supply vessel and crew pre-arrival information.

Some rationalisation is necessary to ensure Customs continues to receive reports, on vessels in particular, required by it and other Government Departments. You will appreciate that information required on a vessel (such as ISPS and levy information) is substantially different from the information being collected through the (ICS) Sea Impending Arrival Report and the (ICS) Sea Actual Arrival Report. A further Australian Customs Notice will be issued giving details of a national simplified requirement. Until then the current Impending Arrival Report must still be lodged.

It is important to note that the Sea Impending Arrival report cannot be lodged in the ICS any earlier than 10 days before the expected arrival of the vessel.

For those companies reporting the Sea Actual Arrival Report on or after the cut-over date, the current arrival report, Form 5 Part One, will no longer be required to be lodged manually. From 12 October the manual lodgement of this form will cease.

The contact for these matters is Manager, Enforcement Operations on 02 6245 5431 or jennifer.robinson@customs.gov.au.

Brian Hurrell
National Manager
Enforcement Operations
CANBERRA ACT

What we know... What we Know we Don't Know... ..

Contradictory Information?

The document received from customs was interesting in that some information seemed incomplete and/or contrary to information from other sources. Also contradictions within the document itself should be addressed such as; "What action does Customs take when vessels fail to meet their reporting obligations?... Action is determined on a case-by case basis, and can range from a warning letter through to prosecution... Put simply, Customs options for dealing with vessels failing to report their crew or passengers does not include the INS." TCP research confirms the former but if this quote is meant to imply that all instances of failed crew report are prosecuted, strongly disputes the latter.

Misleading information?

For example, relating to the first question in the letter above, in international shipping language, small craft usually means any seagoing vessel under 300 tons. This customs document seems to intermingle the terms 'smallcraft' and 'yacht' in a way that may confuse.

Drug Issue a Red Herring?

The minister seems to state that the intent of the 96 hour rule is an anti terror measure. "In the climate of heightened border security and counter terrorism, the Government deemed that advance notice of the arrival of vessels and people to Australia was an imperative." Could the smuggling focus in the Customs document at left be an attempt to justify after the fact? Perhaps, but to pursue it in any case, TCP couldn't verify the amount of drugs that Customs say they found on "smallcraft". TCP research has found two cases involving drug smuggling yachts, one with 505kg and another with 90kg. Both busts were over five years ago and the result of foreign sourced information like US Customs. Both didn't add up to 1.2 tons and in that paragraph the term "smallcraft" is used. In the last 30 days (as of July 27) Customs have announced 9 major drug arrests and over a thousand seized mail drug shipping attempts, not an unusual amount. None from a yacht.

Airlines Get Concessions

TCP have received claims that the descending order of arrival requirements listed at left, "if voyage is less than..." etc, were a concession demanded and received by the airline industry and freight forwarders. This appears to be spelled out in ACN 2007/03. (see above right for explanation of the term and how to access the documents)

Shippers Get Concessions

Indeed, in ACN 2005/47 there is already mention of modifications of the rules to accommodate the shipping industry already angry with customs over the ICS (integrated Cargo System) that seriously tarnished Customs reputation

in international shipping and in the press. Reports are that debacle has cost over \$200 million in cost over-runs to tax payers and over \$12 million has been paid out in damages to shippers hurt by Customs failed system so far. If it was true that the airlines are accommodated as well as ships, then it would seem reasonable to accommodate yachts in such a way as to avoid criminal prosecution except where criminal intent is established.

More Concessions for ships

The "INS" referred to (Infringement Notice Scheme) is a concession to the shipping industry that objected to the '96 hour' rule as impossible to comply with. Under the INS, instead of a criminal prosecution, customs may substitute the smaller fine without criminal record that the shipping industry has negotiated as a concession.

Yachts 100 times more likely for Prosecution than ships

Only one out of the over 19,000 ships that Customs states enter per year has been prosecuted. This was a relatively recent case coming on the heels of TCP's publicity of several yachts being charged. According to the Customs document, only about 700 of the 20,000 marine vessel arrivals last year were yachts. The Document states there have been 5 prosecutions. TCP research confirms, four for yachts and the one ship. According to information forwarded to TCP there have been "several" INS penalties for ships but none for a yacht.

What is Law and What is Whim?

TCP has reports of vessels that have not complied but not been prosecuted. All yachts prosecuted have been in Queensland. None elsewhere. All have been foreign flagged.

Perhaps the greatest concern for yachts is the uncertainty created by the lack of notification of the law and that the acceptable actions seem to be constantly changing. In last issue of TCP a media release published by Customs contained instruction to yachts to ignore the "statutory maximum 10 days (notice) prior to arrival". That could be construed as inciting to commit crime. The word "statutory" implies law but goes on to say it is OK to ignore it. That release also stated you could now notify third parties to relay info when in other customs documents it states strict criteria for how you contact customs.

In this report (left) it states clearly that the final decision to prosecute is made by customs and they have included a list of criteria that is used to decide. This states then, that customs feels it has autonomy when it comes to prosecution, that it reserves the right to decide who might be prosecuted and under what criteria. It is interesting to note that the specific issues listed in this document as mitigating circumstances apply in large part to the cases of boats

already prosecuted. In particular, the Manzari's should not have been charged according to this document. They did diligently seek the correct information, carried it out to the letter with the best communication gear they had and were careful to not violate Quarantine upon arrival. (facts supplied by the Manzaris with court docs and personal statements for support)

Whilst Customs refers to their web site as the only venue for announcement and information to yachts on the '96 hour rule', the notice document (published above), makes no mention of yachts in it's content so even in the rare event a yacht crew would access the notice, it's relevance would likely be missed. Other information for arriving vessels on the web site has been changed often and in some cases, inaccurate. As reported in TCP # 23, well into this year customs still had the old '48 hour rule' posted.

Especially as it strongly appears that Customs is acting independently in these matters, it is fair to ask why is Australia so far out of step with the rest of the world on the enforcement of these laws?

Except for cargo reporting, yachts entering Australia appear subject to more regulation than ships. Whilst yacht crew must be vetted and approved for a visa before arrival, ship crew are only now being asked to apply prior to arrival.

Ships crew not required to have a visa to enter Australia.

According to Emigration; "Special Purpose visa. This visa is for foreign crew (including supernumerary crew), plus accompanying spouse and dependent children, of non-military ships that are entering and departing Australia in the course of an international voyage. This visa is granted to crew by operation of law on arrival (editors emphasis) if crew members hold a valid national passport, and another individually-issued document establishing their employment on the vessel (a seafarer's identification document (SID) or valid employment contract).

Maritime Crew visa From 1 July 2007, this visa replaces the Special Purpose visa (above) for foreign crew of non-military ships but a transition period is allowed until 31st December. Foreign crew will be required to lodge a visa application outside Australia. For lawful arrival in Australia, foreign crew will need to hold a valid Maritime Crew visa, a valid national passport, and must be identified as crew on the vessel (eg. crew list, ship's articles, seafarer's ID)."

TCP reportage has been accurate

Despite invitation to do so, Customs could not contradict or fault any fact published by TCP on these subjects.

Keith tries to understand...

By Keith Owen, SY "Speranza"

I think I have found the answer! Not too sure if I've identified the real question. But I now have a sneaking suspicion that the poor yachties are being slowly but surely sucked into a bureaucratic morass where legislative processes are being applied in ways that were never initially intended by the rule makers. This has resulted in anomalies and injustices - bloody unfair, I say.

Let's start with our Customs mates. Now I personally don't want drugs coming into the country never, ever, full stop. And if I'm riding on a train in Sydney (when they're running), I don't want to be blown up by terrorists on my way to drinks at the yacht club what a waste (the drinks I mean).

As I understand it, the 96-hour Custom's rule is part of a range of measures that was introduced as a result of the Government's terrorism package. One aspect requires all ship's crew to hold visas on arrival in Australia. This enables authorities to screen people before they arrive in Australia (essentially bringing this class of entrant into line with the general visa regime where all people are screened prior to, rather than after, arrival) a good move in my view.

The 96-hour rule is intended to enable the various authorities to check the crew, origins and passage of a ship's voyage prior to arrival in Australia. This period is designed to allow authorities sufficient time to scan the route followed, to assess and request intelligence as to whether there is a potential problem arising from the voyage. Again, the need for some prior notification seems a reasonable proposition.

If a commercial ship has transited a terrorist hot spot or a major drug haven, Customs probably do need the 96-hour window to give them sufficient time to look at intel and to pull in all the necessary man/woman power, dog squads, SAS, Federal Police, paddy wagons, x-ray machines, etc, required to respond to an identified threat. No problem there either.

everyday business. Why, by comparison, is it that they can't handle our husband and wife cruisers from New Cal with less than a 96 hours notification?

If Customs were really into risk management and assessment, you would reckon that they would be able to distinguish between big commercial ships and humble cruising boats. Why apply the same rules? Is the threat the same? Is the same response required? I think not. Why can't Customs be "Alert but not Alarmed"? I am sure they have the fridge magnet in their tearoom.

It is true that Customs have intercepted yachts trying to import drugs. There was a big bust a number of years ago when a yacht tried to land its contraband in Broken Bay, NSW. Yet my understanding is that Customs knew well beforehand that it was coming and had staked out the area where the drop was to be made. I don't think they needed 96 hours notification to pull off that well-executed operation.

However, let's admit that some prior notification of a cruiser's arrival is necessary. My feeling is that it should be at least 24 hours. 96 hours seems excessive. Somewhere in between? (TCP might hold a ballot- what about it Ed?) Because all Customs do on notification of arrival is to run the names of crew through warning lists, check any intelligence including Coast Watch sightings and roster a boarding officer to meet the craft. Pretty straightforward stuff not requiring days of detailed pre-planning.

Customs should provide HF access. Why not? Doesn't cost much to have an ICOM (or the Aussie Barret) going in their ops room. And they have HEAPS of dough!

VHF access might also be a factor. VTS in Qld seem to have very powerful CH 16 coverage. How far out to sea is their reach, I don't know. But Townsville does talk to Hay Point twice a day over a significant distance. Why can't Customs and VTS come together in some agreement to allow log-inn's via the VTS network?

But the bottom line is this; why should Customs apply the same commercial ship rules to cruising yachts? Nothing I have read in their correspondence with TCP justifies the current approach.

Having just covered Customs, let's move on to Fisheries.

I read somewhere during the last month an article outlining the injustices of fishing penalties. Now, try as I might I cannot trace the source of what I am about to write. Suffice to say, I am certain I read it because it has stuck so clearly in my mind.

The gist was that you can drive through a school zone at 100kph and have a traffic offence recorded. But if you were done for a fishing infringement, you had a criminal yes, a criminal conviction against your name.

Now I don't speak from first-hand experience as to the consequences, but I do know that for job applications, visa requests, rental forms, etc, there is the usual question "Do you have a criminal conviction yes/no". If you tick "yes", that is a real blot on a person's ability to achieve an outcome.

Now as you know, *Speranza* doesn't fish, we go to the fish market. But we do appreciate that there is a bewildering array of rules regarding where and how you fish. The zones are hard to follow, and I don't really know where a pectoral fin is actually located on a fish so as not to remove it. Also I thought all fish had scales, so I don't understand the skinning restrictions (is it your own fingers they're talking about when you take out the hook?)

It seems to me, that when applying the fishing rules, they put all the boats in the one bucket. So the innocent yachtie who trails a lure through a no-go fishing zone is immediately treated the same way as a Peruvian trawler with a hold full of illegally caught Patagonian Tooth Fish. They've chucked the same rulebook over everyone!

And good 'ol Gladstone Port. If you are in a boat over 10 metres and don't report to the Harbour Control within the pilotage area, you are in deep doo-doo.

I was told that the log-in requirement stemmed from an incident where a trawler was entering Gladstone and, in true fashion, the crew was down the back gutting fish and prawns etc, and not listening out for a bulky which was going down the channel. Well apparently the harbourmaster and pilot had a hissy fit and extended the rules controlling commercial shipping to cover most small boats as well.

Failure to notify the harbour control attracts fines for 10 metre plus boats - \$15,000 for an individual and \$70,000 for a corporation. Enough to spoil your day!

Now, if I sailed out of Gladstone Yacht Club I would like a Farr 1020. But equally, there is a Jutson 9.9 which is a very slippery yacht as well. In the Farr, reporting is mandatory, in the Jutson it is not. So, if you copped a \$15,000 fine in the Farr, this would represent \$715 per cm of boat length compared with the Jutson. How's that for value for money? Makes the Jutson seem like an economic steal.

Again, I can see the need to regulate bulkies roaring up and down the Gladstone shipping channel unsupervised, but why use the same template for 10-meter boats?

On to the next overkill. If I were running a charter ferry business, I would accept that "duty of care" requirements would require that life jackets for passengers were regularly serviced. Costs would be passed on in the price of the ticket.

So imagine my surprise to be told that our inflatable life jackets need to be serviced every year, yes, every 12 months! Failure to do so attracts a \$180 on-the-spot fine. We were recently inspected by a Fisheries Patrol and after a cursory look at our flares and EPIRB, they were disappointed to see that our inflatable life jackets had indeed been serviced only 2 month ago. No fine, bugger!

The only reason I can think of this excessive regulation is that we yachties are having commercial shipping rules applied to us as well. It would be hard to convince me that an inflatable life jacket would go belly up after only 12 months.

And on the vexed question of boarding of vessels by the various and numerous authorities. I was told that the legislation that underpins the ability of Mr Plods and others to hop aboard, stems from legislation that was enacted some time ago to allow officials to board a tanker, bulky or container vessel which wasn't obeying the traffic rules and looked like running up on the Great Barrier Reef. Good intention, no problem.

But it is drawing a long bow to use this regulation to allow all the various inspectors to jump on people's boat at will. I used a good strategy recently when I said "you may come aboard, but my wife will be coming out of the shower with no clothes on at any moment!" (Having just written this, I wonder if my stay-away warning could have, in fact, generated a wild and unseemly scramble of all the attendant wallopers to board *Speranza* to get an eyeful!) (*Patti's note; He might also have told his wife he was permitting them to come on board!*)

continued next page...



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"One size fits all" continued from page 19

And lastly the good ol' Immigration Department.

When arriving from overseas, foreign yachts must clear in. Crew must be in possession of visas. Boats are given a cruising permit allowing the craft to remain in Australian waters for 6 months with the option of extensions. While the boats are fine, the crew face difficulties. They usually hold a visitor's visa authorizing a limited 3 months only stay. And the entry permit issued on arrival is Non Extendable. It can't be extended in Australia.

The only option for staying longer in Australia is to leave the country and re-enter at which time another 3-month stay is authorised. Air New Zealand is the main beneficiary of this silly arrangement.

Now this visa regime is ideally suited to tourists who arrive in Oz by air. Arriving by this mode enables you to spend the first 24 hours getting over the excesses of the hospitality on the plane and the consequent jet lag. Then it's off for 3 months of full-on tourism. You beauty!

Contrast this to the yachties who sail across the Pacific taking many months to get here. On arrival there is usually a whole host of boat repairs, provisioning, and other nautical issues. You don't tie up in Bundy on Monday and on Tuesday go campervanning to Yularu!

Back to the air traveller. After 3 months hop on the big silver bird and go home.

But how does a yachtie cope with the onset of the cyclone season if it coincides with the expiry of the visa? Off we go? No way.

I have met many overseas yachties who say that they had intended to travel and see much of Oz after the effort of getting here. But the 3 months stay limit when set against the time required for boat issues after arrival often leaves insufficient time for tourism. And as they have to leave Australia to revalidate visas, many decide to see New Zealand, Singapore or Hong Kong so as to capitalize on the cost of the fares associated with regularizing their status here.

Oz tourism misses out again. The visa regime is now perceived as one of the negatives that work against Australia as a yachtie cruising destination. Poor us!

The bottom line? The visa rules covering tourists arriving by air are currently applied to overseas yachties. This has no logic as it doesn't take account of the nexus between boat and owner. The boat can stay but the owner has to leave after 3 months. Where's the rationality in that?

So my overall thesis is this. All rules have a reasonable and logical basis when used in the manner for which they were initially intended. However, the bureaucracy has fudged the parameters and failed to differentiate between cruisers and big ships. They should have put a circle around their main catchment area and avoided the unintended consequences of the current regime. It is "all for one and one for all!" at the moment with silly and frustrating consequences.

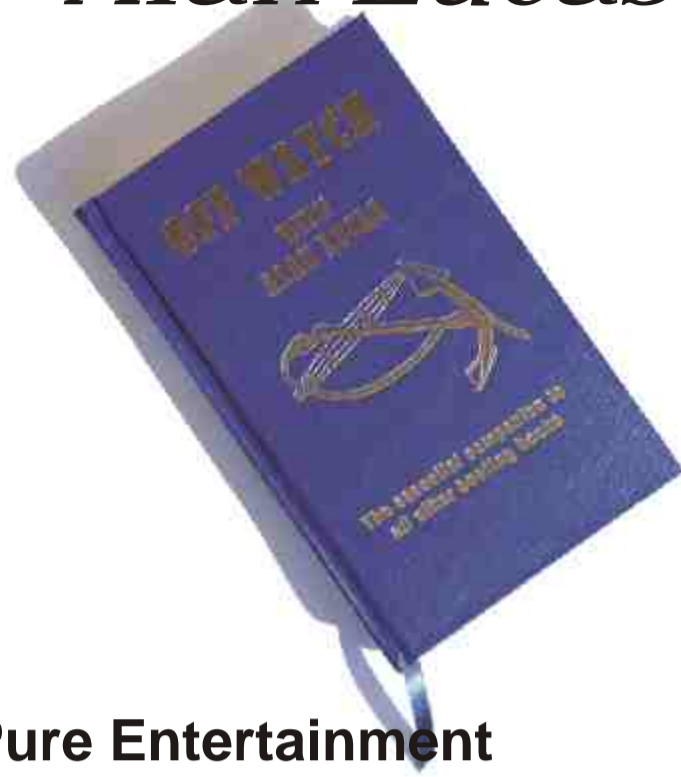
In short they have chucked a king-sized blanket over a single bed (and the poor cruising yachties who are sleeping on the floor have got covered as well).



Able to tuck humour into the most serious subjects, and then to get absolutely hysterical when the situation allows, Keith Owen has been a welcome contributor to TCP for some time. But don't let the silliness fool you. As can be seen by the article above, Keith has a grasp of issues and a talent for relating them that I struggle to do half as well. Thanks once again Keith!

The photo above was shot on the beach at Gloucester Passage. That's Keith at left, then Kay, Patti and myself. Bob or Anne, formally of cat *Endless Summer* was taking this photo while I was saying something like.. "wait till these guys get serious before you...." click... too late!

New From Alan Lucas!



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So imagine yourself at an island beach sundowner gathering and the subject turns to nautical history. A debate ensues about the fastest of the clippers and suddenly one of the group volunteers, "actually that record belongs to the English ship *Sir Lancelot* that beat the record of *Thermopylae* in 1865....". All heads turn.. "How do you know that", someone asks? And then the perpetrator has to decide whether or not to come clean. Do they try to get away with being a walking talking encyclopaedia or do they admit they just read that on page 123 of *Off Watch* whilst sitting on the heads that morning? Nah.. let them twist in the wind for a while. Just wait till the subject comes around to pirates or the slave trade, maybe war ships or survival stories, disasters, diving, rigs or even ships in movies besides a lot of stuff about cruising history. If they don't know the book it's their problem.

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Freedom to Drop the Pick?

A comment on your rights and responsibilities at anchor.

By Chris Ayers, SY Lady Lonsdale

Why do we think we have a right to anchor where we please? Is it part of the sea gypsy in us? Is it as an American writer (Douglass G. Norvell) says, a "remnant of a pioneer mentality ... [where] a high spirited individual could set sail, find an isolated cove, and 'drop the hook'"? Or is there a common law right to anchor wherever and whenever we please? The analogy of a right to drive on a highway is useful. "Just as on a highway one may stop", writes Edmund Whelan "so the owner of a vessel may anchor, run aground and sail back and forth". However, just as there are areas on a highway where stopping is prohibited except in dire emergency, so the same applies on our increasingly crowded waterways.

So the assumption - it is not strictly a legal right - is that we can anchor where we choose. The assumption however, is regulated or at least controlled by the 'owner' of the water. In Australia as in the United Kingdom, all navigable waters i.e. up to high water mark, vest in the Crown. There are arrangements between the states and the Commonwealth as to who has jurisdiction over what and when, but accept it as a fact of Constitutional law that in almost all waters on which we can float or comfortably if not happily go aground, either the Commonwealth or the state government will have ultimate jurisdiction. So there is an assumption we may navigate and anchor where we choose, but this is not a right.

Interestingly, in Japan, boat owners anchor at will, and may even leave their boats unattended for periods of time. However, in Canada and the United States, increasing restrictions are reducing the areas where one might anchor and the length of time one might stay at anchor in any one place. Increasingly we are being herded into marinas.

There also is no common law right to permanently moor. This was established in the case of 'Fowley Marine (Emsworth) Ltd v Gafford' (1967) where the court said it would be "little less than fantastic that in the absence of Statute or proved local custom, the law should allow anyone navigating a ship ... including every amateur yachtsman, to place bulky objects on another person's land without permission and to retain them there, presumably for ever, as being an ordinary incident of navigation". Clearly his Lordship wasn't a yachtsperson. Few judges and fewer politicians are. But hang on to that phrase 'proved local custom'. It might just be useful one day!

Permanent moorings in Australian waters usually come under the ambit of Maritime, Harbours and Marine, Fisheries, Marine Parks and our usual ragbag mixture of differing laws that change from state to state and compete with each other only in Byzantine complexity and a determination that no two states should have the same rules. State authorities will often sub-lease mooring rights to marinas and private boatyards. The ultimate 'landlord' in

all such arrangements generally remains the Crown. No sub-lessee can grant any greater right than they have already received in the head-lease, under the quaint Latin phrase (a dead language once beloved of lawyers and doctors) 'nemo dat quod non habet', or more meaningfully, 'no-one can give a better title than he has'.

There are specific areas in which anchoring is prohibited or severely restricted. These include defence installations and areas under harbour management, such as container wharves, roadsteads for container ships, moorings and swing areas for commercial ships, dockyards and marine developments either Crown or private. Just drop your pick at Shoalwater Bay at the wrong time and you will find out. Often there are severe penalties for infringement.

Anchoring is also prohibited in the following areas:
(1) Within 200 metres of submarine cables and pipelines
(2) In unsafe and prohibited anchorages;
(3) In fairways and channels (except in emergencies)
(4) Near leading marks (see my old seamanship teacher's excellent book, Capt Dick Gandy's 'Australian Boating Manual', p. 167)

Then there are those somewhat disconcerting little notes we read on the charts, the nice ones which speak of 'foul ground', the alarming ones of 'unexploded ordinance'. I cant think of a better way of saying 'anchoring forbidden'!

Of particular importance are areas of ecological and environmental sensitivity. We cruise because we love the sea and all it represents. Two factors appear to be at work. First, there are an increasing number of cruising boats as we are all aware when we find our favourite and once lonely anchorage is now crowded. Secondly, new and accurate research has provided evidence of what impact if any we have on the environment we love. Anchor damage has an obvious impact on coral reefs. We can see with our own eyes broken coral and disturbed marine plant life. But it can also be devastating on sea grass areas. Seagrass provides not merely food for fish and animal species. In Queensland it is a highly important source of food for dugongs. It also helps stabilise the seabed. So, if asked politely to move from an area by a National Park Ranger or Fisheries inspector, politely ask the reason, politely request and record identification of the officer, her or his vessel, the time and of course your position and then if safe to do so move. Under the appropriate legislation, they do have the authority to request you move.

However, you are, depending on the circumstances, entitled to refuse, and the relevant authority the power to prosecute. Your reasons might include storm conditions, incapacity of the crew, possibly even engine failure. But simply because you enjoy the view from where you are anchored is unlikely to be accepted as a valid reason!



Chris and Rhonda of SV Lady Lonsdale

The final point is that safety of life at sea is paramount. No-one, not even the most gung ho Colonel Blimp can ask you to vacate a safe anchorage if a cyclone is in the offing no matter how important they may perceive themselves. If an area is closed for anchoring, then we as yachtspeople have a legitimate expectation that a similar and safe alternate anchorage should be readily and safely accessible.

No authority can order you to put your vessel or your life at risk.

On a brighter note, though, some authorities, most notably in NSW Maritime, actually provide free mooring for periods of 24 to 48 hours. These are of particular value to cruising yachtspeople looking for somewhere safe for the night. It is an initiative Queensland and other states should adopt. After all, if moorings are provide (and properly maintained of course) in areas of ecological sensitivity eg the Lady Musgrave and other parts of the Great Barrier Reef, at one stroke you solve the problem of damage caused to coral by anchors and also provide safe and secure mooring, provide a limit on the number of visiting yachts and encourage people to visit, enjoy and explore the wonders of nature.

Reading

Coastal Protection Act (NSW).1979
Marine Parks Act (NSW).1997
Douglass G. Norvell 'Anchoring Rights', published in the Illinois Real Estate Letter 1998
Edmund Whelan 'The Yachtsman's Lawyer' published by the RYA 1989

Bob's note; Once again our great thanks to Chris Ayers, retired attorney and cruiser for his insightful research. Everyone benefits from a better understanding of skippers responsibilities.



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Australian Customs and Quarantine in the News

Customs Destroys Fishing Fleet

possible retaliation against yachts feared

by Bob Norson with press releases from Australian Customs Service

"53 foreign fishers caught in Australian waters - Tuesday, 27th November 2007

An operation coordinated by Border Protection Command has led to the apprehension of five Indonesian fishing vessels after they were intercepted inside the Australian Fishing Zone.

Following initial detection by a Coastwatch Dash 8 surveillance aircraft, Australian Customs Vessel Triton apprehended the vessels approximately 170 nautical miles north west of Darwin on Saturday, 24 November.

The total crew on board the five vessels was 53 fishers.

The vessels were allegedly fishing for Trepan, a marine slug more commonly known as sea cucumber or sandfish. Australian Fisheries Management Authority officers found approximately 2,300 kilograms of Trepan on board the apprehended vessels.

All five vessels were deemed unseaworthy or posed a quarantine risk and were subsequently destroyed at sea.

Commander Border Protection Command, Rear Admiral James Goldrick, praised the efforts of personnel involved in the apprehension of the vessels.

The fishers were taken aboard Australian Customs Vessel Triton and were transported to Darwin for processing."

The above release from Australian Customs came on the heels of previous reports of similar activities in the northern regions, including a mission to Ashmore Reef covered by Australian TV that depicted customs personal firing their new .50 Calibre machine guns and a crowd of

sobbing captured Indonesian fishermen.

The boats of the fishermen were destroyed. It seems all intercepted fishing vessels from Indonesia are "unseaworthy" or pose a "quarantine risk". How this state of unseaworthiness or quarantine risk can be immediately determined at sea is unknown.

While poaching on Australian territorial waters is an age old problem, some yachtsmen are concerned that Indonesia may take revenge against Australian targets including visiting yachts. Already Indonesia is enforcing clearance bond issues that were not acted upon before. Also, fishing villages that had been recently discovered as excellent cruising destinations, (See TCP # 16 "There be Dragons" by Graeme Hurst of SV Quiet Achiever) are feared to be possibly hostile now that many fishing ports have been affected by the destruction of the vessels.

According to an ex professional international fishing boat skipper interviewed by TCP, a common arrangement for some of those boats would be that the crew do not own the boat but would be held responsible for it's loss. If this is true the effect on some fishing villages may be compounded. A cruising yacht with much experience in Indonesian waters contacted by TCP claims it is possible this spiral of desperation could have the effect of increases in poaching and even eventual violence directed at anyone perceived as a party to the enforcement.

Cruising yachts are urged to use caution when visiting villages in Indonesia that may recently have been affected.

Customs and Police Board All Boats

for Random Searches

"Joint Operation targets illegal activities in Australian waters - Tuesday, 27th November 2007

A joint agency operation conducted off the east coast of Australia has seen 26 vessels stopped and inspected for compliance with State and Federal laws.

The operation was targeted at detecting any illegal activities in Australian waters.

Operation 'Sirius' targeted all vessels in the Australian Exclusive Economic Zone (EEZ) within 200 nautical miles of the coast between Ballina and Tweed Heads. Similar operations were carried out during Operation Baker in September 2006 and Operation Imagist in April 2007.

During the operation, merchant vessels, small craft and fishing boats were stopped and boarded at sea.

Operation Sirius involved the Police Launch Alert and the Australian Customs Vessel, Roebuck Bay. A Coastwatch Dash 8 surveillance aircraft also provided assistance.

NSW Police Marine Area Command's Inspector, Joe McNulty, said these operations strengthened the operational capacity of agencies involved in the policing and enforcement of Australia's offshore maritime zones.

"The execution of the operation reinforced the effectiveness of the established relationship between the various agencies' intelligence teams," Inspector McNulty said.

Customs Manager Enforcement Operations, Peter Hughes, said that Customs officers had the power to board a range of vessels, whether Australian

registered or foreign registered, under the Customs Act 1901.

"This operation highlights the commitment of law enforcement agencies to work together in investigating a broad range of illegal activity in Australian waters," Mr Hughes said.

Police and Customs teams made three arrests for illegal firearms and the possession of prohibited drugs (cannabis). Numerous fishing breaches were detected and will be investigated by fisheries authorities.

Operation 'Sirius' was coordinated by NSW Police Marine Area Command and supported by Customs, NSW Police Tweed Local Area Command, Australian Fisheries Management Authority, NSW Department of Primary Industries, Australian Federal Police, NSW Maritime Authority, QLD Water Police and QLD Fisheries."

As the above report failed to mention or describe the quantity of weapons and marijuana seized, it is likely to have been small.

As this kind of random search and seizure is unusual in many countries, it remains to be seen if this news further tarnishes Australia's reputation among international tourist and visiting yachts.

News that Australian Customs may now be asking for a saliva sample from entering yachts, ostensibly for drug testing, is also an unusual entry formality. At time of press, TCP has not been able to find another country that uses this test on visiting tourist or returning nationals without "probable cause".

The budget for the operation was not reported but due to the vessels employed and the various agencies involved, it would have been substantial.



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Incompetent Bunglers... OR Ruthless Revenue Raisers???



Marine Safety Queensland has a long history of confrontation and reported bad attitude towards the cruising fleet (see page 11 "Permission to Come Aboard" and lower right). For years reports have been coming into TCP like the incident reported below left and more. Charges that the enforcement is little more than revenue raising are common. The wide spread nature of the incidents belies any claim of a rogue operator and makes it very difficult to understand how MSQ in Brisbane isn't aware that it's personnel may be habitually operating outside their own laws. Foreign and interstate vessels seem to be particularly targeted. MSQ was invited to respond to these claims. A call was made to Queensland Transport and TCP asked for the appropriate contact for a media inquiry. A copy of TCP's inquiry and the quickly received 'response' (received 4.1.08) is printed below but nothing after that.

'Ignorance of the Law is no Excuse!'

By Chris Ennor SC *Magic Carpet*

I recently returned from a circumnavigation and have certainly been taken aback by the voracious approach of our 'officials' in Australia. We were very well treated in the 50 odd countries we visited and I have been embarrassed by the treatment that overseas cruisers get in Australia.

A couple of weeks ago an American cruiser was booked outside MidTown Marina, Bundaberg for not carrying life jackets in his tender and threatened with further prosecution if he did not register his tender in Qld. Now this man had been in the country less than 2 weeks, he was going out to a marina mooring (a distance of 100 metres on a windless day on a river approx 150 metres wide. The Water Police Officer insisted this was a safety issue and would brook no conversation about the matter. Along with another Aussie Yachtie I went up to MSQ and asked for clarification of the Legislation. Sure enough the officer was clearly wrong on two counts. Firstly a tender (if operated within 2 miles of the mothership) does not need to be registered - this is specified on page 5 of the MSQ Booklet. Secondly the legislation specifically exempts foreign recreational vessels (if in Qld for less than 12 months) from registration. In the legislation and clearly on page 50 of the booklet the heading for the safety equipment (lifejackets etc) clearly states 'for vessels that are required to be, or are registered'. So irrespective of the size of outboard motor (in this case 5hp) Tenders and overseas vessels are not required to be registered and therefore carry equipment specified for registered vessels.

The foreign cruiser in this case, at the suggestion of MSQ, has returned the ticket to the OIC of Urgan Water Police with a request that it be withdrawn as it does not comply with the Legislation. A few weeks have passed and no acknowledgement of his letter has been received. I guess in this modern era of 'we & them' we can longer expect courtesy.

The Water Police official was quick to point out to the foreign visitor that 'ignorance of the law is no excuse', so should the wrongful actions of the officer, in this case, be then considered Harrassment?

It would seem that any yachtie that has been booked in his tender (provided they were within 2 miles of the mothership) for not complying with safety regulations set out for Registered Vessels, would be within their rights to request a refund of the fine.

Considering that foreign vessels when they arrive, in Australia, are not given any indication of state legislation responsibilities, even if the officer had have been correct, an appropriate measure from a more civil age would have been to advise the visitor of his responsibilities and give him a warning, but alas, in this and examples with foreign yachties and the Boating and Fisheries inspectors on the Burnett River, the age of civility and consideration seems to have passed, at least on these waterways in Qld.

If you check the MSQ website and look up 'Legislation', then Safety Regulations 2004, section 60 deals with whom the legislation applies. 60 (2) says: TO WHOM IT DOES NOT APPLY. 60 (2) (i) covers tenders when operated within 2 NM of the mothership. 60 (2) (l) covers foreign recreational vessels in Qld waters for less than one year. It is very clear, in black & white. So when they book a foreign vessel for not complying with the regulations, they are TOTALLY WRONG. They either have not made themselves familiar with the regulations that they purport to enforce, or it is 'harassment'. It can only be one or the other!

Editors note; It appears from the excerpts of the act listed below that registration is not required for a foreign vessel unless the ship stays in Queensland for a year or more, further, that any (legally) non registered tender may not have to carry the gear. Chris Ennor reports this is reiterated in the "Guide to recreational Boating and Fishing" published by MSQ, May 2007, pages 5 and 50.

There are other aspects of this enforcement that appear to be at odds with the regulation as well. Skippers are encouraged to study the regulation document themselves as it might not be advisable to depend on the expertise of the local water cop for interpretation.

To assist in that regard TCP will post on the "Issues" page and "New Stuff" page a link to the document in PDF. It's about 1.1 meg pdf and 280 pages, much of which is devoted to commercial operators and other material unrelated to a cruiser so not as difficult as it sounds. If you have a computer on board it might be a good idea to have it in your "documents" folder... just in case.

The final update? Chris informs TCP that MSQ has advised to pay up or go to court.

Transport Operations (Marine Safety) Regulation 2004 Division 4 Registration of Ships

section 60

- (2) However, part 5, division 2 of the Act does not apply to the following ships;
- (f) a recreational ship that—
 - (i) is not powered; or
 - (ii) is powered by an engine of less than 3kW;
 - (l) a recreational ship from a foreign country if—
 - (i) the ship is in Queensland waters for less than 1 year; and
 - (ii) the ship's owner is not an individual or person mentioned in subsection (1)(a)(i), (ii) or (iii); (*Queensland resident or operating a business out of Queensland*)

To: Wayne Watson,
 mailto: Wayne.e.watson@transport.qld.gov.au
 Greetings Wayne,

I have come across cases of water police issuing infringement notices to vessels that appear to be issued improperly, for example, safety equipment and registration violations applied to foreign vessels in Queensland for less than one year. I also have complaints from Australian vessels, of being charged with equipment violations (EPIRB) that the operators claim is incorrect due to the nature of the waters they were in when charged. Quite a few of these kinds of incidents have been reported to this office over several years and over a widespread area of the state.

For a recent example check infringement # 00573300.

Will MSQ acknowledge this problem and if so, how will MSQ answer the charge that the activities of the water police appear to the boating community to be mere revenue raising or incompetence?

Most reports mention a belligerent and aggressive attitude on the part of the offending officers as well.

The Coastal Passage would very much like to report that this issue is being investigated and consequently, the victims compensated and the officers retrained I look forward to seeing this resolved on behalf of the fleet.

Cheers,
 Bob Norson,
 The Coastal Passage

Thanks Bob,

I've forwarded your query for a response to be prepared. I am on leave from this afternoon so one of my colleagues will contact you with a response.

Cheers,
 Wayne

commentary by Bob Norson

From the TCP archive.. This segment was originally published in TCP # 16, "Passage People" and illustrates that especially international cruising folk feel they have been treated unfairly. They were done at Horseshoe Bay, Magnetic Island. Nowhere in the world has a worse reported reputation for aggressive and unfair enforcement than Queensland. Hey! We're number one!



Jeff Bowers and Christie Weiser left America quite a few years ago and don't seem in a hurry to return though the Aussie officials seem to have been encouraging them to move along. They were "singled out" at an anchorage for "on the spot fines" because some of their safety gear didn't match local standards. With that subject raised and with the radical changes occurring in Australian laws, Jeff came up with a cute story called the "Boiled frog syndrome." He said if you want to boil a frog you don't throw him into boiling water cause he will just jump out right away. But if you put a frog into cold water and start raising the temperature slowly..... the frog just sits there until he is dead boiled! anyone feeling warm yet?!

Pirates on my Right and Bad News on my Left..

by Kate Lovegrove of SY *Delight*, 38 foot Lightwave cat

It was a planned short trip. Took two months off for a quick cruise in the Whitsunday's. June-July '07, which was two of the coldest-damp June-July on record. And 2 incidents of one description or another.

#1. We arrived in Nara Inlet (Hook Island) amid much rain. It rained and howled all night. But weren't those waterfalls spectacular the next day!? Didn't count them, but they were everywhere, must have been millions of litres per minute. As much as it had howled that night all boats (and there were many) behaved and remained where they were. Many congrats to the charterers!

We were anchored the top of the inlet a good distance from everyone else. A large professionally skippered charter boat joined us mid-afternoon and anchored approx. 200m above us.

All was good (though still freezing) in the world. 5am BANG BANG THUMP! We left our warm cozy bunk ever so quick, threw on jackets, grabbed torches to find a 60 ft+ boat beam on to our starboard bow with our bow prodder pierced through its solid side rails but not (quite) piercing the windows. No one on deck. We began attempting to fend this vessel off ours as a young deckhand appeared through the companionway. Within some minutes, we presume, the skipper who swore (as you would), made some comment of the length of chain he had out and attempted to rectify the situation.

But in the course of us attempting to fend it off, which had holed the gel coat, my husband fell in. I threw a torch at the fairly bamboozled 12 year old on board and ordered he keep an eye on his father and not lose sight as he swam back to the transom, whilst I kept an eye on the deckie jumping up and down on our prodder. The skipper of the vessel started the engine and went to sort out their chain and anchor; my skipper was back on board, safe, but injured.

Daylight was approaching. They'll come and see us then. Check damage; was the skipper ok? You know, those sorts of mandatory pleasantries; boat name, skippers name, etc. The vessel had re-anchored close to the top end of the inlet. And *gobsmocked* we watched it up anchor and disappear! All we could do was the same as we had no mobile coverage there and we planned on doing so that morning anyway, though now for medical reasons. While we had decent painkillers onboard, the skippers knee was damaged, swollen and painful, obviously in need of attention. I called a bareboat charter and gave a description of the vessel. Not a 60 ft.+ around those like it- as we did not know its name (thanks for their assistance). I called MSQ Shute Harbour (thanks Rod there really are some gems in some Govt. depts!). He (we) were flabbergasted that this had occurred. With mobile moral support (thanks *Dancing Dolphin*) and very real assistance and support (thank you so much Bernie & Aileen, Bowen) we went to Bowen to have skippers knee tended to. Sadly, if you aren't a current patient on the books in that fabulous town (well, we love it), then you spend time in outpatients at Bowen Hospital. *Provisional* diagnosis is torn crucial ligaments/tendons.

Filled in required marine incident report and faxed to MSQ Shute Harbour. Did they ever hear from the Charter Company? Nah. We had called the company and reported the incident. The Director's of the company told us their vessel should not have been there because of poor (!!) holding. That they'd need to contact the skipper, etc. and they would let him know what his responsibilities were regarding incidents at sea. Wow!! I checked again with them the following day, but they apparently hadn't had contact with him and the following day wouldn't return my call, nor attempts from MSQ to contact them. We received a letter from MSQ some time later confirming the report had been investigated and the skipper charged with the offences of failing to render assistance and failure to report an incident. We footed the repair bill rather than go to the insurance company (premiums are way too high as they are!).

Never heard from the outfit at Shute Harbour. Not so much as an apology or inquiry into my hubby's knee (still damaged).

#2. Then the "pirates"... we encountered them in the form of Queensland Transport, QB & FP or Queensland Boating and Fisheries Patrol. We'd departed Hill Inlet after a few glorious days (great place for cats Bob!), through Solway Passage to Thomas Island and overnight there. Departed the following morning to Brampton Island; dropped the pick. The following morning when hubby and children went ashore, I observed QB & FP making pests of themselves in the anchorage. I retrieved our safety gear and put it all in the cockpit for inspection without the need for the officers to board. Regardless, they stated they wanted to board. I denied them permission stating "house" rules excludes anyone coming on board if only myself, or the children, are on board unless they are close friends or family. The gear was given a quick check and then they enquired if we had an EPIRB on board. I stated that we did and when I went below to retrieve it I heard one of them call that they were going to board. With the EPIRB I ran back to the cockpit and again requested him to remain in his boat (he wasn't a friendly or happy chappie from the outset and I sensed he was becoming even less so). He took the EPIRB, deemed it out of date as the expiry date couldn't be read (lesson here do not store where it may be subject to large amounts of UV rays).

I was handed the \$150 fine, but before accepting it, I pointed out that we'd not been in waters where an EPIRB was mandatory. He rejected that, saying we must have if we'd come from Bowen. I didn't pursue the point, but clearly, on page 28 of the Official Tide Time 7 Safety Guide, put out by Qld. Transport; this shows we had remained out of the boundaries of where it is essential to carry an EPIRB. I wrote to the Dept. disputing the fine (as one is morally obliged to do), and arguing various aspects of the whole incident. I am now required to produce a copy of the ships log to prove our innocence having been judged guilty from the start.

Response from Windjammer

TCP contacted Barefoot Cruises, operators of vessel "Windjammer", the vessel involved, through their web site and received a prompt reply to the inquiry concerning the allegations from SY *Delight*. Below is the response.

The "collision" from my understanding was low impact as both *Windjammers* crew were fending off *Delight* at the time.

- From the time they touched to the time they motored off was a matter of minutes.
- The damage to *Windjammer* was a minor 45mm scratch on the port toe rail. I personally spoke with the lady of the vessel *Delight* the following morning and assured her that I was taking this incident seriously and I recommended she notify MSQ of the incident from her end.
- An incident report was lodged with MSQ by the skipper on his return to port.
- MSQ did investigate the incident and even took photo's of the scratch on *Windjammers* toe rail.

The incident was not caused by negligence but rather the unfortunate fouling of the anchor and the increase in wind speed during the night. The crew in my view responded to the situation in a proper manner. The crew of *Delight* on the other hand, were apparently panicking in the cockpit and did not assist in fending off *Windjammer* other than the gentleman that ended up in the water as he stepped over the guard rail to help out.

Windjammer re anchored at the southern end of Nara Inlet (incident took place at the northern end) and left the following morning just after sunrise and did not pass *Delight*.

My only concern with this incident was that the skipper did not call on *Delight* as a courtesy the following morning prior to his departing, even though, in his words they were a long way up the inlet and it was such a small incident.

This skipper is currently not employed by Barefoot Cruises.

Ashley Kerr

Managing Director, Barefoot Cruises Australia

Ruthless Revenue Raisers??

by Bob Norson

Kate Lovegrove did send supporting documents along with her story at left. These include copies from the log, copy of the incident report with the charter vessel, and very interesting, copies of letters received from MSQ regarding her objection to the infringement notice about the EPIRB. According to Kate and supported by her log, the contact with QB&FP did occur in waters where an EPIRB is **not** required. See excerpt from the "Act" at lower left. According to Kate, MSQ requested a copy of her log to verify they had not *previously* been in open waters. This is surprising in that the law states "in smooth waters" indicating the fact at the time, rather than "always operates in.." According to a copy of a letter from MSQ's Wendy Burns, MSQ did confirm investigating through VMR records that SY *Delight* had been in partially smooth waters to Thomas Island two days before but when it came to supporting Kate's position, "unfortunately.." VMR records are "unavailable". Another interesting passage in a letter to Kate From Burns of MSQ dated 12 10 07, "The officers identified themselves as required and this can be heard on the digital recording made at the time." Kate reports she asked to obtain a copy of that recording and received this on 16 01 08, "We are not aware if the officers recorded your conversation or not."

The facts of this case and others seem to indicate that QB&FP officers often make what may be unwarranted charges and that MSQ engages in cover-up or at least selective provision of information to boaties that may protest the charges.

There are several other points addressed in the MSQ letters that should be examined by skippers, especially live aboard sailors. To serve that purpose, TCP will make copies of these letters available on the "Issues" section of the TCP web site soon.

Division 2 EPIRB for all ships

9 All ships in Queensland waters to be equipped with EPIRB

(1) This section applies to a ship in Queensland waters other than a ship—

- (a) in smooth waters; or
- (b) in partially smooth waters; or
- (c) within 2n miles from land.

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And as always, TCP very much appreciates your letters and other contributions that provides the rich forum of ideas that sustains the rag. For information on feature contribution requirements and awards, see the TCP web site, "contributions" page.

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-WESTERN AUSTRALIA....
Boating Warehouse Yacht Club
Osborne (near Fremantle)
Rushcutters Bay

MSQ BACKDOWN

WATER COPS WERE WRONG!

In TCP # 29 (last edition) two reports were made to TCP concerning charges that were booked against a visiting foreign vessel and an Australian vessel. In both cases the charges appeared false according to the law. The foreign vessel was charged with a registration related safety equipment violation in Bundaberg and the other was an Australian vessel charged with not having a current EPIRB but the vessel was in "still or partially still waters" where such equipment is not required.

In both cases prior to last edition, skippers were notified by MSQ that their appeal to have the charges cancelled was denied. Within one week of publishing TCP both cases were subject to a stunning reverse. In the case of the foreign vessel, Chris Ennor of SY Magic Carpet, who provided assistance to the skipper reported; Had a call from the Water Police today, saying that they had tracked down the original paperwork and the ticket had previously been cancelled, but even with a big cancelled stamp across it, somehow it had still been processed??

He has contacted Qld Transport whom, he said have agreed to withdraw it. So there you go, eh? I think that we can be pretty sure that there won't be more International visiting boats prosecuted, at least by Hervey Bay Water Police - or if in another area, this is a pretty clear cut precedent.

In the case of SY Delight, Kathy Lovegrove forwarded TCP a letter she received from the Ministers office informing her of their change of position. TCP recently received a letter from another boaty describing a very similar EPIRB charge. See page 9. They also protested the charge and report they were successful.

Have you had a booking that you feel was wrong? The regulations are posted on the TCP web site. See the "issues" page. Notify TCP by letter to publicise the dispute. We will endeavour to leave a clean wake for the next boaty... or potential victim.

Pacific Cruisers, Take Notice!

There is a report on www.noonsite.com of a German cruiser that was en route from The Marshall Islands to Vanuatu that has come to grief on Butaritari, Republic of Kiribati. The yacht Atlantis is charged with failing to gain entry clearance at an official port prior to landing at Butaritari. Apparently the country is taking a hard stance on the issue. The two crew were in prison for nearly a week at the time of report on April 10.

This was reported to noonsite by Bruce Allman of SV Day Star and TCP was alerted by Nancy Zapf of SV Halekai, an SSCA member, who knows the German couple.

Just in! As going to press, Atlantis crew has been released. Investigation revealed legitimate boat in 'distress' condition. The sailors report being apologised to.

Percy Island Law Suit..

TCP has been informed that the long awaited trial for the lawsuit contesting the legal ownership of the lease of Middle Percy Island has occurred and the parties are now waiting for the decision. As soon as the details become available the web site will host the announcement.

Domestic "Bio-fouling" protocol??????????

In issue # 17 TCP warned that the government may attempt to put a quarantine protocol in place for vessels within Australia. Information coming from the DAFF suggests something may be afoot. An inquiry was made by TCP but so far DAFF spokesman Don Cumming has failed to deliver a response to 5 questions in over three weeks. The vague nature of the information available combined with the apparent reticence to respond is causing some concern. Maybe nothing, maybe something. Keep an eye on the web site.

Comment from the editor.....

TCP READERSHIP EXPLODES AGAIN!!

It has been really good to peruse the statistics from the web site and reports from the counters where TCP is available. Print versions remain tight for supply though TCP will print some more this issue for the Sanctuary Cove Boat show. (10,500) The big take up has been through the web. Besides Australia, letters arrive daily from places like Cyprus, Baku, UK, all over the US, Singapore, Phuket, and on and on... and to those TCP readers in the Czech Republic, greetings to you, good to have you aboard! French sailors are showing strong support. And how about TdF! (Tierra del Fuego) See Passage People. There is a universal message in TCP. If you can afford to retain integrity, not 'sell out' and focus on the activities and issues that the boating community really believes in... it all comes together.

But how can you do it without selling out? Answer is.. It isn't easy.. or as profitable!

A culture of entitlement to use editorial for commercial sales or political message permeates Australian media. 'Cash for comment' or 'advertorial', whatever you call it. TCP just received a mail soliciting ads in a boat show guide by offering; "Editorial is available to all advertisers that place a 1/4 page or larger ad." How typical. If that's the kind of crap you want to read there is always a new one coming your way. It's up to you to be a clever consumer, to recognise the bullshit and dismiss it. **And support TCP advertisers.** They gave up the right to dictate content in exchange for lower ad rates but more important, to direct their ads to a better quality readership. It doesn't hurt to let them know it's appreciated.

TCP's First Government Ad?!?!

Took me by surprise! Marine Safety Queensland (MSQ) is the first government agency to buy advertising space in TCP. After the criticism they faced from the actions of their officers last edition it was particularly curious. I have chosen to believe that this remarkable event represents a respect for TCP's editorial independence and though the issue that is advertised is one TCP and readers find deep disagreement with, at least they are providing notification of the rule prior to effect rather than the disgusting entrapment committed by Australian Customs. And speaking of that....

Customs loses face... again.

I recently saw a new Customs ad in one of the government friendly press, telling Australian Yachties they must now give 96 hour notice prior to entry.... What brass! Prosecute first then advertise later to enhance image..how very Chinese! (government, not the people) Another example? All those emailed notices that are sent to Customs from yachts prior to entry, the ones that Customs reviews "very seriously" .. to "protect our borders" .. what happens to them? Apparently, most go right to the bin!! From the first coverage of this problem (TCP # 23, "Brutal Customs" see report from "Karma winds") and to include two accounts in this edition, ("13 things I wish I knew..." page 15 and in a letter from Paul Lewis on page 9), Customs habitually does not bother to forward the yachts 96 hour notification to the intended port of arrival... making the whole exercise useless. Well done comrades.

The Season of Storms.....

"forecast for ___ until ___: S/SE winds 25 to 33 knots, seas to 3 metres, showers and isolated thunder storms." Well, at least it wasn't very hot this summer but I'm sure I'm not the only one that was bloody tired of the forecast above. Rockhampton flooded early in the season but little damage. Airlie Beach and Magnetic Island copped it hard. The photos on the TCP web site of the Airlie Beach and Horseshoe Bay wreckage went right round the world. Thanks to Jim Gard and Bob Fenney from Airlie and Pete Safe of Maggie and Dave Clifford of Rocky for the pics. Port Phillip Bay and WA got slammed as well. There was just no where that was safe this year.

The Coastal Passage

The voice of boaties everywhere

Bob Norson: Publisher, Editor, journalist, advertising, photographer, computer & marine heads technician, etc., etc...
The Coastal Passage

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Government Destroys Foreign Fishing Vessel



But What if they are WRONG?



Fishermen Beat the Rap!

Bob Norson

It was revealed May 15th by Federal agricultural Minister, Tony Burke that 55 Indonesian fishermen, including some underage children being held in detention were innocent of charges and their boats were wrongly destroyed. The fishermen were due to be transferred from detention to motels in preparation for repatriation. The boats are to be compensated for but the value was a matter of dispute.

The Indonesia Consul in Darwin, Harbangan Napitupulu says investigations into other Indonesian boats apprehended in April are continuing. According to an ABC report he was surprised 33 boats were apprehended across three weeks. "We felt that perhaps there was something wrong with these apprehensions," he said. "We met the fishermen, most of them mentioned that they are still in the Territorial water."

Though the real quarantine threat posed by the fishing boats may have sometimes been in error, the fishermen themselves do seem to be a real concern. TB is a real problem among the fisho's. This is complicated by the fact that treatment begun whilst in detention sometimes isn't completed before they are repatriated, thus undermining TB control efforts by developing drug resistant strains that are much harder and more expensive to cure later. Then repeat offenders may bring resistant strains back to Australia. Apparently there is a high recidivism rate because when illegal fishermen are caught and their boats are burned, they are fined by the boat-owners in Indonesia. So they return to Australian waters to earn money to pay off the debts and then they are caught again.

The ABC quoted Senator Kerry Nettle from the Greens as referring to the incident as "this terrible mistake" and criticised the government for concentrating on the small fish. "Really what we need to see from the new Government is a renewed focus on stopping this issue at the cores." The fishermen are just employees whilst the 'Mr Bigs' escape punishment. "Their families probably don't know they've been detained, probably thought they'd been lost at sea so it's a horrendous situation for these people."

Meanwhile Indonesian fishos are often portrayed as 'living it up' at the expense of Australians, even using computers in detention to view pornography, though no charges of child pornography have been made. The children are housed in motels and provided excursions for entertainment.

New Border Security Measures?

Bob Norson

Immigration Minister Chris Evans says he is going to increase security measures at international airports and sea ports and strengthen Australia's security. Immigration officials will now assess passengers' data *before* their flight or ship arrives in Australia. Senator Evans says the new system means low-risk passengers can be cleared through immigration more quickly. Yachts have faced criminal charges and huge fines for not giving Customs four days notice before arrival to "assess" passengers. Yacht crew are apparently considered extremely high risk.

Fun From the Deep

Bob Norson

Q: What's the difference Between a Giant Squid and a Colossal Squid?

A: About 4 metres and 200 KG!

Are fishermen going further and deeper to get a catch? That's one theory as to why these dramatic deep sea specimens are showing up with increased frequency. But no one seems to know really. In fact little seems to be known at all about these creatures as so few are found... normally. The Giant and Colossal are really recognised different breeds. Back in February this year a New Zealander fishing in the Ross Sea off Antarctica for Patagonian Toothfish hooked a Colossal Squid that weighted in at 450 KG, just shy of a thousand pounds. Prior to this find most of what was known was from the bits recovered from the stomachs of Sperm Whales. The fishing boat was equipped with a large freezer and the squid was looked after by the crew so scientist will be looking to answer the many questions such as how large can they get? How long do they live? Has it had a starring role in a Pirates of the Caribbean movie and other important information.... like how big the Calamari rings would be... Sorry.. A couple of interesting things about the monster are the eyes which were reported to be about 300mm or one foot diameter and the longest tentacles were armed with a series of very sharp claws. Probably good they don't hang around beaches.



This is the little one. These specimens provide a demonstration of how little is known of the deep sea environment and the creatures that inhabit the depths.

Not long after that a Giant squid was hauled aboard off Portland Victoria. At only six metres and 240 KG or about 528 pounds this pint size specimen is still plenty interesting to the scientists at Museum Victoria that will be examining the creature to try to find out everything they can including diet, eye structure, evolution, aging and sex life. Apparently so little is known that with an excellent specimen like this almost all information may be new information. After a bit of slicing and dicing the carcass is to be stitched back together and shipped to Melbourne to be displayed in the Museum. To the dismay of seafood lovers everywhere...

In Response to the article on "Ariel of Rabaul" in TCP # 31;

Some boats seem to inspire much passion and this little Lidgard design appears to be one of them!



Hi Bob,

I have been reading with great interest about "Ariel of Rabaul". Donna & I are the proud owners of one of these fantastic little yachts, which we have owned since 1993. We left NZ waters in 2006 & are at present enjoying cruising the Queensland coast. Our yacht "Kidnapper" was built in Tauranga in 1972 & is well known in NZ, with a long racing history including many Tasman crossings. This design has been included in a book on the history of NZ yachting. John Lidgard informed me that there was 6 built, (1 in Tasmania). The NZ ones were all cold moulded in double diagonal Kauri, glassed over. So it is very interesting to find that there was one built in alloy. John Lidgard

was asked by his then navigator Jack Allen to design a Half tonner. Tumblehome was de riquer at the time & Demijohn as the design was called was given plenty of it. The tumblehome in the Demijohn design represents a fashion derived from measurement of deck width as maximum beam, and indicative of an era in offshore racing which may never be seen again. We have sailed many thousands of miles in *Kidnapper*, she is a great sea boat & just loves going to windward. So Mike & Judy enjoy sailing on a yacht from one of NZ's famous designers.

Cheers,
David & Donna
SY *Kidnapper*

What you Should Know About if Cruising to Indonesia

Indonesian Fishermen accuse Australian authorities of entrapment

Last June in Kupang, more than 100 fishermen staged a rally to protest against ill treatment by the Australian government when they operate near the Indonesia-Australia sea border.

During the rally the demonstrators also burned an Australian flag. The fishermen, accompanied by their wives and children accused Australian marine patrols of often trapping them by purposely herding them across the Indonesia-Australia sea border into Australian waters so that they could be arrested.

"We have a recording as evidence that we were herded out of Indonesian waters toward Australian waters and then we were arrested," a coordinator of the rally was quoted as saying. Fishermen claim that after being arrested, all their equipment including their GPS instruments were seized and destroyed by Australian marine police, he said. TCP has been informed that Australian Customs now claims the legal right to forbid recording or transmission of any kind by anyone, of their operations if they so order. This may prohibit the introduction of such recordings in court, leaving only ACS supplied recorded evidence as admissible.

The fishermen urged the Indonesian government to take a stance to stop the ill treatment. They are hoping the Indonesian government would soon respond to their demands and solve the problem through diplomatic channels with the Australian government.

Last May 24, the Australian government had deported 50 Indonesian fishermen to Kupang, East Nusa Tenggara.

On May 17, the Australian Immigration Authority sent home 43 Indonesian fishermen who had been declared innocent, and 13 fishermen declared guilty of trespassing on Australian territory.

In April, according to the Indonesian consulate general, at least 253 Indonesian fishermen were held in Darwin. The Indonesian consul general in Darwin, Harbangan Napitupulu, also quoted some of the detained fishermen as saying they were arrested while they were still in Indonesian territorial waters.

Antara News of Indonesia quoted an NGO activist, Tanoni as saying, "...the two countries should soon establish a JFZ (joint Fishing Zone) to deal with or minimize problems involving Indonesian traditional fishermen whose livelihoods depend on fishing in the Timor Sea and surrounding areas." He also urged the Australian authorities to stop intimidating Indonesian fishermen, among other things by forcing them to enter into Australian waters and later accused them as illegal poachers. Intimidating traditional fishermen, and later punishing them and destroying their boats were human rights violations, he said.

Australian Government Sore Losers?

In an apparent reaction to the recent defeat of government charges against many Indonesian Fishermen, (see TCP # 31) Australian authorities have forced the cases to be removed from local Magistrates Court to the Supreme Court.

Representatives of the fishermen say this is wasteful and unfair. For a mere charge of a fishing violation involving a catch that Australians have little interest in, Trepong or Sea Cucumbers, the Indonesians are to be in custody for months. The absence of these people is likely to cause severe hardship for their families in Indonesia.

ABC quotes a Legal Aid representative as saying, "An Australian person, if they were charged for an offence for which the penalty was a maximum of a fine, they'd never be in any kind of custody or detention, you just don't lock people up when the worst they're going to get is a fine."

What you Should Know About if Cruising to Fiji

Fiji government introduces new customs requirements that have the international yachting community fuming and Fijian marina and tourism operators concerned.

New regulations include a huge import fee directed at any vessel returning to Fiji sooner than 9 months after departure. This would come to about 27% of the value of the vessel with other taxes added to that. Also the penalty for moving between ports within Fiji without customs clearance has been increased from \$50 to up to \$5,000.

When alerted to this issue from the web site, www.noonsite.com and the SSCA member vessel "*Halekai*", TCP immediately drafted a letter to the Fijian Minister of Customs, Mr. Mahendhra Chaundry urging a revision of the policy. It appears the policy was directed at international vessels that have come to stay in Fiji on a semi permanent basis without importation but will affect a large number of vessels that often visit Fiji for a short period then sail south to New Zealand for the cyclone season before sailing again to Fiji before continuing their voyage westerly.

A meeting was held with stakeholders and the feeling of those that attended was that the policy may be reviewed positively. Milika Marshall of Vuda Marina is in contact with TCP and as soon as the issue is decided we will have the information and either amend this report on the eve of print or will post to the web site. Also keep an eye on noonsite if you intend on Fiji.

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TCP ask's J...

Greetings J,

I did have a couple questions if you don't mind.

As far as the general thrust of the letter, that is, the matter of attitude affecting outcome, did you observe anything yourself that would have indicated this applied in the case of the vessel "Friction"?

If it did turn out to be a matter of random selection rather than a particular "probable cause" would that effect your opinion of the outcome?

And... pleased to hear you were able to import your boat successfully and enter without drama. That is the case with the majority lately.

Cheers,

Bob Norson

Hi Bob,

My comments related to experiences I had witnessed in the different countries that we cleared in and out from, the attitude of some skippers is that they feel that they are above the people of authority that they are dealing with. In many cases I saw other boats penalised for their attitude to authorities, where we were polite treated them with respect and only answered question that were asked of us and we were treated very well in all the countries we visited. The only places that we had food stuffs confiscated was Port Vila and naturally Australia, other vessels had things confiscated and had to pay fees of disposal. The only difference was the attitude towards authority.

I did not have personal experience with the yacht that you referred to, the aim of the letter is also to say that by the rumors that are out there and that is right across the Pacific and beyond we are frightening potential visitors away from Australia.

I get regular emails from people that we have met that have not reached our shores yet asking me questions about things that they have heard. To answer some of their questions I have contacted Customs and AQIS direct for the answers and emailed them to the respective friends.

Have a happy festive season. I hope this helps. J

comment and response, Bob Norson

First point: those aren't "rumours across the Pacific", those are facts. Australian Customs has used in past and continues to use extraordinary laws and enforcement tactics that are at odds with world norms and the interests of cruising sailors. TCP coverage of those hostile interventions has resulted in the more relaxed enforcement that is now usually the case. TCP has always and continues to invite correction on any mistaken fact stated in coverage of Customs. So far, no takers. All we get are unverifiable anecdotes on occasion, like J's. Notice he admits he hasn't met the *Friction* crew but would have readers make a negative inference about them based on innuendo. And what if we did? Is our border security to be based on facts or so unimportant we can afford to squander the resources on an officers personal dislikes ?? Besides decency, efficiency demands that laws are applied evenly and fairly. Also worth noting that though J asserts cruisers attitude is the problem he offers not one fact to support that. Even the example sited in the original letter does not state for fact that the cruiser "Nick" was treated rough because of his attitude, J merely states his belief that it was. To advise cruisers concerning a situation that could be dangerous for them to satisfy a personal belief could be disasterous. Second point: notice that J ignored the second question in my mail entirely. Mind firmly closed. This may be what allows J to criticise "rumours" and the harm they can do whilst at the same time make his point with.. rumours.. Perhaps the author is just passing on what he has heard because Bundaberg is for some reason the home of rumour and blaming the victim. An excerpt from TCP # 31: *Watch out for the whisper campaign! My favourite whisper lie? I was sent a mail that quoted some rumourmonger in the Whitsundays as saying he had a contact in Bundaberg that claimed the Manzari's were anchored for several days before contacting customs. This was from a forum that many will read and some will even believe. The person who mailed it to me had doubts and wanted confirmation. Wise man. Print media like TCP bears a burden of fact in reportage. The forums, blogs, marina layabouts and the MIB whisperers bear little or none at all.*

There are business people that may believe it is in their interest to deny or redirect blame for heavy handed officialdom. That may be wrong though as the most recent case shows because it does not deter future instances of abuse and it will be reported when it happens. If the business community got stuck into Bundaberg Customs as well, maybe they would revise their enforcement style for everyone's benefit. **After all, it isn't the victims or TCP that causes international cruisers to avoid Australia. Customs has the monopoly on that business. TCP just reports the facts.**

What's with Bundaberg Customs?

Bundaberg Customs has been at the front of conflict with entering cruisers. No other port of entry has had such a record. The very first complaint of Customs made to TCP was from Bundaberg (TCP # 15, The SV *Toujours* conflict). The Manzari case was in Bundaberg (TCP # 24). The controversy over "ship in transit" duties was in Bundaberg (TCP # 30) and now *Friction*. Cruisers should know this so they can make their own decision.

A letter from the P2P committee

The Port2Port 2008 Yacht Rally wishes to disassociate itself from the comments made by a "volunteer working with the Port 2 Port rally" as reported in your Customs article of October 29th.

Volunteers were advised not to offer comments about this incident as this is a legal matter between the Australian Authorities and the vessel involved.

Lesley Grimminck

President

Bundaberg Cruising Yacht Club and Port2Port Yacht Rally committee.

comment by Bob Norson

Regarding the very surprising letter above, why this person thinks they have the authority to control anyone's speech is interesting but actually there were no "comments made" from a P2P volunteer in TCP though a volunteer did have a few words on the TV coverage of the incident (wonder if Channel 7 got a letter!). A P2P volunteer did alert TCP to the incident but no comments were used. TCP had observed a friendly relationship with the writer and local Customs staff and hoped that might insure pleasant formalities for participants. **Thus TCP had made recommendation to several boats to enter with the P2P which is a lovely event with a fine history.** However, it appears that a cruiser may still encounter difficulties entering with the P2P and in that case, may not find support from the rally hierarchy that they may otherwise find from the general community.

Can they Take Your Camera Away?

by Bob Norson

On December 19, Nick Holmes a Court, owner of web based media companies was on a street in Kings Cross where he lives when he saw Police performing what appeared to be a search on someone. He started recording video with his Blackberry which caught the attention of the police and they came to him demanding his Blackberry and saying they could arrest him under the terrorism act as recording the police was forbidden under the act.

The incident received immediate attention on the web as upon returning home Mr. Holmes a Court sent a message out on the blogsite Twitter.

He claims he did not volunteer the device and stated "I do not consent to a search of my phone" but they insisted saying, "give me your phone, give me your phone".

According to his account the police pulled the phone out of his hand and when he protested he was told to "shut up". He was forced to stand by while the female cop looked through his email, text messages, photos and contacts. When they found the video they deleted it from the phone.

NSW Civil Liberties Council president, Cameron Murphy was quoted in a Courier Mail article on the story as saying there had been a similar event "where a student was arrested and pressured to delete footage of a brawl involving police". According to him police could seize footage only if it was needed as part of an investigation.

From the article, "There has been a steady increase in police powers to stop people, search them and move them along," Mr Murphy said. "This is very dangerous and it's the sort of thing that over time will lead to a police state."

Queensland Council for Civil Liberties agrees. According to the president, Michael Cope, police do not have the authority to confiscate equipment or stop people from taking pictures of them performing their duties and questioned why the police would feel they need to..

Australian Customs Service claims they have the right to stop people recording their work and this begs the question of their authority. It does seem to be common for government agencies to exceed their authority and some individual officers may use intimidation to succeed where the laws don't provide. Since few people know what their rights are, this often succeeds. TCP will pursue this matter along with the forced removal of owners from their own boat whilst being searched.



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 Stuart Mears SY Velella
 Wendy, SY Absolutely
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"It can't be about you without you!"

And as always, TCP very much appreciates your letters and other contributions that provides the rich forum of ideas that sustains the rag. For information on feature contribution requirements and awards, see the TCP web site, "contributions" page.

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- *P O R T D O U G L A S
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 Port Douglas Combined Club
- *Y O R K E Y S K N O B
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- +C A I R N S
 Blue Water Marina
 Cairns Yacht Club, Wharf St
 Cairns Marlin Marina Office
 Cairns Cruising Yacht Squadron
- *C A R D W E L L
 Hinchinbrook Marina
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 Iga, Horseshoe Bay Supermarket,
 RSL, Maroon'd and "TraxsAshore"
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 Whitsunday Sailing Club

- Abel Point Marina Office

- Whitsunday Ocean Services
 Marlin Marine

- Shute Harbour Chandlery & Slipway
 Quadrant Marine

- *S E A F O R T H
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 Tin Can Bay Boat Sales

- *B U N D A B E R G

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 Kawana Waters Marina
 Mooloolaba Marina Office
 Whitworth's (Minyama)
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 Noosa Yacht & Rowing Club
- *S C A R B O R O U G H
 Scarborough Marina
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- *N E W P O R T
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- *S A N D G A T E
 Queensland Cruising Yacht Club
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 Whitworths (Woolloongabba)
 Whitworths (Breakfast Creek)
 Boat Books
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 (Rivergate Marina)
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 Moreton Bay Trailer Boat Club
 East Coast Marina
 Royal QLD Yacht Squadron
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 Moreton Bay Marine Supplies
- *R A B Y B A Y
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-WESTERN AUSTRALIA.....
 *B A N D E R A
 O'Connor (near Fremantle)
 Canberra Yacht Club
-VICTORIA.....
 Royal Yacht Club (Williamstown)
 Royal Geelong Yacht Club

Editors page... by Bob Norson

Edited with the trial version of Foxit Advanced PDF Editor

Minutes before putting this edition to bed, an agreement was reached between TCP and Yaffa Publishing/Cruising Helmsman to correct an item in an article in their February edition and Yaffa to pay for TCP's legal costs. A modest outcome but TCP understands the difficulties in accurately reporting contentious issues. Contributors can sometimes fail to reveal a vested interest that may colour their material, or the contributor may just be over their head. A million things can go wrong. Everything has to be so carefully checked. TCP is proud of our record in reportage of issues, but it hasn't been easy to keep the facts right on contentious issues. Touch wood and let's move forward....

Crocs in Space?! A few months ago a croc sighted near Magnetic Island caused much anger when it was found to have been caught by the EPA in the far north and transported south to be released in a creek near Townsville by Queensland Parks and Wildlife without telling the public! Townsville marine scientist, Walter Starck was quoted on the Brisbane Times web site as saying it was "criminal stupidity". The croc nicknamed "Whitey" was re-caught and died in the custody of EPA whilst they were trying to work out how to dispose of the creature. The government claimed plastic killed the croc, hmmm. The program that saw this come about was called "Crocs in Space" (no, we didn't make this up) and the department claims the project has been discontinued and there are not other crocs released. But then what about...?

Crocs sighted in Sandy Straits and Burrum River! There has been croc sightings in several unusual places lately, possibly as a result of extraordinary rains but because the creatures are known to be very territorial, many are asking if the EPA is telling all. In any case great caution is urged this cruising season as no area should be assumed "safe" in Queensland from these predators. In the last two weeks there have been several credible sightings in the Sandy Straits of a large, adult croc. The Burrum River croc has only one sighting known to TCP so far.

Andrew MacNamara is Queensland's minister for "Sustainability" (?) which includes EPA and Parks. Besides the embarrassing issue above the EPA could do so much more for protection of the environment. Residents in Mt Isa, Bowen, Bundaberg Port and Gladstone, among others feel the absence of leadership from the EPA. Our issue is the EPA's lack of interest in noise pollution.

There is no pursuit that inflicts more harm on so many for the frivolous convenience of a few as aviation. Especially "recreational" aviation. Not in any place I've lived have I seen such an assault on the environment of a community as I have recently seen in Hervey Bay/Wide bay region. This is a top down disaster with the aviation lobby in apparent control of the regulatory agencies, filtering information down to local bureaucrats who in turn advise councilors of the new amalgamated shires that own these regional airports. Councilors can be very good but they can also be ignorant, lazy, pro noise or maybe even corrupt. In any case, often not up to the job, What just a few months ago, was one of the best places to live in Queensland is turning into an aviation slum and councils deny the planes are there or that anything has changed... like we wouldn't notice!! In Bundaberg a retirement home has in the last few months been inundated with flights of small craft beginning at 0500 everyday.. as many as 20 flights before 0800, right over their roofs according to one resident. 80 of them signed a petition asking for relief which will be ignored by the pro noise council. In Hervey Bay I have seen a plane fly as low as 50 feet over a roof top. Every day we see planes flying less than 500 feet above homes and schools kilometres away from the airport. Maybe when enough lives and homes have been wrecked by constant noise or innocent people are killed in the accident that will eventually happen.... then they will close that barn door in true political fashion. In the meantime....

Letter sent to Queensland opposition requesting relief...
 From a letter (edited for space) sent to To; Lawrence Springborg, opposition leader and Fiona Simpson, shadow minister for transport, on behalf of Readers;
 Greetings

I publish a newspaper for the boating public, *The Coastal Passage*, distributed heavily in Queensland.

The Labor party has done nothing but aggravate my readership and there are currently a couple of specific issues that could sway a block of voters your way if the LNP would take them on.

First, a recent horrendous increase in the registration fees for cruising type vessels has created much anger. A promise of removal of this new tax would be very favourably looked upon by readers of this publication.

Second, 15 metre vessels have been arbitrarily saddled with new fees, licensing requirements and mandatory insurance that many vessels can not obtain should they be able to afford the insurance and other costs involved in obtaining it. (Vessel survey etc) A law that is impossible for even the most diligent operator to comply with.

And their reply?

Leader of the LNP
 Leader of the Opposition
 Member for Southern Downs

28 February 2009

LNP to build better boat ramps

Queensland boaties can expect less congestion at boat ramps and better boating facilities under a LNP Government....

The press release goes on to discuss more about boat ramps and establishing ramp cops to encourage people to be courteous. No mention of the 15 metre issue.

Conclusion? Vote Independent! Nobody could possibly be worse! A lot of people I talk to have just about had it with every professional politician.

Computer Stuff 101, Computer Security, Before you start rolling your eyes and saying 'here we go again'... CNN reports; An American company recently found the complete plans and specs for President Obama's helicopter on a file sharing computer in Tehran, Iran! This important security breach could have been avoided if the operator of a computer at a defence contractor in Maryland had read TCP's warnings on this. The IT company that discovered the files in Iran said that an employee at a US defence contractor had apparently downloaded a file sharing program typically used to copy music files. He warned, "When downloading one of these file sharing programs you are effectively allowing others around the world access to your hard drive." They say China, Pakistan and Yemen also are engaged in this activity.

Any program you download from the web can be a disaster for your computer. From US defence secrets to your bank account details and emailing lists, everyone wants your private information and there are no laws to regulate the content of programs.. they can be anything.

Victoria... It goes without saying that every Australian is devastated by the horrors of the fires there.

The Coastal Passage

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Bob Norson: Publisher, Editor, journalist, advertising, photographer, computer & marine heads technician, etc., etc....

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Dear Bob,

Thank you for the fantastic, honest and open approach in the articles concerning customs/quarantine attitudes and methods with arriving yachts.

While we have no personal factual story of interest fortunately, I have been privy to many discussions prior to and since your last few issues, so just want to offer moral support.

Many yachtsmen, especially European, that we talked with crossing the Pacific this past year have excluded Australia from their itinerary citing the heavy handed attitudes in general in Australia versus the welcoming nature elsewhere (except maybe Fiji recently).

Over the past eleven years we have sailed to just over 60 countries and just want to advise Australians that not only is this the most expensive country by far to clear into, but also was the biggest worry of possible huge fines from the many strict rules and regulations on sailing vessels. Many arriving Australians that I have spoken with have also experienced this control freak, penalty mindset and unnecessary heavy handedness over what I consider one of the most well intentioned segments of society boaties!

We enjoy and admire Australia and hope to extend our stay and your paper is comforting to know that these issues are being highlighted towards possible change of methods too protect and promote fairness for everyone.

Regards,
George Philips

TCP note: One of the great losses to Australia because of this border paranoia, is the reduction in mingling of foreign sailors. Without a point to compare some Aussie sailors may conclude that our Custom's style of heavy handed bureaucracy is normal! When of course it is not. Internationally, Australia is becoming a destination suited only to those with a strange sense of adventure and plenty of money but too risky for many. Entering Australia may be perfectly harmless, though expensive, but you could be that "1 in 100". Thanks for the kind words George.

Bob,
It was interesting to read the letter from Alan Lucas concerning the location of the Brisbane "Port of Entry".

It is added to by the fact that the big yellow quarantine sign still exists on the Manly Harbour breakwater (December 2008). The Queensland Government - Notices to Mariners which I understand is the official "legal notice" still features a 2005 notice as yet unsurpassed that states Manly to be the point of entry.

http://www.msq.qld.gov.au/resources/file/eb07150d637c725/Pdf_ntm_048_2005.pdf

In fairness the customs website does state Rivergate Marina is the "Boarding Station for Arrival". Unfortunately for unsuspecting visitors who have absolutely no idea where that is the waypoint Latitude: 27 deg 27.6'S Longitude: 153 deg 11.6'E given is for, you guessed it Manly.

You could click on the link to Rivergate Marina and use the waypoint given there Latitude 27 deg 26.418'S Longitude 153 deg 06.518'E but then you would end up at the Northern Queensport Ferry, departure wharf for the Tangalooma Ferry.

Thank you for a good read,
Peter

From Bram Goedhart, skipper of Saluut and convicted criminal

Dear Bob,
I sailed from The Netherlands to Thailand and doing so I cleared in and out in about 20 countries. I never had a reception like I had in Australia. Normally Customs do introduce themselves when they come on board, in Australia the first thing they did was reading my rights without telling why.

Twelve hours before I entered the port of Brisbane I had contact with Customs and they ordered me to go to the quarantine jetty in Manly. They knew they had a catch and they did not tell the option to stay on sea and give notice 96 hours before entering,

I had to go to court and I was convicted. It was a pity for Australia and bad for me.

I had a lot of stress before the administration of justice and it did cost me money.

For Australia it was one more thing to make it less popular on the cruiser tam tam.

Recently I did hear worse things did happen afterwards to other cruisers. Among cruisers there is talk to compare Australia with 'Das Dritte Reich'

The time I was in Australia I made a tour and I came to like the people and the land. Please do not spoil your public relations with acting like cruisers are terrorist.

When a terrorist comes by plane and book a last minute you do not have 96 hours to check, do you really think terrorist do come on a slow sailing yacht?

Best regards,
Bram Goedhart
(Since Australia with criminal record)

TCP note: Bram's Saluut, was the second vessel prosecuted. What was especially unfair in Bram's case was that when he contacted Customs he could have stood off for the required time. Instead of advising him, Customs lured them in. Our thanks to Bram for staying in touch.

By Bob Norson

In the February issue of Cruising Helmsman, page 6, there is an article that refers to emails sent to www.noonsite.com from "a Queensland marine writer" concerning the Customs incident at Bundaberg with the vessel *Friction*. There is only one such article on that web site and it is signed by yours truly of The Coastal Passage. The article contained errors of fact that should be addressed.

For example, Cruising Helmsman stated that "The writer inferred that part of the reason for the search may have been because the owner's wife was Columbian". Absolutely false. No such remark or inference was made.

Your editor did not state that the crew of the vessel *Friction* were "prevented from filming or photographing the search", as stated in the article. How could they? They were not on the boat! What was clearly stated in the notice provided for www.noonsite.com was that the local TV station did cover the incident (an important point ignored in the CH article) showing some of the damage and disarray of the interior after the search.

The claim made in the Cruising Helmsman article that the *Friction* crew made "no complaint" is inaccurate. They complained to the TV station, they complained to the police, they complained directly to the customs and immigration officials involved, and they complained to TCP. The report in Cruising Helmsman excluded all that and other information on the report on www.noonsite.com that didn't support the view of their sources, whom may have had vested interests to protect.

No comment was sought by Cruising Helmsman from TCP or the *Friction* crew.

TCP finds the quote in the article attributed to L. Grimminck that "For every bad story there are 100 positive stories, and it is a shame these are never printed," is an inference of unfairness directed at TCP. If that is the case it is certainly false. TCP has printed pages of positive reports by cruisers satisfied with their experience with Customs. TCP is informed that L. Grimminck is a former Quarantine agent (TCP sought confirmation or denial of this by email but have not received a reply).

The Coastal Passage stands by the facts as reported and always has. See below, the complete, unedited emails sent to noonsite. Decide for yourself who has the facts right!

Sent 31 October 08, 07:22 AM

Greetings Noonsite

Yesterday I received two reports of a new tactic from Australian Customs. I received an email reporting a boat that landed in Brisbane was ransacked by customs after ordering the crew to leave the vessel. Dogs and teams of personnel taking turns.

Then a phone call from a TCP contributor and volunteer working with the Port 2 Port rally in Bundaberg, the vessel "Friction" was given the same treatment.

This vessel reported extensive damage to the vessel and personal property as a result.

A powerful personal story here as the vessel left Australia 9 years ago and enroute the skipper met a new bride in Columbia. She was particularly traumatised as she had fear of police and authorities in Columbia but was reassured by her new husband that things were different in Australia.

One other boat in the fleet that came in with the rally was searched this way as well but do not have the particulars yet.

Most reported a thorough search but courteous treatment otherwise. Some were selected at random for this.

The officer in charge of the search that caused this latest controversy is the same individual that processed the Manzari's.

The incident was reported last night on a local TV station. In response to the inquiry by Channel 7 news team, Customs promised that they would pay for damage to personal property and to repair the damaged electronics on the vessel.

No contraband was reported found in any of these searches.

Australian Customs have announced before that they now have the right to deny a crew from recording any audio or video or pictures while they are on the vessel. They will but you can not.

The act of ordering crew off the vessel outright is new and seems well at odds with any normal police practise for search and seizure.

Again, skippers beware of Australian Customs. Bundaberg and Brisbane particularly. Suggest ports of entry, Coffs Harbour in NSW or Mackay if a Queensland entry is required by conditions.

Do you wish further information as it develops?

Cheers

Bob Norson

The Coastal Passage

Sent addendum 31 October 08, 11:38 AM

I just spoke to Dave, skipper of the vessel "Friction". He has contacted the Australian Federal Police as he feels the latest action of Customs against his vessel was illegal. He states that in the 52 countries he has cleared through no one has ever come close to the nature of Australian Customs and that his vessel was damaged in a way that had he proceeded to sea the vessel and crews safety would have been compromised. There may be damage yet that is undiscovered.

He says he is applying to the Supreme Court for an interlocutory injunction to cause Customs to cease this activity until the court can examine the legality of this procedure.

Bob

Quotes from the Channel 7 Local News, Oct 30 08

It's been 9 long years since David Morrow left Australia and this is the welcome he got.

"The cupboards were emptied out, the beds were upturned and the electrical wires were pulled out."

Mr. Murrow says, "customs officers treated me like a criminal", ordering him from his home and sending two sniffer dogs in, his boat was searched for more than an hour by three teams of inspectors and they left virtually nothing untouched. His wife's prescription glass's were broken, personal items damaged and electrical equipment unresponsive. Altogether thousands of dollars damage.

"The upshot is it is probably worse than that, my wife has been sick following along this."

Now he wants an explanation; "They had an attitude that it wasn't a problem, wasn't a big deal."

Port to Port volunteers say it is not an isolated incident, Chris Ennor says Australia has a terrible reputation among boaties who often by-pass us to avoid trouble.

"I'm just terribly embarrassed and it makes me angry because I'm a very proud Australian."

Later this afternoon after being contacted by 7 local news, Australian Customs said it would repair the owners glasses and electrical wiring but Customs says the origin of the damage to the vessel is still unknown.

TCP contacted David Morrow about the Cruising Helmsman article but he hadn't seen it so couldn't make comment. Because comments in the Cruising Helmsman article attributed to a Port 2 Port rally official were very supportive of local Customs officials, TCP inquired how the Rally organisation and participants reacted to the *Friction* crew regarding the incident. "Normal boaty support," from participants and volunteers said Dave. He explained how volunteers helped comfort his wife Sonia and other crews were sympathetic. As far as the rally organisation, "they didn't want to know about it, like it didn't happen." He went on to speculate it had to do with the marina management that he described as "extremely unhelpful", and that may have been worried about negative impacts on business due to the publicity of the incident. Dave Murrow described the manager, Geoff Beyer as "antagonistic" toward him. Mr. Beyer's concern for loss of business due to publicity of the incident was expressed to TCP at the time.

Why is Australia discouraging foreign tourists?

And Why is Queensland ("The Smart State"?) the Worst?

comment by Bob Norson

The World Knows

A quote from the Seven Seas Cruising Association, Commodores Bulletin (Feb 09 page 9).; "In the 46 countries we've visited in our ten years of cruising this (Australian) visa is by far the most difficult and costly we've encountered. The attitude conveyed by the rules and procedure is one of mistrust, bureaucracy and one-sided heavy handedness."

From the Sun Herald (May 4, 08); "Boaties set sail for NZ to avoid Aussie Customs. Strict boating laws might be costing Queensland a fortune."

From Channel 7 local news, Wide Bay (Oct 30, 08); "It's been 9 long years since David Morrow left Australia and this is the welcome he got."

Mr. Murrow says, "customs officers treated me like a criminal", ordering him from his home and sending two sniffer dogs in, his boat was searched for more than an hour by three teams of inspectors and they left virtually nothing untouched."

From a letter this edition (page 10); "Many yachtsmen, especially European, that we talked with crossing the Pacific this past year have excluded Australia from their itinerary citing the heavy handed attitudes in general in Australia versus the welcoming nature elsewhere."

Countries that remove crew from a yacht to be searched

Australia..

Yup, only us. TCP has never heard of another one. Have you? Please tell us if you have. This seems to be unique to Queensland so far.

According to the crew of *Iron Bark*, Cuba was more even-handed and politely insisted on crew accompanying any search.

MSQ adds their 2 cents worth of Trouble

TCP has been covering this issue since 2005. From edition # 15 page 14;

MSQ seeks to eliminate or restrict recreational vessels over 15 metres

"The information (supplied by MSQ) suggests that larger craft are often operated illegally, operating charter business's while registered as a recreation craft and usually are hard to trace ownership when liability for salvage is required. It is also stated that there are 91 vessels (as of 2001) that have been identified as "abandon, wrecked or derelict vessels spread along the coastline. The common pattern with these vessels is that they are unregistered or inappropriately registered - for example, an ex-commercial vessel registered as a recreational vessel."

TCP went on to refute every claim used to justify the program and alerted the fleet. TCP warned that this could be a very serious problem. The disappointment was that the boating industry and other media did little to assist. Entering Australia via Queensland in a 50 foot boat would take a brave skipper indeed. Entering craft are required to have the unique salvage/liability insurance upon arrival in Queensland waters. Even some Australian vessels, particularly ferro, find this difficult.

Why Entering Vessels Still need to Worry

Most of the rules that caused so much trouble are still on the books and new threats continue to be developed (the *Friction* style of search for example). Australian Customs Service has designed the rules to be discretionary, that is, an individual agent is not in a "must" do situation but a "may" do one.

An example of this is the letter published in TCP # 33 from Wendy of SV *Outsider*. Their experience with Mackay and Townsville Customs was excellent. Even though the vessels information to customs was very rubbery, not even sure of the port of arrival, Customs was satisfied because they had "tried their best". That is in sharp contrast to the report of the vessel *Karma Winds* from TCP # 23. That vessel was one of the first to enter under the new 96 hour rule. It was by chance they found out about the new rule in the Louisiades and the skipper was able to have a German boat with sailmail forward their information to Customs. Skippers should read that story on the web (see *issues, customs, brutal*) to know what it "may" be like...

So entering Australia has better odds lately but the threat remains. No matter what you do, you may come to grief as a matter of random chance. Customs assertion that they "risk assess" every vessel is unbelievable. In the last several years, despite the extraordinary scrutiny applied to entering yachts, TCP knows of none charged with a crime more serious than failure to do the paperwork. But in Queensland, that's serious!

An Inhospitable State of Affairs

By Chris Ayres

Oh, dear, why don't we just give up and surround the coast with razor wire and put up 'Keep Out' signs? Firstly, Customs at it again. Ordering owners of the aptly named yacht *Friction* off their vessel before according to a TV report, ransacking the vessel and according to a statement by the owners, apparently moving valuables from where the owners had left them to another part of the yacht? Why? To destroy credibility of the witnesses not that they were there to witness anything it seems! Now, fly into to any major airport as did I last year and a more welcoming, helpful and professional group of people of Australian Customs would be hard to find. It seems we have a few rogues in Queensland like the characters that frightened the hell out of my partner and I when we were anchored off St Bees in the Whitsundays a few years ago. I looked up from having lunch to see six goons dressed in black in an unmarked RIB peering in through our port-light. I sent them packing and received a grudging apology from the then Minister. I worked for the same Public Service, as do these characters, prosecuting tax cheats. Somehow, we had the training and experience to discern the good guys from the bad. Certain Customs officers in Queensland seem unable to do this. No wonder they don't get the love and respect of yachties!

The 96 Hour Rule is always going to be a source of difficulty to all visiting yachts not equipped with \$10k satellite phones. Now those who enter with rally groups will of course have access to this equipment. For these few, the Rule can easily be complied with. God love the organisers, no one else will! But I feel it is also not only an imposition but a signal failure of Customs to rely on the over-worked and under-resourced volunteer services of VMR to act as de-facto communications officers for a department too incompetent to employ properly trained and equipped radio officers. Yes it is the question of training of these people that worries me. Did they receive their training from the Stasi or the CIA, I sometimes wonder?

And now, having entered Queensland, disposed of the extra flare required by NSW but not by Queensland, as we frantically search for somewhere to empty our bulging holding tank, careful to avoid those coloured patches of water on the charts (but strangely not on the ocean like the yellow roads of road maps that are always black when you drive on them) that proclaim a financial death penalty for anyone even thinking about fishing, trying to work out why AMSA have given our EPIRB a different number and expiry date from our MIMSI number and from the expiry date on the device, we now have to check the length of our vessel to see if we need 'extra' insurance for pollution or abandonment of our dearly loved vessel under that favourite piece of legislation of mine the TOMPA 1995 now welcome Section 67A. Fortunately for most of us, most insurance companies will cover this delightful legal peccadillo at no extra cost to our premiums. I am a great believer in insurance. And Insurance companies are the ultimate pragmatists. No doubt they haven't read the same stories Queensland legislators have found about thousands of yachts of 15 metres (but curiously none under?) or over being abandoned on pristine beaches throughout Queensland. But of course you can always apply for exemption under the four convoluted pages of regulation.

And here lies another problem for a visiting yachtsperson. Many but not all foreign yachts carry insurance. It is usually passage insurance and is unlikely to satisfy the full terms of Section 67A. There is also the point that 'foreign' yachts from other states may have difficulties depending on their insurer and remembering most policies are renewed annually and the terms and conditions offer changed year by year (now I told you the Insurance companies are the ultimate pragmatists didn't I?) what applies in NSW differs from Queensland. Vaguely I recall something in the Australian Constitution about "Section 109. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid." Hmm can't be serious can it now?

So what to do? You can't go fishing, you can't 'relax go sailing', you can't swim if the beach inspectors don't get you, the sharks and crocodiles will! Hide! Emigrate! Keep away! Go somewhere else! At least in South-east Asia, foreign yachts are welcome, the environment every bit as nice as Queensland and the food better. And if Men in Black do board your vessel you will know who they are, they will fly Skull and Crossbones, not sneak around in unmarked RIBS!

Chris Ayres Lady Lonsdale (and please Customs don't board me. I am a harmless old retiree ex teacher ex solicitor (please don't laugh - Human Rights yes *Human Rights!* - before my time in Tax) ex public servant with a dodgy heart!

If you have been told that Prosecuted yachts had a fair go, read this...

A critical issue against Custom's 96 hour protocol was the lack of notice of its implementation. No one knew! In pursuit of information on behalf of the fleet TCP (Issue # 26) questioned Customs and received a statement by the Minister that the protocol had been "widely advertised". TCP questioned that. In response to inquiry, a link to the following notice was provided. Below is a copy of the notice available only from (a rather obscure place in...) the Customs web site. This is apparently the equivalent of "widely advertised". If you *had* seen this document would you have thought it was meant to apply to a yacht? Other information for entering craft on the Customs web site was incorrect and/or obsolete at the time of the early prosecutions. When New Zealand introduced their 48 hour rule they shipped pamphlets to marinas and ports all over the Pacific to let people know. The early yachts weren't negligent, they just had no idea and had the bad luck to enter via Queensland. TCP received reports of yachts entering in other ports without compliance to the new rule and were not charged.

AUSTRALIAN CUSTOMS NOTICE NO. 2005/31

Commencement of 96 hour Pre-Arrival Reporting

On 26 April 2005 Customs advised industry that from July 2005 vessel pre-arrival and passenger and crew reporting would be required 96 hours in advance of a vessel's arrival. It was also the intention that shorter periods would be prescribed depending on the length of the voyage.

Since the date of that advice the Minister for Justice and Customs has agreed with industry to seek a longer transitional period for the purposes of the Integrated Cargo System (ICS). The cut-over to the ICS is now planned to be 12 October.

In examining the legislative implications of this transitional period it is now apparent that requiring 96 hour pre-arrival reporting from July 2005 would need a series of amendments to be made to the Customs Regulations. In view of this Customs believes that matters will be simplified for industry if 96 hour pre-arrival reporting becomes effective from 12 October 2005.

A fact sheet on the ICS transitional arrangements is available at www.customs.gov.au, following the links to the CMR pages.

Customs is examining the forms currently used to supply vessel and crew pre-arrival information. Some rationalisation is necessary to ensure Customs continues to receive reports, on vessels in particular, required by it and other Government Departments. You will appreciate that information required on a vessel (such as ISPS and levy information) is substantially different from the information being collected through the (ICS) Sea Impending Arrival Report and the (ICS) Sea Actual Arrival Report. A further Australian Customs Notice will be issued giving details of a national simplified requirement. Until then the current Impending Arrival Report must still be lodged.

It is important to note that the Sea Impending Arrival report cannot be lodged in the ICS any earlier than 10 days before the expected arrival of the vessel.

For those companies reporting the Sea Actual Arrival Report on or after the cut-over date, the current arrival report, Form 5 Part One, will no longer be required to be lodged manually. From 12 October the manual lodgement of this form will cease.

The contact for these matters is Manager, Enforcement Operations on 02 6245 5431 or jennifer.robinson@customs.gov.au.

Brian Hurrell
National Manager
Enforcement Operations
CANBERRA ACT

The way the protocol was introduced should serve to demonstrate what the general approach was and is, to spring a sudden, unexpected and many would say, unwarranted demonstration of power.... like introducing a search routine as was demonstrated with the vessel *Friction*. **An entering yacht really cannot know what they may face.**

How The Coastal Passage Has Fought to Improve Customs and a Progress Report

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comment by Bob Norson

What Has Changed as a Result of TCP coverage?

Random Boardings of domestic vessels. Curtailed. No recent reports though coast watch flights continue to demand info via radio on a daily basis in some areas. This may also be improving and is being monitored.

Maximum 10 day notice. Result? GONE! TCP pointed out that sailing vessels often require more than 10 days for a passage and are not usually equipped to communicate on passage.

Strict notification requirements. The Fax, Phone or Email requirements were watered down to include messages left with marina staff or other third parties in recognition that yachts do not have commercial shipping type means of communication.

Strict ETA. Customs made to understand that sailing vessels do not have control over conditions and can not hold to a strict schedule.

Reliability of notification. After exposure in TCP that notice provided by yachts was not being forwarded to the nominated port of entry and arriving yachts were being threatened with prosecution, Customs addressed this embarrassing flaw and complaints of this have ceased so far.

Strict Port of Entry. According to reports from yachts, It is now apparently acceptable if yachts have to change entry port due to conditions in spite of not being able to notify customs of that until within communication range.

Attitude of agents. Agents that were once notoriously ill-tempered are now smiling and accommodating. TCP advises to smile back but remember Customs track record. The "Friction" incident indicates there may still be cause for concern.

The most important thing? Alerting Cruisers everywhere that our country is suspicious, heavy handed and costly to visit. With few exceptions, other Australian publications have ignored or even tried to hide or dispute that, perhaps on behalf of advertisers. Customs has disputed it but information received by TCP strongly indicates visiting yachts are down and they don't stay as long. **If the same energy put into the PR campaign to deny these issues, were directed at curing them we would all be better off. A few loose cannons in Customs are undoing the work of those that would improve the system and some short-sighted business interests fail to understand they can't hide the inconvenient truth.**

Regarding Customs, What TCP stands for

Facts! Reports made by TCP are carefully prepared and independent contribution is questioned.

Fairness! Anyone who says TCP does not publish positive accounts of dealings with customs is simply not telling you the truth. See TCP # 27 for the first bunch and a whole page in TCP # 29. The letter in # 33 was particularly good.

Every Sailor is Important. We have heard it said that Customs should not be criticised because only one in a hundred get abused. To that person or persons, how about 1 in 50? 1 in 10? What is the correct ratio before it becomes injustice? Tell us so we can start living *down* to your standard!

You aren't Alone with TCP. If anyone comes to TCP with a report of injustice, TCP will try to help. We are a community. It is not a matter between you alone versus the government. Secrecy in prosecution is the goal of every arbitrary government but the responsibility of the press is to inform. Does that mean TCP is pro boaty regardless? No! However, in none of the incidents with customs that has occurred since TCP has existed and reported, has contraband or other crime been reported as a factor. It has been a matter of bureaucracy.

What the crew of *Sohcahtoa*, the first vessel prosecuted, had to say about Australia

Here is an Ayn Rand quote from Atlas Shrugged that describes how I sometimes feel about our experience in Australia: "**Did you really think that we want those laws to be observed?... We want them broken... We're after power and we mean it... There's no way to rule innocent men. The only power any government has is the power to crack down on criminals. Well, when there aren't enough criminals, one makes them. One declares so many things to be a crime that it becomes impossible for men to live without breaking laws. Who wants a nation of law-abiding citizens? What's there in that for anyone? But just pass the kind of laws that can neither be observed nor enforced nor objectively interpreted - and you create a nation of law-breakers - and then you cash in on guilt.**"

A Customs Entry Alert

Update from the Vessel *Friction* of the recent Bundaberg incident

In a recent phone call with Dave Morrow, skipper of *Friction*, we discussed an anomaly concerning the search on entry in Bundaberg where he and his wife Sonia, were removed from the vessel during the search that caused such controversy (See TCP # 34). Working on the boat they discovered that Sonia's jewellery, that had been stashed in a particular place was missing from the usual spot but found later in "the back corner of a cupboard", like it had "been hidden".

Stuff Up or Set Up? This is speculation... What would happen if a party subjected to such a search as occurred with *Friction* discovered missing property (jewellery for example) after the search and made immediate complaint? Then how would it make the various parties look if Customs or police came aboard the boat and "found" the missing property on the vessel. No crime would have been committed. Customs would have appeared to be unfairly accused and the cruising community would have been painted as unreliable and prone to frivolous accusation. Regardless of motivation the result would be the same.

Lets Celebrate! Without Balloons!



Lyndie holding a small hawkbill turtle - she died here of starvation from rubbish ingestion. Lyndie says they find quite a few of these sick & dying turtles.

By Lyndie Malan

I have in front of me a photograph of a small dead turtle. She is 20 cm long, which means she would fit onto a dinner plate, yet this little creature, once she had died, was found to have 40 bits of rubbish in her stomach. She died a slow and painful death from starvation, as the bits of plastic rubbish slowly blocked her digestive system. The rubbish included ... Three of these bits of rubbish were those fashionably new stupidities the "Release into the air Balloon".

Nowadays, whenever someone dies, or is born, or has a wedding anniversary, the fashion of the people on the planet with more money than brains, is to release helium filled balloons. (Thousands of these things were recently released to raise awareness of child sexual abuse; one hundred thousand were released at the McCain and Palin Republic Convention in the US)

I have also watched turtles die slowly here at Keppel. (see photograph) The turtle in the photo was one of 17 that died in a two year period around the Keppel Islands mainly on Great Keppel Island, where I live. She was a hawkbill turtle, and all the vets,

and turtle experts that I phoned said "Oh, she probably has a gut full of fishing line and plastics, nothing you can do for her, put her in the shade to die".

So, the balloons go up, thenwhat? They of course burst, and fall back to earth, often into the oceans, where some unsuspecting turtle takes a nip which is a death sentence. Turtles have spines in their mouths and throats that stop slimy jellyfish from sliding out of the mouth, and unfortunately also prevents a turtle from "spitting out" an unwanted balloon, or plastic bag. These balloons are nothing more than aerial litter and should be illegal. Thousands of them were released at Steve Erwin's funeral. Crickey!! I wonder what he would have said about that.

Whatever happened to the great old fashioned notion of lighting a candle in remembrance of someone you loved, or wearing a flower on your lapel or even sitting quietly or saying a prayer? There are too many people on this planet and too many stupid balloons. I have been into the new "Balloons" Shop in town and told them about my reservations and they say, "oh the balloons are biodegradable", so will break down. This is not good enough. Human waste is far more biodegradable, so are tampons, or some plastic bags, but no one would suggest simply littering the oceans with them. The fact is, once the balloons have been released, they are at the mercy of the winds and are simply either land or sea litter.

NEWS! Printable Solar Power??

Breakthrough could see solar power revolution!

Our own CSIRO has devised a way to make solar panels like we print money. That is, the process in producing the plastic cash can be used to make a solar generating film.

According to a recent ABC report, the CSIRO conducted trials on a machine using technology already developed by CSIRO for the latest banknote production, that can print 200 metres a minute or 100 kilometres a day!

A CSIRO spokesperson said once the printable cells reach the market in about five years, the cells will probably be much more efficient.

The new type of cells can be made transparent. They could even be used over windows in homes. The ABC quoted Dr Gerry Wilson;

"You could obviously put them on the roof or any other solid frontage like walls and things like that," he said.

"But because we can lay down these polymer films with different thicknesses you could make them transparent or semi-transparent so even windows or architectural features like that could all be used."

And very relevant to boats, the films can be made to float on water. "These plastic films that we're making now also float you don't necessarily have to be constrained on putting them on land," he said.

"When you consider the amount of water we lose through evaporation on dams, wouldn't it be smart to put a whole heap of films on top of your dam."

Imagine a boat with a deck covered in low cost solar film. Or maybe sails made with the film... or no sails at all for power but for generation to run electric motors? This could profoundly change boat building and cruising.

Customs Searches of Vessels



By Andrew Crawford

Recently there have been a number of reports surrounding the issue of small yacht owners being told by Customs staff that the owners were not permitted to video or audio tape the search or conversations or indeed any actions undertaken by the Customs staff.

Of course there is the ongoing chestnut of the 96 hour reporting period. Why does ACS require 96 hours notice of a possible arrival?

There are a number of very serious implications to this. Fundamentally what is it that ACS is trying to hide? Why are they concerned about an action that occurs in other law enforcement regimes on a regular basis? What risk is managed by the order preventing the taping?

If members of the State or Federal police come to my house and execute a warrant to search I am quite within my liberty to tape that search. We will leave aside the fact that when I am at home on land a warrant is usually necessary to search my house but that when I am at home on the water it isn't, that's a discussion that has been had before and will be had again.

We could note the Australian Customs Service's own self demonstrated view that taping things is a damn good idea, by this I refer to the television reality pulp known as Border Security and similar shows, where taping of Customs activities not only occurs, it is broadcast to hundreds of thousands of people.

So there are policy issues connected with the "ban" on taping searches but even prior to that there is the legal basis for the "ban" to be considered. The initial question therefore is "does an ACS staff member have the lawful power to tell you that you are not permitted to record the activities"

And the short answer is maybe. Well at least that is my opinion. As usual I need to clearly state that you should satisfy yourself as to legal issues and your own rights and responsibilities. I am not a person admitted to practice law so what I am about to examine may assist you in arriving at your own decisions, including seeking any legal advice you believe you may require.

Contact with the ACS resulted in my being advised that sections 234 AA, 234AB of the Customs Act 1901 are the powers upon which they rely to make this order to not record the actions of ACS staff. The sections are reproduced below for your enjoyment. [TCP note: Andrews reference information is so comprehensive that there was no room in this edition for it all. Also, the author included web links that are not as useful in print so.. this entire article including the reference material will be posted to the web. This is top quality research and should be publicly available] Also sections 234 A and 234 ABA are included which relate to, in part, the ability of ACS staff to direct you to leave the vessel, which may be the next step if you win the argument that their no-videoing direction is unlawful.

Section 234 AA (Places set aside for purposes of the Act) quite clearly, in my view, requires that a "sign" be erected at a "place" if any of the powers in regard to prohibition of entry is going to be enforced. Further, an additional sign may be erected to prohibit the use of cameras etc. So prior to any direction to a skipper to not record

anything at least two signs need to be erected, though I suspect that a single sign with both areas of the section may suffice. In other words, if a "place" (being an area or building or part of a building) has a sign lawfully posted, then a further sign may be erected prohibiting the use of video cameras etc in that "place". Then and only then can the ACS staff direct people that they not use cameras etc. It would appear that a part of a ship may be a place pursuant to Section 234AB. Though that is not entirely clear.

I note that subsection 3A of Section 234 AB also provides that no offence is committed by a person who fails to comply with the "no cameras" direction if a person has a reasonable excuse. I would think that an argument could be easily mounted that a person whose floating home is being searched has such an excuse. But in any event no lawfully erected signs means no power to make the "no cameras" direction.

Sections 234A and 234 ABA then discuss the issue of who is an authorised person to be in or on "places". The key in each of these sections is still the existence of the sign and even then a member of a crew disembarking or embarking has the right to be in the area (see 234A 1A (c) and (d)). So again - no sign, no power to issue the direction.

The effect of these sections (particularly 234 ABA) is to give the ACS staff member the ability to direct a person to leave the area, this would have the effect of preventing a recording of the search.

As a former law enforcement professional myself, the issue of removing people from a search is also curious to me, when I went to court I wanted to be able to say that I had asked the person if anything in this locker, for example, needed to be declared, if the person owned or had control of all the things in the locker etc. In short I would seek evidence to tie the illegal item to the person. That is just good investigatory practice.

Aside from the Commonwealth legislation there are general state laws regarding the taping of conversations that may or may not have application. In the broad sense however these usually have no impact provided that the taping is declared. In the case of Queensland even that may not be required.

One of the reasons provided by the ACS to me about the policy position on this was "officer safety", they suggested that they need to do this so that cantankerous people do not interfere with the actions of the ACS staff. On that point I can only reinforce the need to not hinder or obstruct the ACS officers, by all means courteously and respectfully put your view, but otherwise stand aside and let them go about their business. Merely taping a search would not in my opinion amount to any threat to officer safety.

Quite frankly it amazes me that ACS would want to prevent any person taping their searches etc. If an ACS officer had stopped me recording the search and any subsequent prosecution by the ACS came to a matter of credibility between the officer and me then I suspect a court would wonder why the officer didn't want the search etc taped.

On the one hand we have places that quite clearly have signs erected, and ACS allows television stations to make films, on the other we have boats that may not be "places" where a "Sign" is erected and yet ACS seeks to prevent the taping.

It makes little sense to me. But then again - I am but a citizen of the Commonwealth of Australia.

I sought advice from the Australian Customs Service on this and related issues, this was an interesting process. I rang the telephone number on their website, the one I might use to advise of my pending arrival, after 20 minutes on hold and being shuffled around various people I felt I had experienced at least one part of frustration that incoming yachts have. The initial questions were posed in December last year.

1. Why 96 hours? It is an arbitrary number.

A minimum of 96 hours is required in order for Customs to effectively manage potential border threats, the time allows us to undertake necessary checks.

2. What risk are we managing with this amount of time?

Customs uses this time to manage a number of risks including CITES, potential drug, tobacco etc imports, and potential attempts at evading excise.

3. Why are we concerned about people filming our officers when undertaking vessel boardings and conducting searches?

One of Customs priorities is to ensure the safety of officers. In the event that a crew member is believed to pose a threat to a Customs officer they will be asked to leave the vessel.

4. Why is Australia the only country to have 96 hours as a reporting time frame?

Australia is the first country to implement the 96 hour reporting time frame. It is expected that other countries will soon follow suit and that reporting requirements will become much stricter around the globe. It is unfortunate that a small minority of people choosing to do the wrong thing affect the pleasure and freedom of sailing for the whole community.

I wrote back to ACS and indicated I would like to submit my article soon but that I felt their answers did not do the ACS justice. For example I still don't understand the answer to questions 1 and 2 in that I can get on a plane with 300 people in South East Asia after buying a ticket an hour or two before take off and land in Australia 10 hours later and ACS are able to manage this.

The answer to question 3 is particularly curious; the question was why a prohibition of taping searches is necessary, the answer didn't address the issue other than tangentially. To be clear if a person does behave in a threatening manner towards ACS officers then clearly they should seek to remove them from the area, however if the occupants of the vessel are quiet and compliant, why on earth would taping of the search constitute a threat to the officers.

The ACS answer to Question 4 is equally interesting. It would appear that there is some form of suggestion that all countries in the world are agreed that ACS time-frame of 96 hours is appropriate and indeed about to become the world standard. I could find no such reference on the World Customs Organisation website. What I did find on that website was reference to a range of Customs Agencies throughout the world and I have included below a sample of requirements:

It would appear that Australia is certainly out of step with at least the countries noted below, I didn't search every country I just looked at similar countries to Australia. Even post the 11 September issues connected with the USA they still do not treat arriving pleasure yachts as criminals.

CANADA - Private boats

If you arrive in Canada aboard a private boat, you must proceed directly to the nearest designated telephone reporting marine site. Upon arrival in Canada, the master of the boat must report to the CBSA by calling 1-888-226-7277. The master of the boat will provide details of the voyage, the passengers and their declaration. No one except the master may leave the boat until authorized to do so by the CBSA. As proof of presentation, masters will be provided with a report number for their records. Masters must provide this number to a border services officer upon request. You do not have to report to the CBSA when you leave by private boat unless you are exporting goods that need to be documented. To get a list of the designated telephone reporting marine sites, call 1-888-226-7277 before you arrive in Canada.

New Zealand - Advance Notice of Arrival

New Zealand legislation requires the master of every craft en route to New Zealand to provide the following information at least 48 hours prior to the expected arrival time in New Zealand:

United Kingdom - Do I need to notify Customs of my arrival?

Whether you need to notify your arrival to customs depends upon where your last port of call was. If you are arriving directly from an EU Member State, you need only contact Customs if you have goods to declare. However, there may still be immigration requirements that need to be met and you should refer to paragraph 4.9 for details.

When arriving direct from a country outside the EU (the Channel Islands are regarded as outside the EU for this purpose), you must telephone the **National Yachtline on 0845 723 1110**.

United States - Pleasure Boat Reporting Requirements

(04/28/2007) Pursuant to 19 CFR 4.2, operators of small pleasure vessels, arriving in the United States from a foreign port or place to include any vessel which has visited a hovering vessel or received merchandise outside the territorial sea, are required to report their arrival to CBP immediately (see 19 U.S.C. 1433).



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Customs Searches, continues...

After some prodding ACS responded with a more expanded view:

Why do crew and passengers have to report to Customs 96 hours in advance of porting? What is it that Customs does in that 96 hours that can't be done in 24, 48 or 72 hours?

Australian Customs and Border Protection is responsible for clearing all goods, vessels, passengers and crew entering and departing Australia. A primary reason for Customs presence at the border is community protection preventing prohibited, harmful or illegal goods or persons from coming into Australia.

The role has become more important in recent years. Post 9/11, Australia's border security and counter terrorism activities increased and following the Australian Government's review of national maritime security, the government deemed that advance notice of the arrival of vessels and people to Australia was critical and that the time-frame should be extended from the then 48 hours to 96 hours.

In the case of smallcraft, Customs staff are responsible for completing a range of border control functions in relation to the vessel and its crew for Customs, Immigration and other government agencies as required.

While the vast majority of smallcraft are generally involved in legitimate travel into and out of Australia, there is also a history of smallcraft being utilised by various criminal entities to breach Australia's border controls. Taking into account this and other evidence, Customs has taken the view that all vessels, regardless of their size or the purpose of their travel to Australia, must be fully risk assessed prior to their arrival into Australia, and therefore must provide the prerequisite information needed to make this assessment.

Customs risk assesses every smallcraft and commercial vessel in advance of its arrival in Australia. The assessment takes into account government held intelligence in relation to a range of border security issues, including: illicit drugs, terrorism and people smuggling.

Why is Australia the only country to have 96 hours as a reporting timeframe?

After 9/11, the Australian Government along with governments across the globe reviewed their security and border protection activities. The government deemed that advance

notice of the arrival of vessels and people to Australia was imperative.

In the airport area, Customs obtains advance passenger information on all travellers prior to their arrival in Australia. This allows authorities to screen and risk assess all travellers prior to their arrival in order to ensure that they do not pose a threat to Australia's security. Similarly, the government recognised that passengers, crew and vessels of all sizes should be assessed prior to their arrival in Australia.

After careful consultation with border agencies, the government determined that passengers and crew should report to Customs no later than 96 hours in advance of a vessel's arrival at the first Australian port. This rule applies to vessels of all sizes ranging from large cruise ships to small pleasure craft. The timeframe of 96 hours was considered appropriate in order to provide sufficient time for Australia's various law enforcement agencies to conduct a thorough risk assessment and to organise an appropriate response.

What risk are we managing within this amount of time?

Customs uses this time to manage a number of risks including preventing the following imports: drug, tobacco, and some medicinal products, flora or fauna and protected wildlife, firearms, weapons or ammunition, and potential attempts at evading tariffs.

Customs works in conjunction with a number of different agencies to secure Australia against border threats, therefore sufficient time is needed for the Australian Government to develop an appropriate response, involve all agencies and delegate roles and responsibilities in the likelihood of a threat impacting our borders.

Are other countries going to follow the 96 hour time frame?

Australian Customs and Border Protection (Customs) manages the security and integrity of Australia's borders. It works closely with other government and international agencies, in particular the Australian Federal Police, the Australian Quarantine and Inspection Service, the Department of Immigration and Citizenship and the Department of Defence, to detect and deter unlawful movement of goods and people across the border.

Customs works in a whole-of-government approach to protect

Australia's borders and ensure Australian's enjoy a safe and secure lifestyle. Put simply, there is no universal way of protecting a country's border - each country manages their border security in the best way possible to minimise risk and thwart threats to society.

Customs cannot comment on another country's border security regulations.

Why are we concerned about people filming our officers when undertaking vessel boardings and conducting searches?

Under the Customs Act 1901, Customs officers can ask passengers to refrain from using recording devices such as cameras, sound recorders, mobiles, or other electronic form of communication where Customs officers will be using a 'place' for questioning, searching or examining or holding a passenger.

Please refer to section 234AA of the Customs Act 1901 for further information and note that Customs powers are standard across all points of entry, including arrival by air.

Conclusion

After lengthy examination of the Act and discussion with ACS I still do not have an answer to the why ACS would want to prohibit the taping of a search by a compliant person who presented no threat. I still don't understand why Australia needs 96 hours to do what it needs to do for boats with 3 people on board and yet can do a plane full of passengers in 24 hours. I still don't understand why Australia needs 96 hours to do what it needs to do, when other similar countries can do it in much less time.

I have spent the majority of my working life in law enforcement, particularly in Intelligence and Investigations. I applaud and support the work done by ACS my concern is not with that, it is with the manner of that work.

I doubt that we will see much change to the policy or legislation, what we may see is an economic impact as less and less yachts choose to come to Australia to and spend their money.

Fundamentally though I would hope one day to understand the simple question: Why, provided I am compliant, would it concern ACS to have me tape a search of my own boat.

TCP asked Legal Expert Chris Ayres to have a look at Andrew Crawford's article and make comment if he should choose.



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Bob,

This is a great, well balanced and well-thought out article. (TCP agrees emphatically!) I question the right of ACS to exclude and owner from the vessel on the grounds:

it may be unlawful, under the relevant legislation.

Evidence submitted by ACS officers would be open to scrutiny under cross examination as being unlawfully gathered and may not be admissible in court;

it is in a clear and blatant contravention to national and international human rights law. Even soldiers in the front line are bound by these laws!

it is a contravention of international maritime conventions;

would lay ACS officers open to prosecution for theft, wilful damage, trespass to property and possibly assault.

A reasonable defence by a person would be to ensure the search was carried out in good faith as well as in the protection of property i.e. his/her home and to ensure Natural Justice is upheld.

All are questions a court of law would have to consider and may warrant referral to the International Court of Criminal Justice as well as various UN tribunals on Human Rights. Don't think ACS can ride roughshod over this. If the AFP cannot exclude taping and photography as an evidence gathering device (all the person owning the yacht need do is provide copies of tapes and photographs to ACS) and requires a warrant as your writer properly says, it is more to protect the police and authorised officers from interfering with evidence.

The issue of Natural Justice – clearly breached and not even considered by ACS – in a common law right that must be specifically excluded by legislation if the ACS wish to rely on it.

Finally, the first thing I ever did and the first thing any defence lawyer does is question the validity of the search warrant. That is why, when I signed search warrants for State and Federal Police as well as for ATO officers 264 notices, I asked the officer what was the purpose of the warrant. If they do not tell in general terms what is the purpose of the warrant, it is not properly executed. If the warrant is not properly executed i.e. if the person signing it is not an officer of the Court with power to witness a warrant and if the officer executing the warrant does not explain when asked the purpose of the warrant, then any evidence gathered in reliance on the warrant cannot be admitted in court. That is what is meant when a crim walks on a 'legal technicality'. It is the one thing the police are really conscious of, too.

Of course, if ACS board a vessel near where I am please call (see below) and I'll come down. They cannot exclude me without themselves committing an offence. I don't have to act for the person – in fact I cannot – I am no longer practising so cannot take a fee and there cannot hold a retainer, but **I am admitted solicitor and currently on the Roll in the High Court, and the Supreme Courts of Qld and NSW and as a 'lawyer' under the Act I have a right at law to be present a all times when ACS do their search and to photograph, take notes and record everything that happens.**

Chris Ayres

B.A. (Hons), M.A., M.Ed (Hons), LLB., Grad Dip Legal Practise, Master of Law (Taxation)

Solicitor of the High Court of Australia, the Supreme Courts of New South Wales and Queensland.

And bloody nice person too.

And yes, Bob, you can print this too. (ta!)

email for Chris; law@thecoastalpassage.com

Phone contact ring TCP 07 4125 7328

Thanks to a lot of hard work and the sacrifice of victims but the laws are still there and more to be done.

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The Man Behind the Screen: Clearing Customs in "Oz"

By Ellen Massey, SY Heretic

The whole way across the Pacific, people warned us about clearing Australian customs. Everyone seemed to have some third or fourth hand horror story of having all their food confiscated, or having to haul out to prove they didn't have giant mussels and trails of slimy seaweed clinging to the keel. And as always, the more beer the storyteller consumed, the more outrageous and terrible the ordeal became. At the Opua Cruising Club in New Zealand authorities on the subject often spoke their piece. The summer was drawing to a close, and cruisers were contemplating routes back up to the Pacific Islands or simply straight across the Tasman, but eventually, following the trade winds, many would end up in Australia either way. Hence, "If you thought Kiwi Customs was strict, just wait 'till you hit Oz." And then the tales would begin. "Sydney's absolute worst. You see, they train the new ones there and are so thorough you wouldn't believe." "Oh, no, no. I got a friend cleared in at Brisbane, told me that was the worst. Kept thinking he had firearms. Wouldn't believe him that all he had was a flare gun." And so on.

Nor did we escape these tales when we arrived in Fiji. At the Savusavu Yacht Club, with the beer flowing, it began again. "Well, you see, friends of ours cleared in at Darwin, going the other way, you know, up to Japan. They'd lost their invoice for the antifoul job they'd done. Had to haul before they could have a shower. And then more Quarantine people came and did a whole search of the boat. They took away any cans not from Australia. And honey. Make sure you finish all your honey before you get to port. We just took out spoons and ate it right out of the jar last time we were there."

While we took most of this with the proverbial grain of salt, we were nonetheless careful to have everything in order. We made sure to have a multiple entry visa good for 12 months upon each entry (the Sub Class 676); we e-mailed ahead and got a reply, this way giving several days more than the required 96 hours notice, put our antifouling invoice in a Ziploc bag, and bought only enough provisions to last the 1200 miles from Santo, Vanuatu to Cairns. We arrived in Cairns around midday under gorgeous blue August skies, and after radioing Customs, we were directed to a berth in one of the posh marinas. As we rounded the breakwater and looked around at the other boats with their satellite domes and gleaming chrome vents, we hoped aloud it could be done with quickly since we had no intention of paying for a night in the place. We had spent our passage eating up the cans and dried goods we had left, since we saw no sense in buying lots of food in Santo just to have it confiscated. Sometimes this had made for interesting flavor combinations, but we were happy that all we had left for customs to take were a few cans, some lentils, and some powdered milk which we had shunned in favor of tastier long life milk. We had even eaten all the honey.

Once in the marina slip, the surprises started. First, only two Quarantine officials walked down the pier towards us, instead of the hordes we had been told to expect. They carried no video cameras. An affable man slipped off his shoes before coming aboard, and sitting down in the cockpit to ask us some questions and fill out some forms. We handed over our antifoul invoice which he looked at and then he scribbled something on his clipboard. So that was all for that. No hauling, no fines. When we told him we'd gotten a reply to our advance notice and would he like to see it? he responded, "Oh no, it's all in the computer," and then came the next question, "Do you intend to take up residency in Australia?" "No." "Well, why not?"

The other official was a young blonde woman who was already below looking in our lockers and sifting through our stores, trailing a big yellow plastic bag behind her into which she threw all our powdered milk (thank God) and our few remaining lentils. She held it open for me as I tossed in the rind from the Vanuatu grapefruit I had been eating. She did not touch any of our cans, and was confused when I asked her whether she was going to. "Why, they're sealed!" she replied, and went on to ask if we had any wood or seashells aboard. I pulled out a few shells I had picked up in Fiji, and she placed them carefully back in the drawer. She turned over various wooden objects, inspecting them, before she reached a little carved figure a Chilean friend of ours had given us. She pulled him up from his place in the bookshelf, and as she did, his carved phallus popped over the edge of the shelf. She gave a puzzled look, and our Quarantine inspection was complete.

Please note: None of this is to say that cruisers intending to sail abroad should regard Quarantine, Customs, and Immigration lightly. They are important for keeping countries and their environments safe. My point is only that if you understand the laws of the country, and have your paperwork in order, clearing Customs in most First World countries is not a horror story.

I understand that some yachts have indeed had problems with Australian Immigration, Customs, and Quarantine; I am simply happy to report that our experience here has been of professional yet helpful and accommodating officials. We did not find any difficulties with obtaining an Australian visa: after a close reading of the Immigration website, it became clear which visa to apply for, and since we do not intend to stay in Australia longer than a year, the regular Sub Class 676 Tourist Visa worked well for us. This visa allows multiple entries for a period of two years after the date of issue, and permits a stay of 12 months following each entry. We were lucky to have good Internet and fax facilities available at the time we applied. Australia's 96 hour advance notice rule posed no problems for us, since we were able to e-mail ahead from Santo, and we received our reply immediately. We were also aware of Australia's concern over marine pests, and were thus careful to preserve our records regarding antifouling.

Furthermore, this article is merely a reflection of our own experience, and may have little bearing on the experiences of other yachts, foreign or domestic.

Dear Bob,

Australian Customs & Immigration officers were great. After 3 years of sailing amongst Pacific countries these officials conducted their duties with total respect for us and our yacht. Our exhausting ocean passage ending with their warm welcome and helpful local advise making us feel good to be back in Australia.

Warwick & Amanda Spratt, SV Wiikirri

Greetings Warwick & Amanda,

Congratulations!

You are the beneficiary of much hard work on the

Hi Bob,

I was interested to note on arrival at Mascot Airport recently ...

A. We were confronted with many signs indicating that photography was strictly not allowed.

B. As we queued after collecting our bags, I noticed two large placards stating that Channel Seven were currently filming a program within the Customs' Hall!

If Customs allows a TV program to be filmed within Customs Hall, what is their objection to a search being filmed or photographed on a yacht?

Surely it would safeguard Customs from any accusation of 'rough' or an inappropriate search, while providing proof and assurance to the yachtmaster concerned that the search was carried out correctly?

On the '96 hour advance notice rule', I'll bet airlines do not, indeed can't meet this rule. While Customs may receive an advanced passenger manifest 96 hours in advance, they could only get a final passenger manifest after the flight had closed and was about to depart. This would normally be well under 24 hours with an average of around 300 odd passengers these days. So why the huge difference and disparity for yachts with an average of 3 to 5 persons on board?

Finally, how can a small pleasure yacht at sea meet their requirement when Australian Customs do not have HF radios on which they can be contacted? It has long been standard equipment for every Harbor Master, Marine Police station, offshore yacht, commercial vessels, VMR station etc as it is the 'normal' mode of communications for offshore work around the world. VHF being the standard for inshore comms. If Customs used HF instead of insisting of either a phone call, fax or written advice (difficult in the middle of the Tasman Sea), the 'problem' would not exist. I believe the 'problem' is of their own making.

It's about time that Customs started using HF for offshore work and stop just 'monitoring' the frequencies. All that is needed is for their personnel to be properly trained and licensed, just like the rest of us.

Peter Carton
Ketch Absconder

15 metre + Foreign Boat sails past QLD insurance scheme but Customs "really" nice!

Greetings from Bear,

Just wanted to let you know we escaped from Queensland with no lasting scars. The big issue up here is the quarantine problem with goods entering mainland Australia from islands in the Torres Strait. Yachts heading north to Darwin are bypassing Thursday Island because of it. While in Cairns, the local Quarantine office broadcast messages concerning this issue over the VHF, and when we responded asking for detail, someone from the Quarantine office offered to meet with us and go over the rules. Nice gesture. They do seem to be trying to make the system work for Yachts, but it is a difficult issue. We certainly couldn't fault them for getting their message out.

Also, we got a visit from a Customs boat while in Cairns. Three smiling faces and a good experience for us. They asked if we had a cruising permit and how long it was good for- when I started to go get it they said they didn't need to see it and that was it. They left after giving me some advice on how to catch barramundi- "get a big hook, big line, some bait, and throw it in the water- that's Australian advice, mate". I still smile when I think of that interaction.

The fly-overs from Coastal Watch are a little much, but they do their jobs professionally and courteously. I got so I missed the daily contact when we arrived in Gove.

part of TCP and more importantly, the victims of former abuse that had the spine to stand up. Only a couple ports in Queensland still present a problem. What port did you enter?

Again, welcome home!

Cheers, Bob

Howdy Bob,

Port of entry: Cairns Yes we thought this may have been the case so we felt a little encouragement might be enough incentive to keep the momentum heading in the right direction.

Warwick & Amanda

Hi Peter,

Perfectly reasonable observations. I wonder if the filming you saw was a news item or for that propaganda vehicle "border security" that I've seen advertised as a TV series? In either case it does appear to be motivated by fear of not being able to control message. Besides forbidding independent recording there are other ways that customs has used to control image in a way that appears to me to be very corporate/adversarial but hardly a function of a government 'service' as I view it. For example, I believe customs works with google (read pays google money) to enhance it's web presence and knocking 'undesirable' competition back on searches. At least when I asked, Google wouldn't deny it.

As the example you site, it doesn't seem to be a law enforcement tool but PR exercise.

Customs stopped responding to HF about the time of the 96 hour rule. Reports do indicate they continue to monitor.

I agree that customs should take advantage of every reasonable resource to assist boats to comply with what is after all, the most severe entry protocol in the world, except for China. What company we keep!?

Cheers
Bob

Bob,

Yes, it was the 'Border Security' TV series.

I was told when we were in Townsville, about three years ago, that Customs did monitor HF. At that stage I was actively involved in running the 'Sheila Net' and an American cruiser told me he had either seen or heard it (I can't remember which) when visiting their office.

I can only surmise that Customs does not want to go to the expense of ...

a. Training all their officers.

b. Paying for their operator's license and

c. Obtaining a 'Base Station' license. Who knows?

Keep up the good work ... we need it!

Peter

So my only conclusion is that you beat these guys up so badly that they are being really really nice to "yachties" now. Good on ya, mate.

We are working our way to Broome and then Cocos Keeling. We seem to be the only boat in the area that is not doing the Indonesia rally.

Keep smiling,
Chuck and Dianne
Bear, USA

Thanks mate and yes...

Your experiences are being closely watched and now that you are safely out of Queensland.... we can tell the 15 metre + American boats that have been monitoring your dash for freedom that you made it out unmolested.

I think it's possible that the state does not want the troubles visited upon them that Customs got for being so recalcitrant... but doesn't want to lose face by backing down either. The burden placed on a foreign vessel to obtain this special kind of insurance just to sail through Queensland is unwarranted and perhaps unenforceable.

If we don't hear from you again in the land of oz, have a great voyage and thanks for your help whilst here. You've left better than a clean wake.

Cheers,
Bob



TCP's Forum

Drinking, Yachting and Anchoring

By Andrew Crawford, SC Dilligara



Recently there has been significant discussion in the yachting community about the law in relation to consuming alcohol whilst operating a vessel. The vast majority of people understand and readily accept that if you are under way and you are the operator of a vessel and over the limit then you are liable for prosecution. No real debate there at all. And neither should there be.

Further, I and most people I know strongly accept that navigating under the influence is a silly and dangerous thing to do, and nothing in this article should be construed as excusing dangerous or risky behaviour. To the contrary, I and others like me are scrupulous about ensuring we don't put ourselves and others in danger.

It is interesting to follow the history of drink driving legislation. Not that long ago the law considered that vessels should be treated differently to cars. It used to be the case that you were in trouble with the courts if you operated a vessel under the influence of liquor or a drug (this was a matter of fact, but the law also deemed that you were *Under the Influence* if you had a blood alcohol concentration of point 15 or higher).

It was only the operators vehicles on roads that had to consider the issue of being "over the limit" that is having a blood alcohol concentration of over point 05.

Over the years the laws that regulate vehicles being driven within metres of each other at 100 kilometres per hour became applied to vessels as well.

Interestingly as well is that the law makes no differentiation between the 25 foot sailboat operating at 6 knots flat out and the 50 foot motor boat moving along at 15 knots, or the large container ship at nearly 1000 feet operating at 22 knots.

Where however the law gets really interesting is when we start to consider your liability as a skipper when you may be over the limit but safely connected to planet earth.

The key concern here is what constitutes being "in charge of a vessel that is being used or apparently about to be used in navigation". It is on this point that the law is very confusing, those that administer it are confused, and we the poor public are left scratching our head.

At this stage I should indicate that the basis for this examination is the law as it is written in Queensland. However, most traffic type legislation has been harmonised over recent years (fancy public service term for being made pretty much the same across Australia).

Also I should issue a very strong warning I am not a solicitor or any other form of legal practitioner. I do not hold out the content of this article as any form of legal advice. I am however a citizen who should be able to have an understanding of the laws that apply to me.

A very short review of a couple of the provisions of the law is relevant here. The issues connected with being under the influence of liquor or a drug and or "being over the limit" are contained in the Transport Operations Road Use Management Act.

Section 79 of that Act is mentioned in part below (the full extent of the act and section is available on the internet at www.legislation.qld.gov.au and from that home page follow the links to the Transport Operations (Road Use Management) Act). In the excerpt below I have taken out the references to trams, trains and vehicles to make it a little easy to follow.

So another disclaimer, if you want the exact text of the legislation you need to go to the government web site.

Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood or breath

(1) Any person who whilst under the influence of liquor or a drug(a) drives a vessel; or (b) attempts to put in motion a vessel; or (c) is in charge of vessel;

(2) Any person who, while the person is over the general alcohol limit but is not over the high alcohol limit (a) drives

vessel; or (b) attempts to put in motion a vessel; or (c) is in charge of a vessel; is guilty of an offence (11) Subsections (1) to (2J) apply to and with respect to any person (e) who drives or is in charge of or attempts to put in motion a vessel that is being used, or is apparently about to be used, in navigation.

What the guts of section 79 means is that if you drive or attempt to put into motion, a vessel over the limit you're in trouble, as you should be. What it also means is that if you are in charge of a vessel over the limit then you are in trouble.

The key concern here is what constitutes being "in charge of a vessel that is being used or apparently about to be used in navigation". It is on this point that the law is very confusing, those that administer it are confused, and we the poor public are left scratching our head.

The popular view espoused by the authorities is that you are caught by this section in the following circumstances (text taken from Maritime Safety Queensland web site):

Skippers of recreational boats should also be aware that, when their boat is anchored, it may still be considered to be used for navigation, and the blood alcohol limit applies. The limit does not change unless the boat is securely moored in a marina, to a jetty or wharf or on a swing mooring.

So the MSQ advice (and its only their opinion and not law) is that if you are anchored you must stay below the limit, but if you are in a berth, tied to a wharf or on a swing mooring you are okay. The theory behind that is that you may have to shift your vessel if it is at anchor whereas the other circumstances would not require you to be in a position to move your vessel.

Whilst that is what the authorities say it isn't what is written in the law. It is simply their interpretation of the law, an interpretation that is not binding on the courts. In researching this article the only case law I could find on what amounts to being in charge of vessel being used or apparently about to be used in navigation, is a case from 1878. Yep that's 1878.

For those who are interested the relevant case citation is *Hayn v Culliford (1878) 3 CPD 410 at 417* where the court held that a ship need not be in a state of motion to be in a state of navigation. It is interesting to note that this case doesn't appear to mention being anchored or not, what it does appear to say, in nautical terms, is that if a vessel is under way it need not be making way to be navigating.

The definition of navigation in contemporary literature, for example the Macquarie dictionary, is "the act or practice of passing on water". So the old case suggests that a vessel need not be moving to be navigating and the contemporary dictionary interpretation is that navigation involves motion.

When one reflects on the 1878 case and the dictionary definition one is struck by the thought that what both definitions really say is that if you are under way then you are navigating irrespective of whether or not you are making way. It would appear to me that this is a much more sensible basis upon which we should consider the application of the drink driving (navigating) laws.

Conversations with Police and Transport department officers indicates that both organisation believe that being anchored renders you liable but interestingly, I am advised that there is a Crown Law advice to these organisations which indicates that being on a mooring could also render you liable.

continued next page...

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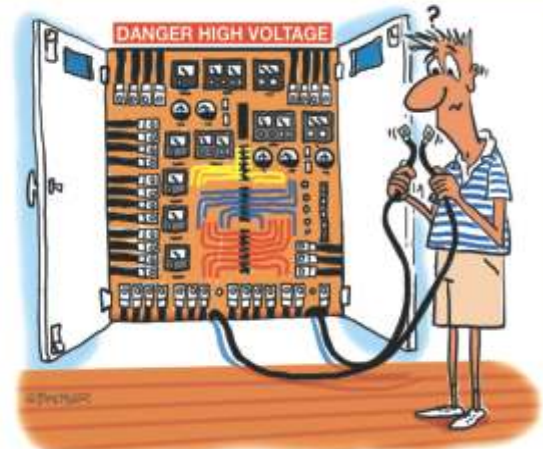
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Drinking, Yachting and Anchoring cont...

So in summary: the law about being over the limit is related to the following concept:

IN CHARGE OF A VESSEL BEING USED, OR APPARENTLY ABOUT TO BE USED, IN NAVIGATION.

There is no statutory definition of what the term used in navigation means, so we have advice from Qld Transport, differing advice from Crown Law, and reference to old cases. Further, it gets very confusing when talking to officers of both organisations, as they quote randomly from a range of other provisions, e.g. USL codes and the like.

The reality of criminal law is that the prosecution must prove each and every element of any offence beyond reasonable doubt.

I really think the time has come to make this law clear. What the law should say is that a vessel underway is captured in regard these laws. That would appear to be more sensible than the current dog's breakfast.

I mean the really scary thing is if you accept the Transport Queensland view that being used in navigation means being anchored, then someone who is on shore at a party some 20 kilometres away from their boat may still technically be "in-charge" and thus liable.

The law actually recognises this as a stupid concept. It actually recognises that if a person has parked their car and is not in it then they should not be held to be "in charge". Subsection (6) of section

79 says that a court is not to convict the person in charge of a motor vehicle if all of the following issues exist concurrently:

- the person in charge was not in a compartment of the vehicle containing the driving seat, or not being in the vehicle the person had manifested an intention to not drive, and
- was not so horribly affected by the alcohol as to be unable to understand what he was doing, and
- the vehicle was properly and safely parked, and
- the person didn't have a history of drink driving.

So taking that section, if you park your car safely and legally and get in the back seat, you don't have a horrible drink driving history and whilst you are reasonably well affected, you aren't so sloshed as to be clueless, then no offence. All terribly reasonable really. It encourages people to choose not to drive.

The yachting analogy is to consider that you are anchored legally and safely, lights on etc, you have a wonderfully clean record and you are two or three drinks over the limit but far from legless.

In the car, fine no dramas, in the boat, liable for prosecution and conviction, if you believe the MSQ web site.

Remember that your 4 knot clunker goes a little slower than your family sedan. It is beyond me why the government seeks to extend the net this wide, whilst providing a defence clause when it comes to cars.

Its also interesting to note that if you are over point 05 but not under the influence of liquor you can legally ride your horse down the road, and belt along on your pushbike in peak hour traffic. (see section 79 subsection7)

Two more things:

Firstly, the powers that police have to enforce these laws are very wide.

Section 80 of the Transport Operations Road Use Management Act provides that if a police officer even suspects, on reasonable grounds, that a person was within the last preceding 2 hours driving or in charge of or attempting to put in motion a vessel being used or apparently about to be used in navigation; they (the police) may require a person to supply a specimen of breath. So you are cruising up the coast your vessel is anchored in Airlie Beach, you are ashore at the sailing club and you are going to stay ashore and sleep at a friend's house, and you are having a big night, according to the current Qld Transport interpretation you are still covered by the legislation.

To take this to the extreme, your vessel is anchored in the Brisbane River, and you are sitting on a plane 30,000 feet in the sky, best not to have a drink, cause you are still in charge according to the Transport definition, but I am sure no court would agree with them in these extreme circumstances. It is the non extreme circumstances that worry me, anchored safely and on the beach at Horseshoe bay having a drink. The MSQ interpretation is that you are quite clearly in charge.

And again; please do not interpret this discussion to mean that in any way shape or form I condone the unsafe operation of vessels. I don't. I spent the better part of my working life in law enforcement and have arrested more than my share of drink drivers, I have investigated more than my share of fatal traffic accidents and delivered more than my share of death messages.

I simply hate badly written and interpreted laws that cast too wide a net.

I hate laws that seek to control behaviour that is demonstrably not causing risk.

Finally, I again indicate that I am not a lawyer; get your own advice and stay sober on the water. But if you are one drink over and at anchor and get done, I strongly urge you to seek quality criminal law advice.



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TCP's Forum

Drinking Yachting and Anchoring



By Chris Ayres,
SY Lady Lonsdale

I want to thank Andrew Crawford for his well researched, thoughtful and clearly written article in TCP #41. Andrew raises two worrying issues.

The first is, can we, as the skipper of a yacht, be breathalysed and charged if over the limit whilst on board an anchored yacht?

Secondly, do authorities other than the police i.e. Queensland Transport Maritime officers - also have the power to breathalyse and charge the skipper?

Let's start by stating the obvious. Here, the law is an ass. A complete donkey.

Now I understand where the problem for the government arises and fully appreciate the positive side of their good and wholesome intentions to try and protect us from ourselves (whether we want to be protected or not). It is also a problem that authorities in Victoria (Marine Act 1988 Sect 33A), Tasmania (Marine Safety [Misuse of Alcohol] Act 2006 Sect 7) as well as the U.K and many other overseas jurisdictions are attempting to control through regulation.

The core of the problem quite simply is this - a vessel (often though not always a hire-boat) will throw out an anchor where it pleases and too often without regard or even awareness that an anchor needs to be picked and held, and then the party begins. We have all been near such craft (nursing murderous thoughts were it not for our respect for the law) and I doubt any of us would condone the behaviour that often goes on. Then someone dives or falls overboard. Fun turns to tragedy in an instant. It is the poor bloody copper that has to go and break the news to distraught family and friends.

So the law looks for someone to be held accountable. It applies the legal fiction that the master, the skipper or however described, is the person in charge of the vessel. In Queensland the Transport Operations (Marine Safety) Act 1994 Sect 7 defines the Master as "the person having command or charge of the ship". Section 10A then goes on to define a recreational ship as "a ship used only for private recreation". In Queensland you are in charge of a vessel if you are the Master or skipper in charge of the vessel. Circular reasoning get used to it! Section 60 states "regulation may require a person to hold a licence to operate a ship as its master" and Section 95 of the Transport Operations (Marine Safety) Regulation 2004 requires that a person must hold a licence to operate a recreational vessel or under Sect 87 be supervised by someone who does.

Now interesting it is that in Tasmania, under the Marine act (Misuse of Alcohol Act 2006 Sect 6) a "person in charge of a vessel" is taken to be the only adult on board at a point of time - Now that is a wake up call for grannie if she happens to be the only person on board whilst the rest of the crew are ashore swimming, drinking or otherwise cavorting!

This is the point, I think, where things get even more muddy. What if the recreational ship "is also your normal place of abode", the place where you "ordinarily reside"? At common law, it was long ago determined that "The place of residence of an individual" is determined "by reference to where he eats and sleeps and has his settled or usual abode". But he may also reside where he habitually lives, even if this is in hotels or on a yacht or some other "place of abode".

In taxation law (anything goes as long as it is taxable), a vessel has long been seen as a place not just of residence (capital gains tax legislation is expansive and includes a vessel as a place of abode; goods and services tax law specifically includes a floating home and the Income Tax Assessment Act (1997) includes a "houseboat or other mobile home" as a "dwelling"). Under taxation law, it is recently been decided by a case the ATO lost (I tried to warn them) that you can even have a "home-office" for which you can claim a taxation deduction on a vessel!

Under Queensland law, a houseboat is a premise and place of residence (Residential Tenancies Act 1994). Even the Queensland Criminal Code includes a "vessel" as property under which a defence of peaceable possession exists.

So let us forget the legal fiction that a vessel is a vehicle. It can be, depending on the facts, be a place of residence. As such it possesses at law all the rights and obligations that follow on its being your place of residence. Just as in suburbia, if you create a nuisance, commit an act of domestic violence, use it for unlawful purposes, then the police are quite within their rights to pay you a visit, and depending on the circumstances, board and search without a warrant. What they may not be able to do (and this is the legally grey area the government have dug up) is treat your behaviour in your maritime residence as being decidedly different simply because it is a boat.

Are you still in charge of the vessel, aka your home, when you are anchored? I won't put you to sleep with the legal debates as to whether or not your place of residence is affixed to the soil by its anchor. I just hope it is, and securely.

Are you still in charge when you are asleep

in your home (aka place of residence) as most people are wont to do in a home on dry land at night?

Are you still in charge (except in Tasmania) if you are ashore shopping or at the Pub? Andrew pertinently asks, can someone 20 kilometres away from his or her boat still be "in charge"?

Now to being drunk whilst at anchor. The only reference to alcohol I could find in the TOMPA (MS) 1994 was an obscure little reference concerning disqualification for licence under Section 202E Sub.paras 2(d) (i) and (ii) which refers you back to the offence noted in Andrew's article under the (Transport Operations [Road Use Management] Act) 1995 Section 79(2).

I won't bore you with what Lawyers and Courts think about convoluted serial-hopping snakes and ladders legislation, but they don't like it. They too, have difficulty trying to unearth what it means. So what we have here is clearly another example of the scrappy, lazily assembled and poorly drafted legislation. Further examples of which are readily found in the good old TOMPA (Marine Pollution) Act 1995 and on which I have previously commented on in a vain but well-intentioned effort to aid the drafters at Crown Law.

Confused? I am. Now go and visit Marine Safety Queensland's website and get really baffled! "Alcohol rules Recreational ships: The skipper must have a blood alcohol limit of less than 0.05, the same rules as on the road. The skipper is also responsible for the safety of the passengers and should be responsible for their alcohol consumption. The effects of alcohol are enhanced while on the water due to the sun, wind, waves and constant motion. Reflexes and response times to emergencies are slowed and swimming ability deteriorates considerably. Skippers of recreational boats should also be aware that, when their boat is anchored, it may still be considered to be used for navigation, and the blood alcohol limit applies (please note the little word "may"). The limit does not change unless the boat is securely moored in a marina, to a jetty or wharf or on a swing mooring".

Firstly, why isn't this included in the legislation? Go to the Regulations (TOMPA [MS] Regulation 2004. Nothing there. Go to the (TOMPA [MS-Recreational Ship Masters Licence Approvals) Standard 1998. Still no luck. So back to the (TO [RUM] Act 1995) Sect 79 and voila! Your boat has, under Sub.sec (a) become a "motor vehicle, tram, train or VESSEL". So by the amazingly convoluted magic of the legislators, your boat is now a vehicle and if you attempt to use it you are caught by this law and if you are in charge of it then Sub.sec (c) applies.

This is despite the fact that also at law, it is also your place of abode and your place of residence. Over the limit and you may be busted! But by whom? The police, then OK. They have the training, the equipment and the knowledge of the law (maybe the only ones in Queensland if not the planet who do). But what about Fisheries Officers or the other myriad of authority described by TOMPA?

Now let us consider the thorny issue of exemption that may apply if "the boat is securely moored in a marina, to a jetty or wharf or on a swing mooring". Now I know of no yachts-person who would prefer the risk of mooring to a swing mooring of unknown age and of doubtful integrity, or of tying up to jetty or wharf that may become exposed to on-shore winds during the night or a marina that may similarly be exposed to bad weather in unfortunate circumstances. But of course, this is a rule, included on a web page and not the law, so in event of vessel attempting to comply with such a request and under the honest but possibly mistaken belief they are obeying the law, then I am sure the government would quickly hide behind its sloppy drafting in order to protect itself.

Finally there are the issues Andrew raises about "a person in charge of a vehicle" (but "had manifested an intention not to drive". Yet a person living on a yacht as his/her ordinary place of abode but who has just quietly had one glass over the limit to celebrate the long hard slog to her/his safe and secure anchorage and is just as "in charge of a vehicle" (keep up please, your boat is now a vehicle, remember) is committing an offence! Please run that past me again?

Look, I know Crown Law are busy, but they need to get out more. Sailing, meeting people in the real world, experiencing what yachting, cruising and responsible boat handling is all about. They also need to read more cases and study the law (and solutions) drafted in other jurisdictions. Then go back and think about what their committee is trying to draft. The police have more to do with their time than try and decipher the indecipherable and run up against the justified hostility of the cruising fraternity.

Finally, please don't for a moment rely on this in a court of law. I am retired. Out of it. To pasture. Now you can understand why. So the only people who should take what I have written seriously and try to rely upon it are the government.

Good luck!

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ONE GIANT STEP FOR BOB

All the boat builders out there can understand the feeling of standing on "the deck" of your boat for the first time. A true milestone. The picture doesn't show Bob's face very well, but believe me that is a smile of contentment and accomplishment on his face. That was over a month ago and decks are now in place, and more (see inside for update). Bob spent a few rainy days updating the projects website - you can view this on: www.buildacatamaran.com As this site develops there will be other boat building projects featured as well.

Speaking of milestones, there is a real sense of "protest" in the boating community lately. There are groups forming to try to stop government from making laws that will effect **all boaties** with no real facts or public consultation, with important issues such as Marine Parks & Middle Percy Island. A turning point? TCP hopes so, as strength in numbers can really make changes happen. Many have written in (we could have filled every page with "issues") and some just call or stop in to share their feelings. Lets **all** work together to keep this wonderful lifestyle as it should be - **FREE!**

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Kay

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- O'Connor (near Fremantle)
-TASMANIA.....
- Oyster Cove Marina (Hobart)

Contributors

What's your story?

"It can't be about you without you!"

Sue Bett, MY Scallywag
 Stuart Buchanan, SY Pluto
 Dianne Challis, Boatie fulfilling a dream
 Greg Dickson, SY Bifrost
 Jan Forsyth, SY Sea Wanderer
 Jan and Norma, SY Fearless Hunter
 PJ Halter, SY Cheetah
 Alan Lucas, SY Soleares
 Mike the Moonshine Magician, SY Bundy
 Bob Norson, issues, technical, ect....
 Stef Railey, RnR Charters Ltd
 Carmen Walker, SY DreamWeaver
 Phil and Patricia Watson, SY Aquavista



And as always, TCP very much appreciates your letters and other contributions that provides the rich forum of ideas that sustains the rag. For information on feature contribution requirements and awards, see the TCP web site, "contributions" page.

CUSTOMS AND SY BIFROST

Let me preface this editorial by stating that I am NOT a fan of the officers and crews who man the ships and aircraft that patrol our northern borders under the combined banners of Australian Customs and Coastwatch.

Nope, not since 2006 when the Customs helicopter surprised my wife and children showering on the foredeck in an otherwise deserted anchorage in the Torres Strait. There (in the interests of national security?) its crew decided to hover for a full 3 minutes at most height, binoculars and photographic equipment clearly glued to their eye-balls, chasing frightened children from one side of the boat to the other with their prop-wash and engine roar, likewise distressing an adult crew, equally stunned by the aggressive and unrelenting nature of their 'attentions'.

(TCP NOTE: Greg did elaborate on other instances of claimed abuse of Customs and Coastwatch over many years. The above example makes the point.)

Yep, that incident combined with other abuses of power have resulted in my current lack of support for such an authority full stop!

Since then my cruising routes have been chosen to keep pretty much under the government radar, but this year we decided to go back 'across the top' and what a saga it has been, for I can report that Australian Customs vessels (without noted exception) are conned by the same breed of autocrat today as they were all those years ago.

Don't shake your head in disbelief here. Not unless **you** have dared to tell them "No", for the sweetness and light that accompanies conversations is **immediately** replaced by the 'big stick and boarding party' mentality for those who prefer to go their own way.

You are the one who (as one Coastwatch pilot dutifully regurgitated it) "refuses to cooperate". With that person I'd like to have discussed many issues, not the least of which is the notion that I (just like him) have a right to go lawfully about my own business, enjoying my private life with my family. Whether on Sydney Harbour or in Torres Strait I can sail my boat without having to report to the government as if I am a prisoner on parole - without having to broadcast to all and sundry that my (often requested and otherwise easily researched) home address is vacant should they be looking for a free furniture upgrade or flat-screen T.V. No. I expect it to be in **his** job description to understand the bigger pictures, to respect citizens' rights and be to more reasonable in assessing just who should be cooperating with whom.

"All interesting stories," you might say, "but at the end of the day, besides pissing off a government department that will no doubt pass word 'down the line' for other officials to ruin your life, what have you achieved?"

I hope a lot. Not in the least of which is clarifying the fact that, under section 130C of the Customs Act 1901, **Australian yachtsmen sailing domestic routes are NOT subject to any form of Customs interference in their private life and travels.**

(see inside pages 7&8 for Greg's story and research on the law)

Hopefully too, Australian yachties will see that together we can do more than merely pen or voice our disapproval when Australian Customs officers disrespect the rights of foreign cruising boats over which they really do hold sway. Informed and organized through media (just like this) many might choose to withdraw the cooperation they give Australian Customs when yachts are bullied and mistreated by their agents.

So what can be done about some of the more serious maritime issues brought to our attention through these pages? Actions speak louder than words and yes, I **am** trying to put ideas into your head; ideas perhaps of a month-long, national moratorium on communications with Customs etc. at the height of the next cruising season (**who said that?**). But of course such seditious notions of protest are up to you and unlike Australian Customs, I'm not asking you to do as you're told, just to think about it...

Greg Dickson, SY Bifrost

Post Script: I sit in Darwin Harbour this morning (Sept 3) watching Australian Customs move from boat to boat throughout the anchorage. To every cruising boat except us that is. "Typical," I think aloud, "when someone stands up to a bully how quickly they find somewhere else to go." Funny how the information that was so pressingly imperative as to warrant threats of boarding a vessel under force of arms is suddenly "no longer an issue".

I believe omestic yachts are **FREE** to travel domestic routes within Australian waters. So too are foreign yachts that have cleared properly into the country (up until that point where they clear once again for foreign destinations). **FREEDOM'S WORTH IT.**



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CUSTOMS IS BACK



Wellington to Brisbane in fourteen days, Brisbane to Hell'n back in one!

After a period of relative peace with customs making every effort to alter their image, a new case demonstrates the risks in complacency. The following is a report from a family member of the crew that was involved in the communications on behalf of the vessel on its voyage from Wellington New Zealand to Brisbane Australia.



Bill in Brisbane River awaiting the "trial"

By Stef Railey of RnR Charters Ltd, Mangawhai Heads, New Zealand
www.rnrcharters.co.nz

On 22nd June, 2010, two Kiwi guys (Wayne and Bill) set off on a 40' Jenneau yacht out of Wellington, a day later than intended but once NZ Customs has cleared the vessel, there's no turning back. Cook Strait is not a place to hang about, so despite the delay getting away, they headed out into the Strait and across Tasman Bay and battled their way out into the Tasman through heavy seas and a bitter Sou'Easter, lightning flashing around them as the storm moved north.

The seas got bigger and bigger and all they could see were dirty great rollers behind them with winds at 50knots, gusting 80knots, in Waynes words, "not nice".

With just two crew on board the watches were three hourly and it was a pretty wet and cold three hour watch, as this yacht is helmed from an open cockpit and no dog house to shelter from the weather.

At times, when there was nil visibility, the auto pilot was used and eyes were on the radar screen. For the first four days and nights this was the routine. Radio scheds were daily at 07.30hrs to NZ Maritime Radio and Waynes partner Stef was calling Maritime Radio, getting the scheds and plotting the course and watching the weather using the www.metvuw.com website to keep tabs on their position from the comfort of home.

The weather only eased on the fifth day and that night, the famine began, with no wind at all, so they fired up the motor and spent the night motoring. Next day, day seven, the wind came back in, but a comfortable 15knots, and built to 35knots during the day. The next four days were more of the same, wind up and down, rain, a bit of motor sailing and a lot of sail adjustments to do. As they got further away from NZ, the radio signal faded and the last radio sched they were able to send out was on the 29th, day eight. Stef had learned that their radio was not getting a signal out back to NZ Maritime Radio and called Lord Howe Island to let them know the yacht might call them up and as they had made slow progress with no wind in the area, they might be needing diesel too, so may call in.

On day nine as they neared Lord Howe Island, they spotted a ship on their port side on the horizon on a converging heading. Being on the port side, the ship should alter course, so keeping a watchful eye on it they continued on. They could see the vessel was going to cross their path at some stage and as visibility was good, expected the Captain was aware of their presence and so knew their position and heading as well. The ship was quite close now and still no sign of a change in it's heading, so the guys altered course and a 'friendly' sailor aboard the ship threw a wave at them as the ship spun it's stern causing the ship to pass uncomfortably close.

More motoring, so the guys called Lord Howe Island Customs and were given permission to come in for fuel. It is only possible to enter the lagoon during daylight hours, so they have to slow to arrive there in the morning to pass through the reef. The people on Lord Howe were very friendly and the Island is a tiny tropical paradise. No diesel pumps on the Island for

visiting boats, so the radio operator there, Clive Wilson, offered them a ride to a local farmlet, where an old single banger powered an antique diesel pump, complete with old spinning wheels in the glass case; a real old gem. There they filled their jerry cans at A\$3.00 per litre, then back to the boat after paying all the visiting fees and an A\$70.00 mooring fee. Not a cheap stopover, but then, the Islanders have to make a living somehow.

Next day, on to Brisbane. No wind again and spend all day motoring, in the calmer waters, they trolled a 400lb 100m hand line hoping to catch an Albacore Tuna for dinner. They got more than they bargained for when a Blue Marlin took the lure and the line got caught around a fender, so the skipper and Wayne hung on to the line for about 10 minutes as the Marlin jumped and dived and eventually straightened the hook out, a bit of excitement, but no fresh Albie for dinner.

They continued motoring through the night and could hear the throb of more ships engines, but no lights to be seen. It was a clear night and they could just make out the outline of two big black ships, which circled and tailed them for a considerable time. Feeling somewhat uncomfortable not knowing what was going on, Bill the skipper called the ships, identified himself with boat name and callsign, asking them to identify themselves too, but the ships just disappeared into the night, not to be seen or heard again. They must have been either pirate fishing boats or the Australian Navy on exercises - anybodies guess!

The wind kicked back in just on daylight on the twelfth day. 30 to 45 knots on the beam with wind against the 2 knot tide running and the seas got nasty. They stayed on the helm all night, no auto pilot now, the salt water had delt to that and the wind increased to 40 knots, gusting 60knots, but the boat handled it really well.

Next morning the wind was still blowing quite strong 30-40knots, but from behind now and they made good progress, making Stradbroke Island just after dark. Luckily, as Wayne had spent time there on the prawn trawlers years ago; he was familiar with the region and was able to carefully navigate around the rocks off the end of the Island. At dawn, they crossed the bar to go through the entrance and on through the network of sandy channels between North Stradbroke Island and Moreton Island and across to Brisbane River.

Clearing Customs from a yacht in Queensland

The Queensland Customs team was less than friendly and took Bill the skipper aside and accused him of not notifying them of his arrival within the 96 hours they demand. Customs disregarded Stefs call to Lord Howe Island, which was made more than 96 hours before the guys arrived there and did not accept that they had asked permission to call into Lord Howe Island and did not accept that permission had been given by the Customs agent there.

The skipper had his boat impounded and had to appear in Brisbane court the next day with a resulting fine of A\$1,800 plus A\$950.00 court costs. The prosecutor told him he got the lowest possible fine. He also has a conviction now. Welcome to Australia !!!!

The delivery done, Wayne spent a day with his cousin and found out that this is a common occurrence. The view locally is, "that the State of Queensland is broke and they are finding new ways to pay the bills". Well, it did seem just a bit unfair and not a pleasant way to be welcomed to the sunshine capital.

Wayne flew back to NZ, but not before suffering one last shot from the Ozzies; Security took him aside and frisked him for explosives before boarding the plane.

Me, I'm glad to see him home and when we go offshore again, the Queensland Coast will be last on our list.

A CLOSE PASS FOR SY SUNSTAR & CREW



& ON THE ATTACK!

Customs admits they do not have the authority to interrogate vessels in domestic waters but use the threat of boarding to coerce cooperation. **CAN THEY DO THAT?**

NO! Says Greg Dickson of SY *Bifrost*

The following contains information and statements that to the best of the authors and publishers knowledge are accurate. This is not legal advise. Skippers are urged to examine the material and form your own judgements.

The Request For Information

subject: customs information that I seek.
 Australian yacht visiting Torres Strait Please reply to this email address.

To: information@customs.gov.au

Sincerely,
 Greg Dickson

Hello,
 In a few weeks I plan to take my Australian registered yacht for a trip from mainland Australia into the Torres Strait Region. The vessel is not leaving Australian waters and is carrying only Australian-born residents holidaying privately.

Dear Greg

As the vessel is not leaving Australian waters, Customs and Border Protection has no jurisdiction over domestic travellers.

I don't communicate with the patrol aircraft when travelling and so request that you inform me in writing of any customs requirements (not guidelines) to which we must adhere, particularly with regard to returning from islands in the Torres Strait to mainland Australia.

Sincerely
 Les C.
 Senior Customs and Border Protection Officer | Customs Information and Support centre | CE&CS
 Australian Customs and Border Protection Service

I am already aware of quarantine requirements in this regard, so it's only



The Official Complaint and Response (Next page)

TO THE DIRECTOR:
AUSTRALIAN CUSTOMS SERVICE.
 9/8/10
OFFICIAL COMPLAINT FROM
SY BIFROST
MASTER: G.DICKSON
AUSTRALIAN REGISTRATION NUMBER: 853444
QLD REGISTRATION NUMBER:
PA 118Q

(These actions are tantamount to home invasion and piracy).
Armed Customs vessel continues to terrorize family aboard yacht with multiple (approximately six) threats of illegal boarding action by its crew whilst manoeuvring astern. Threats and intimidation continue for over twenty minutes despite repeated advice from yacht that the declared course of action is illegal.

"off the navy vessel out there" despite wearing uniforms with the lettering 'S.Bay' (Assumed to refer to Customs vessel 'Storm Bay') and immediately commence questioning. Again, despite an initially polite response of "thanks guys but we're an Australian yacht in domestic waters and we prefer to mind our own business" we are advised that they have the right to board us if we do not comply. A stand-off ensues (presumably as they await boarding instructions that never come).

NATURE OF COMPLAINT:
 (alleged) Unlawful campaign of intimidation and harassment by Australian Customs vessels operating in northern waters against private domestic craft.

In a last-ditch effort to avoid imminent home invasion my yacht persuades Customs vessel captain that it is carrying written confirmation from Customs in Canberra of its legitimate right to privacy.

I believe your Canberra operations are well aware of all of these incidents and that they too must shoulder some of the responsibility for failing to recognize the shortcomings in both the knowledge and temperament of its enforcement agents earlier. It is abundantly clear that the officers and crew that you so readily arm and send out to patrol our coastline have **not** been given the training required to serve in the best interests of Australia's citizens and. as such you jeopardize the rights and safety of all those who put to sea.

SPECIFICS OF INCIDENTS:
 (most-to-least serious).

Yacht is ordered to 'stand by'.
Customs vessel never returns contact to yacht it has placed on 'Stand By'.

Is it so difficult to understand that maritime Australians also have the same rights that you take for granted? That we do not expect to be treated as criminals because we simply wish to enjoy our family life without reporting once, twice, sometimes three times daily to the authorities? We are not criminals on parole or under court order to do so. We are law-abiding citizens, just like you and it's about time that YOUR OFFICERS were educated to understand and respect that simple truth.

Location: Jensen Bay, Wessel Islands. Northern Territory.
DETAILS: At 10 a.m. (approx.) a large, aluminium-hulled Australian Customs vessel weighed anchor from this bay to approach my yacht. Customs vessel communicates intention to interrogate yacht by V.H.F. radio. Yacht **immediately** informs Customs vessel that it is a private, Australian yacht operating in domestic waters and chooses to exercise its lawful right to privacy in wishing to "mind its own business". Yacht's name, port of registration (Sydney) and Qld registration number are clearly visible on the yacht's transom. Yacht's name is also given to radio operator on Customs vessel. Customs vessel asked to similarly identify itself on radio. **Customs vessel refuses to identify either itself or its captain.**

We stand by throughout that day and a nervous night, anticipating an armed boarding attempt under cover of darkness. **Despite a dwindling fresh water supply we stand by (as ordered) a further 24 hours before departing.**

I therefore bring these serious matters not only to your immediate attention but, upon my arrival in Darwin (should we survive your 'curiosity') intend also to bring it to a more public forum. I therefore request a written and timely response with regard to this complaint.

Customs vessel orders yacht to comply with demands for further information and immediately threatens to dispatch a boarding party to commandeer private vessel.

Such **improper and illegal** conduct by an Australian Customs vessel could easily have resulted in either personal injury or the loss of life but it was by no means an isolated incident.

I further request under 'The Freedom of Information Act' the name of the Customs vessel that threatened to attack us in the Wessel Islands, and its captain (as that too should be a matter of public record).

Yacht clearly informs captain that his intended course of action is illegal.

2) July 30, 2010. 0200 hours.
 Customs vessel 'Botany Bay' makes radio contact with yacht. Outlines intention to interrogate. We clearly identify ourselves as a private Australian vessel operating in domestic waters and (beyond relaying our vessel's name) decline further interrogation. Again we are similarly intimidated and harassed by the radio operator/bridge officer who states his right to board us (in rough conditions and at night) if we do not "comply".

Sincerely,
G. Dickson, (Yacht 'Bifrost')

Despite continued harassment we maintain our legal right to enjoy our private lives privately like any other Australian. Customs vessel breaks contact.

3) 5:00p.m. July 2010. (Date not recorded). Anchored Wednesday Island. Torres Strait. Yacht hailed by two patrolling officers in a R.I.B. These officers identify themselves as being

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Customs Authority Responds...

REPLY FROM:
Border Protection Command
AUG 25, 2010

Dear Mr. Dickson

Thank you for your email dated 9 August, 2020 regarding your contact with officers of the Australian Customs and Border Protection Service. These officers operate under the command of Border Protection Command, so your complaint has been forwarded to me as Commander Border Protection Command for consideration.

I regret that your dealings with these officers have caused you distress, and apologise for the inconvenience that you and your family have may (sic) experienced in assisting our officers perform their duties. I sought a review of the circumstances you raised.

Whilst these approaches by our officers may appear to interfere with your day-to-day activities, Border Protection Command has been given the task of managing the security and integrity of Australia's offshore maritime areas. To assist in this task, it is a normal practice for Customs and Border Protection and Defence Officers onboard patrol vessels and aircraft to make routine enquiries of vessels encountered in Australian waters. In the instance you mention, the officers were contacting you to verify the name of your vessel's master, the number of people onboard, the vessels call sign, last port of call and next port of call. We use this type of information to help in risk assessing vessels and to determine if any further action by our officers may be necessary or not.

I acknowledge that you do have the right to not answer such questions, as long as your vessel is not arriving in Australia from a place outside Australia, and if you are conducting a domestic voyage. However sub-section 184A (3) of the Customs Act 1901 gives Customs and Border Protection and Defence Officers the power to board an Australian Ship, as long as it is outside the territorial sea of another country. With this in mind, it appears that in the absence of complete verification information, the officers have correctly outlined their legal right to board your vessel. (TCP emphasis)

I know that in the instances you mention in your email your vessel was not boarded, however, if an officer does board your vessel, you would be bound by sub-section 185(4) of the *Customs Act 1901* which states that a person shall not refuse or fail to comply with a requirement made by an officer.

If you would like to pursue a Freedom of Information request, you may do so by following the instructions outlined at: <http://www.dpmc.gov.au/foi/requests.efm> and by emailing your request to foicoordinator@customs.gov.au

Thank you for bringing this matter to my attention. Again I apologise for any inconvenience that you and your family have experienced. I trust that the information in this letter clarifies the reasons why officers seek this type of information and the legal basis for their actions.

Yours Sincerely
Commander
Border Protection Command

GREGS REPLY:

In reference to your department's response

PLEASE NOTE:-

Under Section 130C of the Customs Act 1901 (interpretation) it clearly states that a "ship" does not include:- (a) a ship that is not currently engaged in making international voyages;

This negates the application of both sections 184A (3) and sections 185 (4) as outlined in your letter.

Therefore I must maintain that **CUSTOMS OFFICERS DO NOT HAVE THE RIGHT TO BOARD AN AUSTRALIAN YACHT OPERATING ENTIRELY WITHIN DOMESTIC WATERS.**

The act of boarding a domestic yacht travelling in domestic waters therefore remains a possible act of illegal trespass, home invasion and even piracy and as your ships are armed. I allege that the captain of a yacht has every right to consider such a boarding attempt by customs officers to constitute an illegal and life-threatening situation. I therefore request that:-

1) BORDER PROTECTION COMMAND NOTIFY THEIR VESSELS AND OFFICERS OF THIS RESTRICTION TO THEIR OPERATING PROCEDURES UNDER SECTION 130C OF THE ACT.

2) ACKNOWLEDGEMENT AND RESPONSE TO THIS ADVISEMENT IS FORTHCOMING IN A TIMELY MANNER FROM BORDER PROTECTION COMMAND.

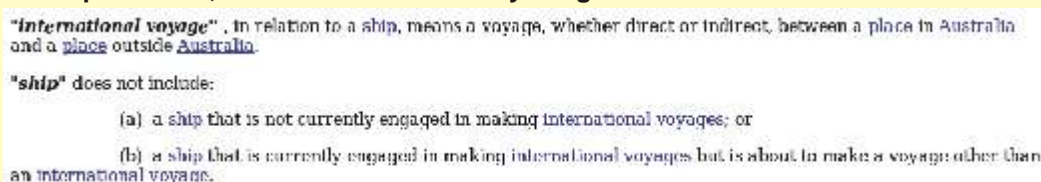
3) NOTE THAT UNDER THE LEGAL INFORMATION (OUTLINED ABOVE) I WILL CONTINUE TO DENY ACCESS TO MY PRIVATE YACHT OPERATING IN DOMESTIC WATERS TO ALL CUSTOMS OFFICERS, AS REMAINS MY LEGAL RIGHT.

Sincerely,
G. Dickson
Yacht 'Bifrost'

Big Questions Remain!

Is there some other passage to the law that contradicts this?

Below is an image from a web search of the Customs act of 1901, section 130C, interpretations, that does seem to verify Greg Dickson's claim.



"international voyage" . In relation to a ship, means a voyage, whether direct or indirect, between a place in Australia and a place outside Australia.

"ship" does not include:

- (a) a ship that is not currently engaged in making international voyages; or
- (b) a ship that is currently engaged in making international voyages but is about to make a voyage other than an international voyage.

What does the law say??

Comment/Questions, by Bob Norson

I have read the relevant sections of the act and believe by my admittedly non-professional view that Greg is correct. In each section that is quoted in the letter at left, the matter reverts eventually back to the definition of "ship" which is as above, section 130C. This includes the reference to a "person" in the passage in the letter in blue. In the same section; 185(6)(a) the act defines "person" as a person or entity on a "ship". So once again section 130C seems to apply. A very selective quoting of the law can give a different opinion.

If the law is somewhat convoluted, the actual web documents are well referenced with hotlinks on all terms to take you back to those definitions. I recommend all skippers read them, study them and gain confidence in your actions by your own investigation but from my examination I will forbid boarding of my vessel by customs if I am not on an international voyage. See what you think. If you are viewing the web edition of the paper, the links below should direct you. If not, copy / paste onto your browser.

Section 130C:

http://www.austlii.edu.au/au/legis/cth/consol_act/ca1901124/s130c.html#ship?stem=0&synonyms=0&query=customs%20act%201901%20sect%20184A

Section 184A:

http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/ca1901124/s184a.html?stem=0&synonyms=0&query=customs%20act%201901%20sect%20184A

Section 185: http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/ca1901124/s185.html?stem=0&synonyms=0&query=customs%20act%201901%20sect%20185

If you are reading the paper and don't want to mess with the huge URL's listed above, go to www.austlii.edu.au and use their search bar. Insert "Customs act 1901 sect130C" or 185 or 184A respectively.

If Greg is Wrong, a Bigger Question Remains

Please read the emphasised paragraph in red at left from Customs, Border Protection Command carefully. It acknowledges that a domestic yacht in Australian waters has the right to refuse interrogation but states that their **armed officers** then have the right to board with the intent to coerce the information out of the crew by intimidation?? Or by the seizure of records or logs???

Even if some other element of law does provide for Customs right to board, does the use of that law in the context of coercing information Customs are not entitled to have constitute an abuse of authority?

And why this extraordinary interest in a community of probably the most law abiding people in the country anyway?? Is our border so secure this fantastic misdirection of resource can be justified?? Is that what this is about, the need to justify the budget on the softest target possible???

We need answers and so do the Customs officers because according to court case Plenty V Dillon 1991, the individual officer may be subject to civil damages in these kinds of cases. TCP would recommend any boat approached for boarding by any authority to photograph and record (you DO have that right!) and insist on knowing the identity of the individuals in case civil claims are made for damages.

INFORMATION FOR YACHTS VISITING AUSTRALIA

It is imperative that yacht skippers study the information on the Customs website:

www.customs.gov.au

Do not assume lenience in enforcement. Their email address is: yachtreport@customs.gov.au and fax is: 61 2 6275 5078.

When you contact Customs insure you have a receipt to prove you have made notice. Ask for a reply to your email or fax and save it. We do not recommend notification by phone. We have numerous examples of the port of entry not having been forwarded the notice from the headquarters in Canberra. The entry port may assume your guilt unless you can prove your innocence.

With your notification you are required to provide this information:

- The name of your craft
- Craft's Country and Port of Registration
- Your intended first port of arrival
- Your estimated arrival time
- Your last four ports
- The details of people on board including name, date of birth, nationality and passport number
- Details of any illness or disease recently encountered
- If you have any animals on board
- If you have any firearms on board

TCP would add that recently Customs have been asking if you have any pornography with you. If you deny having any and some is found, you may be charged. If you declare it, Customs may examine your publications or computer files to determine if they believe it is illegal content. Upon arrival you may be asked to provide a saliva sample. Your vessel may be searched with dogs. In exceptional cases, you may be asked to leave your vessel whilst it is thoroughly and possibly, destructively searched. See this report: <http://thecoastalpassage.com/ACS-friction.html>

One more note: Quarantine has raised their fees considerably. A weekend arrival will cost you over \$800.00AUD over and above all other fees. Try to time your arrival for a weekday in normal business hours if possible.

Things you can do to minimise risk:

1. Avoid clearing in via Brisbane or Bundaberg. They have the worst record. Customs is a federal agency but has regional enforcement control. **If in doubt about your clearance, seek legal advise! This is information only.**

2. **Do not relate any information not required of you.** If you feel Customs may be interested in your arrival, be assured that any conversation is probably contrived to provide them information useful for prosecution and is being recorded. If customs officials state you may be in violation, ask for legal assistance and stop talking except to provide information about the contents of your vessel or other information normally involved in clearance. Customs officers may ask you questions that are designed to assess your legal vulnerability, for example, are you likely to plea guilty to avoid delays or inconvenience? Are you likely to have the money for the fines? This kind of assessment has been typical from the first prosecution and appears to be part of the training of officers. For the stories of the first three cases as written by the sailors, see this link: http://thecoastalpassage.com/brutal_customs.html

3. If approached at sea by Customs or any other Australian authority you may wish to photograph and/or record by video, the encounter to protect your version of the event and provide identity for civil action or criminal charges if that need arises. They have no right to forbid this except Customs in an area marked by signage to forbid recordings made by you, such as a clearance area at a wharf or airport terminal.

TCP truly regrets these actions as the presence of foreign vessels in Australia is a benefit to the local marine industry and a pleasure and interest to local yachts. Queensland is arguably, the finest cruising destination in the world and with the finest facilities. We hope you still come, but be prepared and depend on The Coastal Passage to do everything possible to insure your bureaucratic safety!

Can Customs board your Australian vessel in domestic waters 'anyplace, anytime'?

Probably not, though they make the claim they can.

Commentary and analysis by Bob Norson

First of all, this article is written by a person with no legal training and should not be relied upon for, or in place of professional legal advice. However, should you find yourself involved in a situation relevant to this discussion, the information may be useful for you to make your own, independent evaluation or to direct an enquiry to a lawyer in a more direct fashion.

To catch readers up to the story, last edition a report was received by TCP of the experiences of the vessel *Bifrost* in conflict with Customs. Prior to sailing north the skipper, novelist Greg Dickson contacted customs to enquire if communicating with customs was a "requirement". A customs representative replied that as they were not leaving Australian waters it was NOT.

On the actual voyage, Greg claimed that not only were they contacted by customs demanding details of their voyage and crew but were threatened with forced boarding to obtain said information and at one point were ordered to "stand by." Greg continued to refuse the information and refused to allow boarding by a crew from the Customs vessel. After two days of this stand off, fearing a boarding in the night, they left without further 'advise' from the customs vessel.

Greg Complained about these events to the Commander of Customs and Border Protection and received a reply that was forwarded to TCP. In the reply from the Commander, it paradoxically stated that:

"I acknowledge that you do have the right to not answer such questions, as long as your vessel is not arriving in Australia from a place outside Australia, and if you are conducting a domestic voyage. However sub-section 184A (3) of the Customs Act 1901 gives Customs and Border Protection and Defence Officers the power to board an Australian Ship, as long as it is outside the territorial sea of another country. With this in mind, it appears that in the absence of complete verification information, the officers have correctly outlined their legal right to board your vessel."

Greg went to the law website of www.austlii.edu.au to examine the section referred to in the letter and was misled by a hypertext link (hotlink) on their site that, as it turns out, was incorrect. John Joyce was the first to point out the problem with that, thanks John! But in reading the text of the law it seemed that the intent of the law was not directed at domestic vessels in domestic waters. In part it says;

Australian ships outside territorial seas of other countries

- (3) The officer may board a ship if:
 - (a) the ship is an Australian ship; and
 - (b) the ship is outside the territorial sea of any foreign country.

In other parts of this section "Australian waters" are referred to in relation to foreign vessels specifically but the above passage is one that Customs relies on for justification to board. This seemed vague and the question arose as to the intent of the framers of the law. Usually a power granted to an authority is done so in a very specific manner.

The above passage and others in the act of similar wording; "...outside territorial seas of other countries", would be specific to high seas but require an assumption to apply to "Australian Waters".

The law websites have notes to indicate changes to the law. Section 184A and perhaps others were affected by an amendment in 1999.

Hansard reporters sit in every session of Parliament to record the debates over legislation. Those reports are available through Parliament's website. The passages that Customs seem to be relying upon for the power to board domestic craft on Australian waters were an amendment to the act:

The *Border Protection Legislation Amendment Act 1999* and that its second reading speech in the House of Representatives was on 22 Sept 1999 which was introduced by Minister Phillip Ruddock MHR.



Have you had an experience with Customs?

Have you accepted unwanted interrogation and or boarding by Customs because of implied or actual threat? Have you been ordered to move or not move by Customs? The Coastal Passage wants to know. Your privacy will be protected, nothing is published without permission. Contact TCP by email: cutoms@thecoastalpassage.com or by mail. See page 4 for address.

Here is how my Webster's unabridged dictionary defines "extortion":

ex-tor'tion, n. [ME. *extorcioun*; LL. *extorsio* (-onis), a wrenching away, from L. *extortus*, pp. of *extorquere*, to wrench away.]
1. The act of extorting; the act or practice of wresting anything from a person by force, duress, menaces, authority, or by any undue exercise of power; illegal exaction; illegal compulsion to pay money or to do some other act.

Extracting personal information from an unwilling citizen by 'force, duress, menaces, authority, or by any undue exercise of power'... I would love to know what the "term" is for extortion in the criminal code. Maybe next issue.

Queensland Council for Civil Liberties Agrees! Customs is wrong!

Mr Terry O'Gorman, vice president of the organisation stated in an article with Fairfax Media, *The Sun Herald*, October 24th, written by Kate Dennehy that:

"My view after reading the act is that Customs does not have the power to board Australian yachts in Australian waters without the owners express permission."

To view the entire article, a link is currently posted on the TCP home page and will be mounted on the "Customs" sub-page as long as *The Sun Herald* makes it available.

Near Miss at Bundy Port

Two boats sailing in company from Noumea to Bundaberg Port were threatened with prosecution in October for providing all the information but mistakenly to the wrong agency. Being careful to have all the relevant data and asking for and receiving acknowledgement of the notice, they felt safe arriving at this notorious port of entry. What they didn't realise was that they had inadvertently sent the info off to the AQIS/DAFF office instead of Customs.

Upon arrival Customs denied having notice and threatened the boats with prosecution because they hadn't been made aware of the arrival. One of the skippers did note that as far as he could see, the AQIS desk was within a metre of the Customs desk in Bundaberg and the charge of lack of notice was disingenuous at least. The boats contacted TCP and were given information from customs in past editions that stated Customs would accept notice via third party and before prosecution would consider 'intent' to comply.

The crew reported that they were requested to attend an 'interview' at Customs offices. TCP recommended that they not attend but to contact a lawyer. The lawyer also recommended they NOT submit to the interview.

No further report about legal action has been received by TCP since then. It may very well be that in absence of self incrimination via the 'interview' and the fact no part of the crew indicated they would just "like to get it over with" it has been deemed to have a poor chance of a win in court.

TCP reminds entering yachts, it is an adversarial situation and statements other than required information should be avoided in any case. Also, if there is conflict and a yachty indicates a willingness to plea guilty "just to get it over with", you will likely be obliged.

He gave as his reasons: "The legislation that I present today is designed to ensure that these smugglers, operating on mother ships sitting off Australia's coast, will not be immune. They will not continue to be beyond the reach of Australian law. The bill will create new powers that will allow our officers to undertake enforcement action **beyond our territorial waters**, and to arrest and prosecute those involved in attempts to breach our sovereignty in this way....." The minister went on to describe the actions of a people smuggling ring that used a large mother ship off our territorial waters with high speed Australian vessels running people in to shore. Customs previously had no power to intervene with these vessels while they were not in Australian waters.

So.. it is assured the legislation is specific to these offshore incidences by language used and parliamentary intent. Now we are left with an assumption the law applies to domestic vessels. Researching the laws and how they are judged revealed a tendency by courts to rely on language that is specific if it exists but may consider intent of legislators if it isn't. Customs could argue the point, after all, it's not their money to spend on lawyers, but it would seem at very least, risky. But there is more to consider.

The stakes may be very high for customs. They have themselves acknowledged through correspondence with Greg Dickson that a yachty is not required to communicate or cooperate with interrogation. If they do not have specific power to collect this information and they use the threat of boarding to obtain it anyway, that surely must constitute an abuse of power, but possibly more worrying for the individual officers, the threat of civil suit.

For example, when Greg was instructed to "stand by", he was possibly a victim of false imprisonment. Such was the case in respect of uniformed police officers, who requested that a person accompany them to the police station. The plaintiff in *Symes v Mahon* [1922] SASR 447 was successful in establishing false imprisonment, as he reasonably believed that he had no choice but to accompany the police officers...

I've mentioned the case of *Dillon V Plenty* before as an important one regarding trespass in conjunction with an article by Chris Ayres in a previous edition of TCP, making a strong case for your live-aboard vessel being your home and that may apply to an actual forced boarding but the above case may be better in that it establishes the mere threat as a problem. An instruction that limits your freedom to move about.

Do Custom's officers know this? It would explain the commonly reported reticence in identifying themselves and their (probably illegal) objection to being photographed or recorded.

And then there is one point that could be criminal but TCP does not have the information or expertise to do more than ask the question.

In law there are words and there are terms. Words mean what you think they mean, what the dictionary says they mean. Terms are words but their meaning can vary depending on the definitions used in a particular act and can even vary from section to section. This is what caused the confusion over the definition of "ship" in Greg's original complaint to Customs.

How do you define "extortion"?

Customs: untangling the web

By Robert Norson

It's difficult to gain more than a superficial understanding of the "Customs Culture" unless you are unlucky, then you may acquire a good deal of information too late. The other, safer way, is to be in publishing, the repository of the horror stories of others. And part of the game is having a sensitive bullshit-o-meter.

Any entity with a public voice will be inundated with commercial or bureaucratic interests that wish to have control of that voice to suit their own ends. You can get rich that way. In much of Australian media, that IS the way.

Australians are inundated with subtle or overt messages that offer rationalisation for Custom's acts against yachties or anyone, such as TV shows purporting to be reality and "millions of dollars" expended on internet interference and censoring. TCP has been a victim of that. In short, there is an amazing amount of effort put into image control directed at the public. And then there are the genuine reports of positive experiences by most entering yachts, (thankfully, See the letters section of the electronic version of this edition). If one judges by the majority of information, one could conclude that all is well if you are willing to ignore the substantial minority of

yachts that suffer genuine abuse. TCP can not ignore those. And why are some victimised over others? Bad luck in some cases, and partly I think, but increasingly it may be anyone who dares to resist them. As quoted in last edition of TCP:

*"The evils of Tyranny are rarely seen but by him who resists it."
 By John Jay, Castillion Days II 1872*

How far is Customs willing to stretch the law and where do YOU draw the line? When they ask you a few questions about your voyage they haven't the right to ask? When your boat gets unnecessarily trashed in a search? Or when you get thrown in Jail on bogus charges that could have you there for years because of incompetence or retribution? Couldn't happen? We hope not but that the matter can be questioned at all should concern.

This article is a sample collection of reports, commentary and experiences over the years that may give a reader an inkling into what may be behind that smiling face...

Sailor Jailed by Customs for Smuggling..... Pantene Shampoo?

The Report:

Neil Parry is a professional skipper and yachtsman with many border crossings behind him. He has sailed his yacht, *Burong Bahri* since 1981 with numerous voyages and re-entries to Australia with no problems with Customs until 2010. When he arrived on a flight into Darwin from Singapore last June 4th and a customs inspector demanded the pass word for his lap top; he refused.

After that things got very hostile according to Neil. His bottles of shampoo and hair conditioner were taken away and customs "tested" them and reported finding they had 1.6 kg of MDMA or "Ecstasy" in them according to an ABC report of June 11.

Whilst he was imprisoned, his boat was searched where it was berthed. Although Neil claims to have provided a contact that would open the boat for them to inspect, they

broke into his vessel by smashing it open, tossed it, then leaving it open when they left. Neil claims also that some of his acquaintances had their homes searched as a result of the charges against him.

He remained in jail until the 7th when he was able to arrange bail and then summoned back to court the 9th to have his case dismissed. TCP understands that the contents of the two bottles was examined by the AFP and found to contain.... Pantene Shampoo and conditioner.

Neil as quoted in the ABC report; "Anyone can be locked up at anytime without having done anything and it's not right,"

The ABC also reported that "The Australian Federal Police and Customs have not responded to the ABC's request for an interview."

Mr Parry wants an explanation and apology.

What does it all mean?

It is very important to refer back to the original conflict, that is the refusal to divulge the computer password. If that had been an offence one would imagine charges would have been laid regarding that but they were not.

How reliable is Custom's "testing"? The bottles contained two separate substances, Shampoo and Conditioner yet Customs's claimed to have found MDMA in both. Two mistakes back to back?

Computer security has been an ongoing issue in TCP for years. The more you know about computers and the web, the more importance it assumes. In Neil's case, divulging his password would have allowed a random search; a "fishing expedition" through his personal finances, relationships and more. But the biggest risk could be in what he didn't know was there at all or what could be surreptitiously installed by anyone who has the password.

People that aren't careful or expert with their computer (MSWindows especially) could for example, have large files of shocking and illegal images on their hard drives that they have never

seen and may have no idea where they would have come from.

This is a serious matter. The possibility of this being a simple error stresses belief but if it is, it indicates an agency of such incompetence that it may not be trustworthy as a law enforcement body.

Neil is calling for a full public enquiry into Australian Customs and a review of the laws they work under. This would be welcomed by TCP and would go a long way to restoring confidence and trust in the agency.

In a separate incident earlier last year, Neil Claims he was pressured during a customs interrogation when entering with his yacht, to sign on to a document that stated Piracy was rife in Indonesian waters. He refused as that was contrary to his 30 years of experience and he questioned the attempt at "rumour mongering". He says the most dangerous people he has come across in all his travels are Australian Customs.

TCP will keep readers advised as this story progresses.

TCP'S FIRST ENCOUNTER

About 6 years ago whilst in a far northern port, Kay and I were invited into town for a Thai meal by friends of ours. Upon meeting at the restaurant, we were introduced around and amongst the several cruising couples there was a single or at least unaccompanied bloke introduced as a Customs officer. He seemed out of place but trying hard to fit in. "Odd" but gave it little thought or importance. The Coastal Passage was in its virginal state at the time and Customs had not yet begun stinging the fleet with issues like the 96 hour rule.

A few days later Kay and I were invited to Custom's offices at the harbour by the officer we had met at Thai for reasons that weren't entirely clear except the officer was keen to impart some information and develop a relationship with us-the paper. Nothing wrong with that and the invitation was taken up.

Upon arrival I noticed the high security presence at the entrance. Heavy door, glass I suspected of impact resistance and obvious video surveillance. A bit over the top but it was government after all... I should explain at this point that I am familiar with surveillance monitoring and alarm equipment. I spent many years in the gem and jewellery business. As a matter of self preservation and to protect our customers, I became qualified to install and update our own devises and systems, in as inconspicuous a manner as possible.

Our contact met us by the door and had some mumbled excuse as to delay him but would we mind waiting in a room and he would join us shortly? So we found ourselves in a large clubby looking room full of tables with magazines scattered about and lit by windows lining two of the walls with a view to the car park.

Kay and I exchanged small talk, commenting on the homely-ness of the room and then the penny dropped. The inconspicuous but inexplicable bits of darkened glass and mirrors and other devise placement opportunities were well positioned for coverage.

As I scanned the room I realised the place was likely under surreptitious surveillance. Kay got the message quickly and I growled "we are getting out of here". As we approached the door to the room our visibly red faced officer met us with another mumbled excuse, he had an unexpected duty etc. I think my icy reply was that "I understand perfectly".

It appeared we had been manoeuvred into an area of high surveillance to spy on us. We were understandably upset. Who would do such a thing

and why was this installation so equipped? Highly visible surveillance at the entrance, juxtaposed by a homey club house appearing environment that would lead one to assume it was less "official".

Our observations suggest that anywhere within a Customs-Immigration facility should be regarded as under surveillance. Our experience in this case and reports from others indicate a culture of tricky-ness. A speculative example? Put a person that is targeted into a situation of obvious surveillance, eg recorder on table, then remove that, leave them alone and see what they say to each other in their belief of privacy.

It could be reasonable speculation that the motive behind our experience was to ascertain our usefulness as informants or propagators of Customs messages.

TCP is aware of occasions where customs agents or associates, (eg ex agents) have made efforts to ingratiate themselves into a group of yachties for purposes that could appear to be related to data gathering and message dissemination. For example, TCP was contacted by a reader of an internet forum quoting a Bundaberg source that said the Manzari's, the US couple prosecuted by Customs (www.thecoastalpassage.com/manzaris.html) were anchored for days in the river before contacting Customs. This disparaging falsehood is a likely example. If you are fronted by an agent that appears to be on a personal level, it may be genuine or because you have been determined to be useful. And do be sceptical about any 'inside information'.

more reports, next page...

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FIRST COMPLAINT

The American vessel *Toujours*, was moored at Bundaberg Port Marina when they were boarded unannounced according to the crew. This violation of their privacy at home prompted a letter to TCP. The letter was printed in TCP # 15 (2005).

After that edition, we were informed that word of mouth was being spread around the marina that the circumstances of the boarding were not as represented by the skipper of *Toujours*. This was the first instance of a malicious, anti-cruiser rumour mill we were to encounter. As a result, TCP sent a request to Customs for their version of the facts to settle the matter; also TCP sent a request to *Toujours* for verification of their version (physical evidence, photos of location etc). Customs responded with a letter detailing general policy that supported the version of the agent but *without* specifics to the case in particular. *Toujours* responded immediately with photos and other requested information that showed the rumours to be false. TCP contacted Customs to again ask them for the facts of the matter and were refused.

It is the policy of fairness (see letters page) at TCP that "Anyone disputing a matter of fact in any part of TCP is **invited** to respond as long as the discussion remains one of fact and the responding writer must also be ready to provide support for their assertions or additional information if requested."

Although the information provided by the *Toujours* crew was the more convincing, allowing a non-factual response in debate seemed useless. TCP let the matter stand with the original letter. The rumours then began that TCP won't publish letters from Customs in defence!

"Dangerous Customs" article and web page

TCP had recently published an account written by Chris Ayres of his encounter with Customs whilst cruising the north coast of Queensland. He and his partner Rhonda had been interrupted at their meal below decks, whilst at a remote anchorage, by faces peering into their ports. This violation of privacy brought Chris right up to confront a big unidentified RIB loaded full of blue suited but personally unidentified personnel. As it became apparent they were Customs, it also became apparent they had picked the wrong boat because Chris is one of the lawyers that helped draft the responsibilities toward the public that they were in the act of violating.

www.thecoastalpassage.com/dangerous.html

After print publication the article was posted to the web site. Whilst preparing a subsequent article dealing with Customs, I got in the sloppy habit of using Google to get to the Customs web site instead of direct. I noted that several articles from TCP were on the first page of Google search for "Australian Customs", and Chris's article titled on the web as "Australian Customs acting like Secret Police" was the most popular. And then one day they were gone, all of them. A search back as far as page 50 revealed no articles of any kind from The Coastal Passage! On "Live Search" and "Yahoo!" and other search engines those TCP pages remained for quite a while but in time the loss of the Google search referrals made their numbers wane and they receded back to pages 3 or 4.

It appeared that Customs had gotten Google to manipulate search results to save them embarrassment. I contacted Google to verify but they would not respond. It wasn't until a few months ago that it was confirmed by a statement in Parliament from an opposition member that "Government departments had spent millions on Google".

The conclusion is that Commonwealth government and Customs probably in particular, believes it is acceptable to censor media to manage their image by paying money to Google.

"I Always do Everything Right so I Don't Worry!"

For one, doing "everything right" isn't as easy as it sounds depending on the scrutiny applied. And for two it may mean nothing anyway. Dave Morrow of the vessel *Friction* is a case in point. Just to be on the safe side, he joined the Port to Port Rally entering Bundaberg Port. When David and Sonia arrived they were singled out prior to tying up. They were asked to leave the boat during customs inspection, an unusual and legally questionable request, but which they did without argument and returned to the boat in ruin. The boat had been savaged with personal property and equipment damaged or destroyed. They were one of two boats (the other in Brisbane) reported to have been subjected to this kind of search and neither revealed contraband.

David complained about this to every authority he could contact but he had been gone from Australia for many years on his leisurely circumnavigation and he expressed some shock at the changes. In apparent retribution for his complaints, David and Sonia were the subject of a letter writing campaign and rumour mill. One of the letters received by TCP was so obviously fictitious and untrue, so easy to debunk, that TCP considered publishing it to illustrate the false nature of the attacks but it's defamatory nature precluded it.

David reported that the cruisers he talked to at the marina were all very supportive.

A new level of coverage reported on this event as channel 7 TV news ran the story which resulted in Customs responding that the agent responsible would pay for damages to personal items and equipment repair whilst not admitting wrong doing.



If you have been reading the last two issues of TCP this issue will be somewhat familiar but to refresh; in TCP # 44 we had a report from the vessel *Bifrost* concerning their attempt to sail their Australian boat in Australian waters, undisturbed by interrogation by Coast Watch, Customs, etc...

In preparation for a voyage north, the *Bifrost* crew, novelist Greg Dickson and his family confirmed through Customs in Canberra that they were NOT required to respond to customs regarding their personal details, plans etc. However, on the way they were threatened and in one case, appear to have been put in a state of arrest that may even have been a case of illegal imprisonment.

In a very interesting case of twisted logic, Customs on the one hand, admits they do not have the power to demand the information but on the other hand claims they have the power to board to obtain it by force if they like anyway.

After examining the Act it was the opinion of this (non-expert) writer that Customs did NOT have that power. The legislation Customs claims grants them that power is not specific in the case and research into Parliament's records indicates it was certainly NOT the intent of the legislation. This was confirmed by expert information in the form of a report in The Sun Herald, quoting Attorney Mr. Terry O'Gorman of the Queensland council for Civil Liberties. He said, "My view after reading the Act is that Customs do not have the power to board Australian yachts in Australian waters without the owners express permission."

This leaves Customs in a bit of a pickle. If they attempt to handle this as it appears they did with the 96 hour rule, it is not likely to work. Acquiring precedents from easy targets may not work because the easy targets will likely just acquiesce and give them what they want. The stroppy ones, the ones that will refuse on principle may fight and without a string of precedents in hand, Customs could lose in court. This may very well be why *Bifrost* escaped without harm in spite of the threats.

Customs could try to find a target that at one hand, refuses to cooperate and they feel will fold their hand in a crunch, and/or, shop for a court that can be relied upon. Dangerous stuff.

It is this writer's speculation that: Customs can not afford to take this to court unless they trip over a very unusual circumstance. They will continue their bravado and threats and may even make legally doubtful forced boardings. They are aware that the burden of proof is on the accuser, not the accused. There are at least three people in their big RIB and likely two of you on your boat.

This is a good time to inform yachts that according to the Act, Customs agents DO NOT have the power to forbid recording of their activities unless they are at an installation for clearance and Customs erects a sign that specifies that recordings are not permitted.

But more likely they will be even more careful to devise strategies that trick yachties into reactions that *may* be interpreted as "permission", like accepting a painter from their RIB or some other innocent appearing act. This may possibly be countered by simply stating that any boarding of your vessel is without your approval or consent and ask for the senior officer's name of the party wishing to board. In absence of any recording devise be certain to record in your log the response as soon as you have an opportunity.

The "96 Hour Rule"

As in the case of the powers to board domestic vessels that Customs claims, it appears that applying the 96 hour rule to yachts may not have been the intent of legislation. If the power was invested to Customs by legislation in a clear manner the actions of the agency make less sense but if the agency had little confidence in the power, here is a way to seize the power outside the letter of the law.

Firstly, exploit the element of surprise. Soon after the first round of prosecutions, TCP asked customs why they hadn't published this radical new rule and the response was that it had been "widely published". When questioned further TCP found that their definition of "widely published" meant a notice in an obscure sub page of the customs website that related to commercial shipping. And in fact there was nothing on the actual document that referred to anything other than commercial shipping and if a yacht had by some accident found the document, reading it would probably not have given any clue at all that it applied to a private yacht. A copy of that document is on a much easier to find page here; www.thecoastalpassage.com/customsnotice.html

The customs website had other information concerning yachts entering but that information was contradictory and incomplete, but mostly it was an issue of where and how yachts had traditionally sourced entry information. Few boats at the time had internet capability, especially at sea, and no country had ever sprung such a surprise. It was TCP coverage of the first victims combined with the coconut telegraph that alerted the world cruising community to the rule.

Secondly, screen your victim. The vessel *Sohcatoa* from the US was towed into Trinity inlet with mechanical problems. In interview it was established they were short on time and long on cash. "So after having all of our cupboards emptied and the dog run through all of our stuff, we had to explain that YES we could afford the boat and NO I don't have any business card to PROVE that I used to work at this obviously fictitious company "Cypress MicroSystems". The inquiries concerning finance were unusual under the circumstances. But it gave customs what they may have been looking for, an easy court precedent. (See www.thecoastalpassage.com/brutalcustoms.html for these stories) The second victims were as carefully selected. A retired Dutch couple with limited English and exhausted from a difficult

voyage that contacted Customs as soon as they were within radio range and received instructions to enter without being warned of their non-compliance when they were in a situation at the time, where they could have stood off. Both of these cases were rushed. Charged, convicted, fined and done within a couple days of entry. In reports of more recent convictions, the prosecutor inexorably presents the list of court precedents as "advise" to the victims to show why they should not fight the case but plead guilty and pay the fine.

As judges generally resist contradicting another judge, every conviction adds weight to a "rule" that may have questionable basis in law.

Three recent cases may illustrate this point very well. Two vessels cruising in company from Noumea arrived at Bundaberg Port. They had made a mistake in their emailed notice, sending it to the wrong Commonwealth office. They were threatened with prosecution but did two things that probably prevented it.

They refused the so-called "interview" that officers will infer is an opportunity to deflect prosecution by "explaining" the situation (these interviews are used only to enhance the case against a yacht; they will never be used to your benefit. This is a TCP observation and in this case was the legal advice the targets got from their attorney) and they did not indicate they would cop it sweet. One of the group in particular, had a record of standing up in court and customs would have had access to that record.

That skipper reported that the reason they arrived at Bundy Port was a friend told them how nice and friendly the customs crew were there.

The other two vessels arrived independent of each other at Brisbane. They both had circumstances that mitigated their situation to an equal or better degree than the Noumea boats but they arrived tired and innocent, did the interview and both indicated they would cop it to get it over with.

Two more convictions... and another Kiwi boat that won't return and an Australian couple that had never had so much as a traffic ticket before that were so disgusted they sold the boat and gave up their dream of cruising.

Anchoring in Mooloolaba...or anywhere. Your Responsibilities and Rights

TCP has published accounts from vessels that had been ordered to move on when the skippers claimed that it would be unsafe to do so. This seemed to strike at the heart of the principle that the responsibility and authority for ships safety must rest with the skipper. New information below suggests that is the case and the enforcement alleged in the letters from Jill and Lin was incorrect. The original accounts (edited for space but full versions available in the original editions on the website) are included either side of the letter below.

JILL KNIGHT REPORTS ON MOOLOOLABA ANCHORING RULES

Dear Coastal Passage,

The letter from *Rose-a-Lee* in TCP #43 rang bells for me. In March I had an encounter with Boating and Fisheries officers in the Mooloolaba anchorage after a complaint from a canal home-owner that I was living aboard. I had not suffered a bereavement, as Lin and her husband had, but was spreading my ten days allowed for living aboard over a slightly longer period in order to accommodate eye surgery.

The encounters sound identical - the Bad Cop so bad he was horrid and the Good Cop completely silent so that I thought he might have been recording: probably not, since the exchange took something like half an hour due to meticulous transcribing of my exact words by the Bad Cop into a little note book.

In any case, I had nothing to hide or thought I hadn't: he claimed I could not stay aboard even for one night, but I knew this was wrong. Nevertheless, I was given an Infringement Notice and a fine of \$200 and told there would be another one if I was found aboard next morning. I left the harbour that night with very dodgy vision.

From further up the coast I phoned Harbour Control, the Dept of Transport guy most of us call the Harbour Master, to find out where I had gone wrong. When I mentioned the eye surgery he suggested I write and request reconsideration of the fine.

That request was refused and I paid the fine. Given that not one of the many sailors I discussed this with was clear on the relevant legislation and how it was being implemented in Mooloolaba, I rang the head of Mooloolaba Boating and Fisheries to clarify what sailors could do in that waterway with impunity: it turns out, not very much.

Section 10 (3) of the Transport Infrastructure (Sunshine Coast Waterways) Management Plan 2000 provides the only exceptions to a ban on living aboard, even for one night: *a watercraft that has entered Sunshine Coast waters from seaward while on a genuine voyage along the coast or an international voyage if (a) entry was made for the purpose of (i) taking shelter from adverse weather; or (ii) making urgent repairs; and (b) the living aboard is for no more than 10 consecutive days.*

B&F's Rick Exton was patient with my questions and clear in his answers:

Mr Exton said that there had been conflict in recent months among the various policing authorities in Mooloolaba and that Harbour Control would no longer be advising sailors they had 10 liveaboard days unless their situation accorded with the legislation above;

The reasons Mr Exton gave for the recent strict application of the law were: congestion in the waterways; offence given to canal home owners by people who showered and roamed on decks nude and who hung laundry; indignation of canal homeowners who paid big rates for an environment for which boat dwellers paid nothing. Any complaints from home owners would be followed up by authorities. He said he was not aware of a particular home owner at the far south end of the anchorage, on the island, as an habitual complainant;

I am sorry to say that for those of us who don't want to use marinas or can't find a place there, the days of enjoying this excellent and conveniently placed harbour and this very pleasant and useful provisioning and maintenance stop may be over.

Jill Knight, Yacht Cooee

To TCP,

I have read the earlier letter by the owners of *Rose-a-Lee* (TCP 43) and now by Jill Knight (TCP 45) about the anchoring rules in Mooloolaba River. Both cause concern as both felt compelled to go to sea in conditions that could pose a danger to them and their vessels. Any state legislation is subject to commonwealth law, including the Navigation Act, where there is an inconsistency. In this situation also the Transport Operation (Marine Safety) Act (TOMSA) takes precedence over the subordinate legislation that the fisheries officers are purportedly enforcing.

If due to inclement weather or some other matter that could endanger your vessel and you cannot put to sea safely then you should not do so. It can also be important to keep a vessel safe to have someone on board to monitor the anchoring of that vessel.

The actions alleged in these letters by fisheries officials could endanger the lives of those on board and the safety of the vessel for their purported actions under the Waterway Transport Management Plan (WTMP). The safe operation of a ship is a requirement of TOMSA, and legitimate defence to a charge brought under WTMP, which is subordinate legislation, if complying with a requirement of TOMSA. **Safety takes precedence.** If you have to anchor to ensure safety and as an incident of navigation then you are entitled to.

The behaviour of the fisheries officers as alleged could be the subject of a complaint to the Minister and to the Queensland Ombudsman. The Ombudsman does investigate actions of bureaucrats that can be unfair or could constitute maladministration. For reasons that include increased accountability and to ensure the appropriate focus of any complaint investigation is on the actual conduct of officers rather than the credibility of your version of such conduct - it is perfectly lawful for you to record or video conversations and events like those described in the letters.

Under Queensland law you do not have to advise fisheries officers that you are audio recording them so long as they are aware you are present when the recording is made. You must be a party to the conversation. This does not mean you have to say anything, so long as they are aware of your presence. Police officers routinely covertly record their conversations with people stopped in vehicles for traffic offences using recorders concealed in their pocket (and recorder watches in some instances). They also do this to ensure conversations are accurately recorded if the matter needs to go to court or a complaint is made by a member of the public.

You do not have to advise the officers that you are video recording them in a public place or aboard your vessel. Bear in mind that just because officials may (or may not) be rude, that is no reason for you to be. You should politely assert your rights where necessary and act as if the interaction was being viewed by an independent third party. They are doing a difficult task that may attract unfounded criticism. However, we pay them to be accountable for their conduct and the decisions they make that affect our rights and obligations.

Professional fisheries officers should be recording any potentially controversial interactions they have with you for the same protective reasons. They may not tell you they are taping you, but would be obliged under their Code of Conduct to answer you honestly if you asked if they were.

You should tell the officers your reason for not being able to safely go to sea. This could include inclement weather, exhausted or ill crew or that repairs are required to make the ship seaworthy. You should ensure this is recorded (by you and the officer). If the reason for not going to sea is valid and the officers issue MINs (Minor Infringement Notice), their actions may well be unreasonable and potentially unlawful. It may also amount to misconduct that requires referral to the Crime and Misconduct Commission depending upon the circumstances.

Also remember that you do not have to answer their questions if you are entitled to claim privilege against self-incrimination, in most cases however legal advice should be sought. The officers should allow you a reasonable time to seek legal advice.

Fisheries officers have the power to ask for names and contact details if they think you are committing an offence or reasonably suspect you have committed an offence. If they reasonably suspect any name and address you supply is false, the officers can ask for proof of that. (s475Y TIA) but to complicate matters further, as the identity of an individual is an element of the offence the officer may suspect you have committed, you may also claim privilege in relation to that information as well.

You are not required to consent to them coming aboard your vessel (see s475I TIA). If you do not consent they may then obtain a warrant to enter and exercise a number of powers including search, inspection, taking documents etc.

The above is a brief and incomplete summary of their powers. If you own or operate a vessel you should read the legislation to better inform yourself about the laws that effect your operations (see Chapter 15 Part 2 of the Transport Infrastructure Act accessed by googling Queensland Legislation and going to the Parliamentary Counsel site OR SEE http://www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm).

With the *Rose-a-Lee* owners it is not likely to be material in any way that they owned a home at Mooloolaba or anywhere else. Nor is it likely to be relevant that Cooee has Mooloolaba listed as her home port as clearly Jill cruises all over the place. She appears to be on a genuine voyage, (probably from Brisbane to Maryborough) as were the owners of *Rose-a-Lee*. I think that each of those cases could have been successfully defended on the basis of the versions given.

Given the reasons for enforcement provided, the question has to be asked whether the actions taken by officials were undertaken for a lawful purpose if the reason is to do the bidding of home owners who have purchased a house. However, someone has to be prepared to take action by either making complaints to a proper agency such as the Ombudsman, or the relevant Minister, or by defending MINs issued.

If considering defending then legal advice should be sought so that proper consideration can be given to each charge that was laid and advice given about the prospects of defending the matter, rather than just relying upon the information given above.

Regards, Name withheld

CAUTION! no compassion

To TCP,

We have a house on the Sunshine Coast, however, we haven't lived in it for the past 18 months, choosing instead to live on board our catamaran. The house therefore, has been let. After our previous tenants moved out we moved back to the house do some repairs and maintenance in preparation for the next tenant. After about 3 weeks we were finally ready to set off up north for the sailing season.

We had just started packing our things ready to transport them to our boat, which was anchored in The Duck Pond at Mooloolaba, when my husband's mother who was resident in a local nursing home was taken ill. Around 1600 hours she peacefully passed away. By the time we finally left the nursing home and returned to our boat it was well after dark.

We decided that as soon as the marina offices opened in the morning we would ring around for a berth rather than move back to the house. We had a funeral to arrange and as with any death there were numerous official matters that required attention. Next day before we could phone the marinas however, there was a knock on the hull. A Boating and Fisheries (B&F) boat containing two officers had arrived.

While the younger of the two officers remained silent the other one started to ask questions. He wanted to know who we were and why we were on board.

The officer then went on to say that because we had a property on the Coast we were not permitted to stay on board overnight at all; that the 10 days allowance to anchor and live on board in the river was for "genuine travellers" only. I exclaimed that we were genuine travellers and the boat was our home. Apparently this was not acceptable. He stated that if my 'story' proved to be true then an exemption might be in order.

By this time the B&F officers had been asking questions and taking notes for about 20 minutes. We had no choice but to move all our gear back to the house. Later that week the B&F officer phoned me to acknowledge that I had indeed told the truth, nevertheless the Department had issued an official Caution/Marine Infringement Notice without a financial penalty! So what happened to good old-fashioned common decency?

About 3 weeks later we were again in a position to depart. We moved our gear back to the boat with the intention of leaving early next day. Unfortunately a strong wind warning was issued overnight, and while it had been cancelled by the time we heard the first weather forecast, the damage was done and the sea was up. We motored out of the river and a couple of miles out to sea but it was too rough and we, together with a couple of other vessels turned back. But where were we to go? We tried the marinas again but still no vacancies so we dropped anchor off the beach at Mooloolaba in the hope that the sea might settle later. It didn't. Instead it became rougher as the tide receded. After a couple of really big swells came though and straightened the S hook on our bridle I said, "To hell with the Boating and Fisheries people, they can lock me up if they want, but we are not staying out here for another second!"

Anyway, we motored back to the Duck Pond and after a relatively quiet night we left the river and had a good sail to Double Island Point.

Speaking of points, what then is the point of this letter? Well I guess it comes down to this: What have my husband and I received for the huge increase in boat registration fees? The answer is harassment from Public Servants (definitely a contradiction of terms) and an **Official Caution!**

Lin Nemeth, SY *Rose-A-Lee*



The Season of Storms

Between the Natural and Bureaucratic variety... many Queenslanders are getting edgy

The yachting community has it particularly bad but we are not alone when it comes to over-enthusiastic authorities. If you watched TV coverage of the states involvement in the flood aftermath you may have a very positive impression of compassion and professionalism. But...if you ask the people out there, you might have a different impression. The message below was forwarded to TCP by Rick Lutjens. Thanks Rick. The message was followed up and TCP located the name and phone number of the writer to verify authenticity. We spoke to the writer and found him to be a farmer and successful industrialist. He is the owner of Dingo Australia, an excavation machine maker many readers may be familiar with. www.dingo.com.au The sentiment of his letter appears to be representative of many voices. So on this and following pages are a collection of letters from victims of the recent floods to tell *THEIR* side of the story.

Stupid government... It's our fault for not getting on to the idiots and asking why this is happening!

Bob Nerson photo

There has been some amazing great story's come out of the floods. But there are also the ones that will never be told because in this country we tolerate idiots in government jobs and no one wants to point the finger in case it somehow blows up in their face.

Sorry, but at my age, I have become totally disenchanted and someone needs to tell it like it is, so I will start the ball rolling.

Take Qld transport In Dalby district.

Dalby hit the news with a record flood in the Condamine River that damaged the water treatment plant and water needed to be trucked in, in the middle of floods. Truck drivers worked hard to get us water.

Officers from Qld Transport booked drivers for so called over loading..... what Idiots. Who pays? It'll get squashed and probably has already, but what a waste of resources at a time when manpower was critical.

Farmers crossing a road with a tractor to feed starving, flooded stock were pulled up, the tractor measured, and they were booked because it was slightly wide. Not only that, they were forced to leave the tractor and go to town to get an over wide permit before they could move it back into the farm. And this happened on an already closed road where the farmer was the only person around, except for the idiots.

This morning, I was booked for driving down a closed road to check livestock that were reported out on the road and, at the same time, pick up my employee who had walked over the bridge to come to work. My house happens to be 50 metres past the road closed sign, so apparently I cannot even go in and out my gate. I tried

to reason amicably with 2 idiots. Of course I got more than a little agitated when they refused to let me down the road to my farm. As a result they pulled a tape recorder, so I made sure that it recorded their stupidity. I even had to insist that they return my driver's license. I'll definitely win the court battle as my employee witnessed the whole affair, but what a waste of time and resources.

Over the last 3 weeks, there have been Qld Transport officers stationed outside our farm booking innocent locals for about 8 days. 2 guys sit in a vehicle with the engine idling and hazard lights on 24/7. That would be 3 shifts, plus motel and other costs. Now most of these guys were reasonable people. I had to chat with them every time I went out my gate. Some were idiots like my experience this morning. But the real idiots in this case are the people who sent them out here to guard an obviously flooded and closed road. And never bothered to check when the water went down, and left them there. We, the taxpayers, pay them to be there and also pay fines for trying to get on with our lives in tough times.

Wrote the above in the hour before I went to Brisbane to help clean up the mess in our flooded premises there. While in Brisbane I was told about the truck drivers delivering food to Gympie. As it happens in times of desperate need, trucks rolled out of the Brisbane warehouses stacked with as much as they could get in. After all, the media was screaming for food for Gympie. Queensland Transport then intercepted the trucks and fined the drivers for overloading.

What Senior Idiot in Qld Transport decided that he could solve Queensland 's financial crisis by fining drivers? And sent dozens of men out to embarrass the Government when they could have been helping people

in need.

And did you hear about the farmer who was ferrying food and other essentials for himself and neighbours across the flooded Condamine? Well, the SES and Police decided that was their job. Apparently it is illegal for us farmers to even launch our boats to help ourselves or rescue our livestock. So they sent him home after warning him that if he continued to help, they would prosecute. As he was putting his boat back on his trailer on the other side of the river, he heard horns blowing and looked back to where he had been sent away from. There were the professional idiots, in the middle of the river, sinking. And, as we normal citizens are stupid, he had to re-launch his boat and go back and rescue them.

Apparently they had forgotten to put the plugs in the bottom of the boat and their training had not taught them how to simply put them in after they discovered it and then how to bail the boat out. He should have let them drown. That would be called "natural selection". But again, they had been sent out with an attitude rather than real training. So who is at fault? Need I answer that?

As I said at the start, there have been many, many great deeds by the vast majority of people, but when a society gets to the point that ordinary people are stopped from helping each other and are forced into submission by bureaucrats, Where are we going?

Somehow, we have to reverse the stupidity that makes our nation the dumbest in the modern world.

Our great grandfathers would be appalled.

Gary Briggs, Dalby

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TCP went to Bundaberg to report and found accounts of bravery and generosity everywhere. We saw people volunteering to help out at MidTown Marina which seems fair in that Ray Foley, the owner of Midtown was one of the heros of the river, running his tinny out to boats in the town reach to deliver medicines to people stranded on their yachts or whatever. Jan, his manager reports he worked until exhaustion and wound up overboard himself once. Downstream, we heard of people that during the height of the flood had ventured out in small craft to save un-manned vessels by boarding to deploy their ground tackle and towing hazards out of the way before they could ram boats. Prominent among those heros was Ian Willett of *The Blue Pearl*. Under the circumstances we were astounded when we got the letters below from *The Blue Pearl*.

The photo at right was sent in by Ashley "John" Cooper who says the incident occurred when a good Samaritan attempted to provide provisions for a boat in his dinghy as no one else was available for the service. That hero was in grave danger but was saved by the other hero on deck.

We were told that after a story featured in the Bundy paper describing the plight and lack of help for those trapped on their boats, assistance with provisions was provided.



Ashley Cooper photo

MSQ, GET A CLUE!

Liveaboard yachties left to themselves at the height of the floods show outstanding seamanship and heroism and then branded negligent by MSQ. And where were they?! Over and over again TCP hears the same Gaddafi-ish story...

Hi Coastal Passage

We thought you may be interested in a little story about *"The Blue Pearl"* who happened to be moored at the Burnett River at the time of the floods at Christmas time.

We were unfortunate enough to be damaged by a vessel that dragged onto us at 3.30am on the 23rd December. We went to MSQ to report the incident in the hope they could help us locate the owner who has since left the area.

I have enclosed a copy of their response to our incident report and our response to their letter to us.

Ian was hailed as a hero by many boat owners due to his tireless efforts to save boats. They would be dragging down the river backwards with moorings attached, sometimes two or three joined together. He would jump onto the boat, locate their anchors and throw the anchors and wait until they were secure. Sometimes he would move them to safer anchorage and to get them out of the way of God knows what coming down the river. The public jetty was pushed to the riverbank by Ian, John and Bill from *Takutori*. The fuel dock with 30,000litres of fuel missed *Takutori* by a hairs breath. He and two other men (Barry and John) were risking their life to save boats (manned and unmanned) and lives. I believe Maz from *2Abreast* wrote to you about their ordeal. (TCP note: indeed they did and credit the survival of their boat and perhaps their lives to Ian's and others effort. A letter is on next page with their more recent MSQ experience and their full report of the flood incident is published in TCP# 46 Special electronic edition available on the website)

Ian and Barry left our boat at 9.30pm one night and didn't get home until 4.30am in the morning. *2Abreast* had a tree lodged on her bow and was being pushed down the river. To say that I was traumatized would not be a lie. I had to look after *"The Blue Pearl"* when she dragged because Ian was away helping others. I am not an experienced mariner, but I knew that he would not give up on anyone or any boat and he needed me to keep *Pearl* safe.

When we received this letter from MSQ it was like a punch in the guts. We never saw MSQ when all this was going on. We were all on VHF using the required channels to keep in touch with each other, to let everyone know when a vessel or a shed, or a bloody fuel dock was coming towards us. My tears fill up when I remember those three weeks. I have 6gb of photos and videos and we only just watched it on the weekend with Ian's son. My heart was pumping reliving each event. To be told that we were negligent was hypocritical of them.

Anyway I could go on forever.
Hope you can use some of this for your paper.

Kind Regards
Lynne Barr
"The Blue Pearl"
Ian Willett, Skipper

See the edited response that *The Blue Pearl* made next page as well as that from the catamaran *2Abreast* that received the same accusation of negligence.

12 January 2011
Ms Ian Willett
610 Midtown Marina
Direct Mail, Teague Street
Bundaberg QLD 4670

Dear Mr Willett

Thank you for reporting 23/12/10 and 23/12/10.

Maritime Safety Queensland (MSQ) is the lead authority for the investigation of marine accidents and incidents. Your report is being reviewed and we will contact you to provide this feedback.

I would like to draw your attention that all vessels large motorised vessels in the Burnett River moved their vessels to safe moorings prior to the flood event. Your action in not moving your vessel at the time was clearly negligent, other persons and infrastructure in grave danger. Maritime Safety Queensland strongly encourages all vessel owners to take timely action in removing their vessels from danger in times of flood and severe weather. Whilst it is appreciable that some people could be being hindered from their vessel and may not be able to take immediate and timely action to move or better secure their vessel, especially at this time of the year, other precautions could be made to ensure vessel owners have made arrangements with mooring sites, would be able to take immediate action, the vessel owners behalf.

We have investigated the circumstances of the incident and do not suppose to take any further action at this time. Any liability for damage to your vessel, as a result of the collision is a civil matter and should be resolved between you and the owner of the other vessel.

If you have any questions about the matter, please call this office on 40 31 8500.

Yours sincerely
[Signature]

13 January 2011

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Catamaran 2Abreast wishes to thank the heros.

2Abreast is back in the water now. We would like to thank Ian Willet from *The Blue Pearl* and Barry Cotter of the boat *Niue*. These were the brave souls who came to our assistance in their small dinghy on the night of the 30th December 2010 and rode the 'rapids' of the Burnett River with us (river was running at least 16 knots).

Without their help 2Abreast would be no more and we may not have made it through in one piece either. What you did was heroic and you would not leave us even though we asked you to leave us to take our chances.

We can never ever thank you enough and you will be in our hearts forever.

Maz and Geoff from the sailing cat 2Abreast

Several days after the above note arrived, 2Abreast forwarded their response to a letter from MSQ with the same accusation of negligence that *The Blue Pearl* received!

Storms...continue

Ashley Cooper photo



The Blue Pearl

The Blue Pearl replies to the letter from /MSQ (edited for brevity)

Excerpt from your letter: "Your action in not moving your vessel at an earlier time clearly placed yourself, other persons and infrastructure in grave danger."

Response: I adamantly disagree with your remark. We were all on our boats and monitoring the situation constantly, with conversations between each other and with Midtown Marina, and also the internet weather sites, helping each other and clearing debris off the professional mariners' vessel (because at this time we were still on "safe moorings") to prevent them from dragging onto us and any other vessels. We take your comment as an insult to our intelligence and our duty as live-aboards to protect our homes. **We have all been responsible vessel owners** and did as much as humanly possible to protect our and other vessels. "*The Blue Pearl*", "*Butterfly*" and "*Nui*" vacated the moorings before any other vessel in the area, including your professional mariners (except, of course the unfortunate vessels that dragged). And please explain where there were any safe moorings or piles to be had, when from the 24th December **all** moorings were floating down the river with their boats still attached. The reason we know this is because we live on our vessel, we left early and we watched these vessels drag by us and the other responsible live-board mariners. Also there were many reports of other vessels leaving Bundaberg Harbour with piles attached from your moorings.

Excerpt from your letter: "Maritime Safety Queensland strongly encourages all vessel owners to take timely action in removing their vessel from danger in times of flood and severe weather."

Response: So how is this procedure brought into place ("Encourage all vessel owners to take timely action")?

We have had accounts of responsible vessel owners who tried to get on their vessels to secure them or take them to safer anchorage but authorities were not allowing anybody to enter the river. On the public holidays when the authorities seemed to be absent, it was both disheartening and shocking to watch a hoard of tinny owners who did not own any vessels on the water, entering the river to either view the carnage or just steal from the unattended vessels of owners who were stopped from going to their vessels. And any assistance conspicuous by its absence.

2Abreast replies to MSQ (edited for brevity)

When I read the response to my marine incident I have never felt so betrayed in my life. I put in a marine incident where others did not as I believe (maybe erroneously) that after a serious marine incident it is a legislative requirement. The reply I received was most hurtful. Did anyone actually read the typed incident report submitted?

The part of the letter which states: "*I would like to draw your attention that all professional mariners moored in the Burnett River moved their vessels to safe moorings prior to the flood event. Your action in not moving your vessel at an earlier time to a safe place clearly placed yourself, other persons and infrastructure in grave danger. Maritime Safety Queensland strongly encourages all vessel owners to take timely action in removing their vessel from danger in times of flood and severe weather. We have investigated the circumstances of the incident and do not propose to take any further action at this time*", is quite incorrect.

I will now address these:

1. All professional mariners DID NOT move their vessels prior to the flood event. Some trawlers were still leaving the town reach many days after we left.

2. We did leave our berth at Midtown Marina on the 23rd December 2010 well before the flood peak on 30th December 2010. A whole week before. We were anchored in a calm spot in the river with many other boats from Midtown Marina. We were just unlucky we got hit by a rogue tree root which happened to miss all of the others. Also, it was the infrastructure that was placing us and other vessels in grave danger and not the other way round. The public jetty was pushed to the bank by three small dinghies and secured to ensure it did not put others in danger.

3. The boat that we hit a glancing blow had been already been a danger to us and others as it was unattended and going backwards at a very fast rate. It was secured and made safe by us and other boat owners. It was these unattended boats that were putting us in grave danger and not the other way round. We, and others, spent many hours securing other unattended vessels and saved many by our action.

If it wasn't for the actions of myself and other boaties who were aboard their vessels, and who worked diligently up river securing infrastructure and unattended vessels in extremely dangerous conditions, the mess that the Bundaberg Harbour Master would have to clear up would be considerably greater than it is now.

Geoff White, 2Abreast



Ashley Cooper photo

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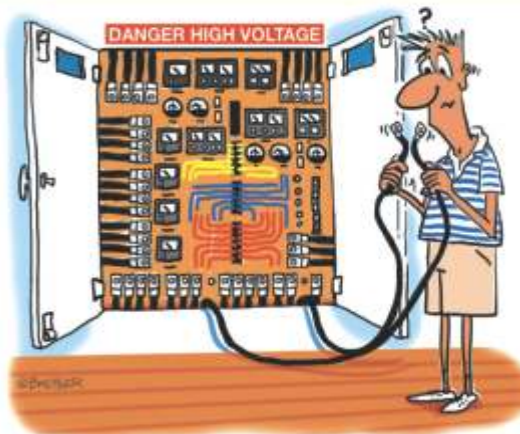
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Ashley Cooper photo

I have lived on a yacht in the Burnett River for 15 years, principally in the town reach. I have survived 5 floods in that time and have a very good strategy for surviving... Do not take advice from any authorities! My strategy is simple... when the flow in the town reach becomes 5 knots and over, I get out down river to where the river is widest and tuck in to one of my "Spots", usually a backflow caused by some upstream obstruction. The last flood has been the worst and I was told by the authorities two days before "not to worry, we will call you if it starts to look bad"... (I am still waiting for that call!)

Anyway, I spent the entire flood peak (the first one), less than 5 metres from shore in negligible flow. Unfortunately I saw some terrible sights. I was 200 metres from the Long Reach Moorings administered by the Bundaberg Port Authority. I saw yachts smash into each other, some sinking, others being ripped off the moorings and swept out to sea. I saw two brave yachtsmen get tossed in the water trying to help a stranded couple by diverting an unmanned yacht from hitting them.

Where were the authorities??? They were busy denying responsibility and busy telling everyone they could not touch unmanned vessels and that they were just "doomed". V.M.R. were quick to explain an upcoming court case "tied their hands" from touching unmanned vessels... They could only intervene when life was threatened. Unmanned vessels smashing into manned vessels obviously do not fit that category either apparently. Just as well it was experienced yachties trying to save everyone, from the appalling display of seamanship I saw as the V.M.R. vessel tried to pull alongside a jetty in 8 knots of flood flow...

Anyway.. I was anchored in my "spot" but complained to the Port Authority about mooring blocks placed on the beach nearby. None were marked and they had no definite idea where they were.

As the first flood receded I moved into the main flow (now diminished) so as not to take the ground. When I was in town the Port Authority came in with the tug and placed a concrete mooring block *directly under* where I was in my previous safe haven 'spot'.

The second flood peak warning came and just as I was about to come back to my "spot" I noticed the plain white buoy and assumed it to be a crab pot like so many others here. It was only because of a nearby yachty who saw the tug that I found out it was a mooring block. I had to take my chances in the flow of the second flood peak.

I complained to head office Gladstone and the manager in Bundaberg who's initial denial of any movement of moorings was followed 20 minutes later by an admission he was mistaken.

I have a disagreement about mooring block placement without any warning or notice.

Isn't it hard enough to save your vessel against the flood with out having to fight the desk jockeys of a large corporation?

Anyway there is now an independent inquiry being undertaken by the Port Authority into the handling of the whole situation....

I hope that will shed light this and a whole range of issues that have resulted from this flood.

John Ashley Cooper.

The story that won't go away, or The accidental interview, OR "Don't get me started!"

By Bob Norson

It was blazing hot, Kay was hiding in the one AC room with what used to be MY big computer.. it was a big tide out front.. I was on my way out to the tent to go to work and I just rebelled.. hell it was my birthday... Popped the tinny in around the corner and blasted across the Sandy Strait.

Gary's is one of the best anchorages on the coast and only about 4 miles away, behind Fraser Island. I know every shoal on the way and it's as good a destination as any... saw this boat that was all smiles.. two guys sitting under a shade on the bow, beers in hand, life is good. I stopped by to congratulate that they appeared to be the most comfortable set up in the anchorage.. about 6 boats there. We were invited aboard.. Sure, why not. Aboard about 5 minutes and then he mentioned they were in the Burnett river for the Bundy flood and he started spitting out words about the "D-----s" in authority there (apologising to Kay for the language) and the things they did... Kay and I look at each other... Told them who we were and then it was "You can print every bloody word mate and I got a lot more!"

Kevin reports that the experience was very emotional for his partner Melody. Her reaction was made with every bit of news on the VHF or what could be seen from their boat; elation when a boat was saved by the group of heroes that were boarding unmanned boats in their tinnies to deploy ground tackle to towing dangerous floating obstructions away from anchored yachts and heartbreak at the loss of others as they were drifting in the tide, snagged, broached and rolled under.

And the authorities... the people that recovered their runaway beacons and took them into the duckpond at Burnett Heads and as Kev reports, placed them into the middle of the best water in the restrictive shallow harbour. So when Kev crabbed in *Scorpio* against the roaring tide, he was forced to anchor on extremely short scope in the only place he could find for his vessel. For safeties sake, he tied a line to one of the beacons and claims he received shouted orders from the VMR station within sight of him, saying he couldn't do that.

Kev reported that he responded loudly and negatively. When the VMR boat was nearby later, Kev says they didn't say a thing.....didn't even look in their direction.

Kev also complained about the local VMR's lack of response to unmanned vessels adrift due to a law suit. Kev states he heard conflict between Bundy and another rescue service over the issue on VHF and the other rescue organization determined that an unmanned vessel was a hazard to navigation thus requiring their action. Kev says the experience has shaken what has been years of support. "I've supported VMR and Coast Guard for years but now if I find out one cent of the money I donate might go to Bundaberg VMR I won't do it anymore!"



Visitor Brian at left and Kev is at right showing off a big Muddy due for execution later. We missed Melody off on family visit.


TCP Note: The criticisms of Bundy VMR above and at right were not unique though there was aid rendered to some (assumed manned) boats, see letters section. . If Kev's allegation that he was instructed to remove a line attached to the beacon by a VMR official is accurate, it indicates a need for education. As it is clearly stated on page 6 of this edition, a skippers paramount responsibility is to the safety

of the vessel and crew and why is a VMR volunteer trying to play cop? TCP will pursue the law suit issue and Bundaberg VMR's response to that and update the electronic edition if required.

TCP would venture the opinion that the privatisation of the port authorities has not benefited mariners so far. The


placement of stray beacons and mooring blocks as reported was not thoughtful. TCP would like to remind those in authority that the liveboard cruising community is a great reservoir of experience and information and should be respected and engaged.

As always, TCP invites correction on issues of fact in the reports published here. See pages 4 or 5 for details.



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Getting Facts from MSQ?

In TCP #49, we had letters published and comments from TCP addressing a report of Marine Safety Queensland (MSQ) enforcement officers making a demand of a boat in his tender for safety gear that, on examination of the law appeared inappropriate.

In TCP #50 more contribution pointed out that TCP had been too conservative in response and several writers quoted the laws with more precision than TCP. WELL DONE ALL!

One writer questioned MSQ directly in Brisbane and obtained clear and specific instructions that do that MSQ officer credit.

But the publications that MSQ were producing and at least some of their enforcement officers were

still in disagreement, so TCP addressed the issue to the general manager of MSQ, Patrick Quirk, to get a definitive response that could be publicised for the benefit of the public and enforcement officers. It sounded easy.

First problem was that the question wasn't addressed until past the deadline though 5 days notice was given. Second was that when a response did come it was from an individual with no authority or real accountability. Third, when the direct question was pursued with Mr. Quirk post deadline, he refused to address it directly. It seemed that MSQ would rather avoid admitting there is a minimum legal requirement and instead, through inference, attempts to engender a belief in the public of requirements beyond the law for tenders and other craft not required to be

registered, in normal operating conditions. This response, or lack of, was so astounding that TCP sent the correspondence to Andrew Crawford for comment to insure there wasn't some arcane point TCP had missed that added value to the MSQ response. TCP wanted to be fair. Andrew went way beyond that request and once again, came through for the boating community with the clearest discussion thus far (see next page) that seems to confirm that TCP readers have been more factual than MSQ's literature or the response from the general manager!

This saga has revealed that there are still some competent and helpful staff within the organisation but that leadership remains adversarial and that may be more important than this particular discussion of law.

August 23, 2011, with a deadline for response of 29 August, TCP asked:

Please verify or refute for publication, the following statement:
 "The law is and the intent of the law is. If a boat
 1.. is under 6m in length, regardless of motor size
 2.. is appropriately marked Tender to Reg. Number / Name of Mother ship
 3.. is operating within 2nm of the mother ship (regardless of water type smooth or open) then the boat is deemed a "TENDER" and a tender is not deemed a "Registrable Boat".
 As such, although highly recommended that they do, there is no legal requirement for a boat deemed a Tender to carry any safety equipment other than a light for night use and signalling."

Sept 6, 2011, Mr Quirk responds to the question:

The problem with your approach is that it seems to ignore a core component of the Queensland legislation and that is the general safety obligation that we all have to operate a boat safely. The latest boating guide makes it very clear that operators have this duty - as an example please refer to the footnote on page 31 of the latest guide and then the tables on page 31 recommend equipment as one way to satisfy that obligation. This approach of a general safety obligation has been in the legislation since 1994. This is not new. You are looking for a right / wrong answer to your query - well under Queensland legislation there is flexibility for operators to equip their boats to meet the perils of the voyage.

Sept 6, 2011, TCP responds to response:

It's not my approach, it is that of your legislation and enforcement officers who demand the yes/no response. They do not ask the operator's opinion of what the operator requires for safe operation of the vessel, they specify a list and you better have it or face fines. A general safety obligation is a thing that I can see coming into play after an incident but that is irrelevant to this issue. Motor-vehicle operators also have a general responsibility to operate safely, but the speed limit is clearly posted. You owe it to the public to make the requirements that may incur a fine clear. We are not enquiring about recommendations or guidelines. The enquiry is about legal requirements. The question stands.

Sept 6, 2011, from Mr Quirk;

Unfortunately I am not convinced that anything we can say will alter your view on this matter. **I believe in accountability and transparency** (TCP emphasis) and this is how I try to manage MSQ in all our varied areas of operation. You are looking for a simple answer for which there is no simple solution and has not been since the legislation came into force in 1994.

The text above are excerpts from exchange of email as dated. For complete email exchange see ECP #51 or the TCP website under MSQ.

MSQ introduces Raft of New Regulations. A First for Australia. New License for 12 metre vessels, (does not apply to Bare Boat Charter)

New requirements for standard license, epirb labels, pdf's, grab bags, and vessel owner now responsible for verifying qualification of operator of loaned vessel and More!! See TCP or MSQ website

Effective Jan 2013

New advanced licence endorsement

An Advanced Recreational Marine Driver Licence Enforcement (ARMDLE) will be required to operate recreational boats 12 metres or over in length and powered by an engine of more than 4.5 kilowatts. The advanced licence endorsement will be a new licence category within the existing BoatSafe framework. The requirements for future licence holders to obtain an advanced licence endorsement will be:

- * Holding a Recreational Marine Driver Licence (RMDL) or equivalent from another Australian state or territory for at least one year.
- * Minimum age of 18 years.
- * The completion under the supervision of an advanced recreational marine driver licence holder or equivalent of a range of boating tasks required in an advanced BoatSafe Workbook.
- * The completion of an advanced BoatSafe training course focussing on specific knowledge required to operate larger recreational boats.

Assessment of the workbook and delivery of the training course will be done by Maritime Safety Queensland accredited advanced BoatSafe training providers. The applicant will be issued a BoatSafe statement of advanced competency by the training provider on completion of the workbook and training course.

Candidates for the advanced licence endorsement will then submit their statement of advanced competency to a Department of Transport and Main Roads customer service centre together with an application form and evidence of identity. The applicant will then be issued with an ARMDL. Existing RMDL holders will continue to be permitted to operate large recreational boats. Current commercial master licence holders will also continue to be permitted to operate any recreational boat.

An advanced licence endorsement will be issued in recognition of an expired commercial marine licence or other marine qualification equivalent or superior to the advanced licence endorsement.

Effective Jan 2012

Boat owners do not always verify that a person holds an appropriate licence before allowing them to use their boat. If a recreational boat is lent for use by another person, there should be an obligation on the owner similar to that required for commercial and fishing boats, to ensure that the person operating the boat holds the appropriate licence.

New requirement

The regulation will require the owner of a recreational boat to verify that a person who is to be the master of the boat holds an appropriate licence to operate that boat.

Current legislation requires that safety equipment, on a commercial and fishing boat, to be located, and storage space to be clearly marked, so as to be readily available for its purpose in the event of an incident. However, this requirement does not apply to recreational boats.

New requirement

The regulation will require the accessible stowage of safety equipment requirement on recreational boats as well.

The Mooloolah River mouth, Gold Coast Seaway and Round Hill Creek will be included as bars where a PFD must be worn.

Disclaimer: the info above are quotes from MSQ literature but TCP can not guaranteed they are accurate or factual. Boaties should investigate the actual legislation.



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Getting Facts from MSQ?

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Readers please note; The reliance on the "General Safety Obligation" as referred to below appears to be debunked by the research in Andrew Crawford's article in this edition.

See section 43 entry. The press release at right contains part true-out of context statements that avoid the direct enquiry.

AS PER TCP 51, PAGE 12, BELOW FOLLOWS THE EMAIL EXCHANGE BETWEEN MSQ OFFICIALS AND TCP

August 23, 2011

Greetings,

Please verify or refute for publication, the following statement:

"The law is and the intent of the law is. If a boat

1.. is under 6m in length, regardless of motor size

2.. is appropriately marked Tender to Reg. Number / Name of Mother ship

3.. is operating within 2nm of the mother ship (regardless of water type smooth or open)

then the boat is deemed a "TENDER" and a tender is not deemed a "Registrable Boat".

As such, although highly recommended that they do, there is no legal requirement for a boat deemed a Tender to carry any safety equipment other than a light for night use and signalling."

Sincerely, Bob Norson

The Coastal Passage

August 25, 2011

Greetings in return...

Thanks for the email and the delay in my initial response. Give us a few days and we will get back to you. I really want to get the best advice as you seem to be hinting at some apparent failure in the legislation and your readers deserve the best guidance.

Regards, Patrick Quirk,
General Manager (Maritime Safety Queensland) Office Of The General Manager Maritime Safety Queensland Division | Department of Transport and Main Roads

August 27, 2011

Hi again We need to have a response to this no later than Monday morning, the 29th to be able to include in publication. All we ask is a simple confirmation or refutation of the statement in the original message.

Sincerely, Bob Norson

August 27, 2011

Bob I am currently on Thursday Is but I checked up on Friday and a response is coming to you on Monday. I will chase up asap Monday morning.

Regards, Patrick Quirk
General Manager (Maritime Safety Queensland) Office Of The General Manager Maritime Safety Queensland Division | Department of Transport and Main Roads

Sept 6, 2011

Patrick It is disappointing that you were not able to make a response to our enquiry in time for publication. We did receive a letter from a media advisor from your agency expressing his ambiguous and unsupported opinion on related matters but that is of no use to the boating public. We've had an oversupply of that.

The enquiry made of you was a specific, yes or no matter that every boat operator in Queensland must know the correct response to on demand at any time to their financial peril and yet the General Manager of the agency can not or will not.

This does not seem to be a matter of a failure of legislation and that is not the position of The Coastal Passage. This is a failure of leadership. "You are the skipper, you are responsible."

You have enforcement officers under your command that often make errors in their duties. You have publications under the creation and control of your agency that persist in disseminating incorrect or misleading information to the public.

We realise that you inherited an agency with a lot of problems but you have been given time and in this case an opportunity to convince the boating public that these old ills are being addressed.

If your agency is to have credibility as one of providing safety to the boating public then the focus must be on education, not punishment and that education must begin with the officers under your command and the public must have a clear, unambiguous ruling on the legislation by the person in command of the enforcement officers. Nothing else will do.

Sincerely, Bob Norson

Sept 6, 2011

Bob Hi The problem with your approach is that it seems to ignore a core component of the Queensland legislation and that is the general safety obligation that we all have to operate a boat safely. The latest boating guide makes it very clear that operators have this duty - as an example please refer to the footnote on page 31 of the latest guide and then the tables on page 31 recommend equipment as one way to satisfy that obligation. This approach of a general safety obligation has been in the legislation since 1994. This is not new. You are looking for a right / wrong answer to your query - well under Queensland legislation there is flexibility for operators to equip their boats to meet the perils of the voyage. The recommended

equipment provides one path to do so however your readers may have other approaches. We can spend weeks sending and answering emails - why not we arrange to meet sometime soon to take you through the Queensland provisions. I travel fairly frequently to most regions and am more than happy to meet. Hope to catch up soon.

Regards, Patrick Quirk
General Manager (Maritime Safety Queensland) | Office Of The General Manager Maritime Safety Queensland Division | Department of Transport and Main Roads

Sept 6, 2011

Hi Patrick It's not my approach, it is that of your legislation and enforcement officers who demand the yes/no response. They do not ask the operator's opinion of what the operator requires for safe operation of the vessel, they specify a list and you better have it or face fines. A general safety obligation is a thing that I can see coming into play after an incident but that is irrelevant to this issue. Motor-vehicle operators also have a general responsibility to operate safely, but the speed limit is clearly posted. You owe it to the public to make the requirements that may incur a fine clear. We are not enquiring about recommendations or guidelines. The enquiry is about legal requirements. The question stands. I'm sure we could have a lovely chat but the matters at hand require clear statements for the record, as I said, this is all for publication. Bob

Sept 6, 2011

Bob Hi Unfortunately I am not convinced that anything we can say will alter your view on this matter. I believe in accountability and transparency and this is how I try to manage MSQ in all our varied areas of operation. You are looking for a simple answer for which there is no simple solution and has not been since the legislation came into force in 1994. The offer to meet is still there and happy to look into specific examples that you care to provide.

I would request that you publish the whole email chain in your publication rather than you providing an edited version.

Regards, Patrick Quirk

General Manager (Maritime Safety Queensland) | Office Of The General Manager Maritime Safety Queensland Division | Department of Transport and Main Roads

RESPONSE FROM TOM HILSTON,
Manager (Communications and Public Awareness) | Executive Services & Compliance
Maritime Safety Queensland | Department of Transport and Main Roads

AUGUST 30, 2011

Bob,

Thanks for your enquiry and apologies for not getting this back sooner - there was a grounding incident yesterday that took up a fair bit of our attention.

A tender under six metres in length with an engine under 3KW does not need to be registered.

Also an appropriately marked tender that has an engine of 3 KW or more which is operating only within two nautical miles of the primary ship does not need to be registered.

The required safety equipment required for tenders under the regulation is a torch and an EPIRB if operating beyond partially smooth waters or two nautical miles from land.

Miscellaneous equipment recommended in the Transport Operations (Marine Safety Recreational Ships Miscellaneous Equipment) Standard 2006 should be also carried to satisfy the General Safety Obligation.

An operator can be prosecuted if a marine incident occurs where the vessel is found not to be appropriately equipped to meet the ordinary perils of the voyage.

Hope this helps - congrats on your 50th ?

Kind regards,
Tom Hilston
Manager (Communications and Public Awareness) | Executive Services & Compliance
Maritime Safety Queensland | Department of Transport and Main Roads

Tom

Thank you for your letter expressing your opinion of recreational tender's equipment requirements but this is not useful to the boating community.

Regards

Bob

Breaking News; High Court Decision Appears to Further Weaken MSQ's Reliance on the "GSO" (General Safety Obligation) updated to edition Friday Nov 11

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MSQ , GSO and HCA
by Andrew Crawford

Maritime Safety Queensland have a habit of, some may say smugly, going AHHH but there is always the GSO (General Safety Obligation). The, MSQ, appear to believe that where there may be a gap in the law, or indeed where there may be a gap in their ability to successfully investigate and prosecute, that they can rely on the GSO. There has been a recent High Court of Australia (HCA) decision that may have weakened MSQs position on this matter.

As always I must warn everyone that I am not a lawyer, solicitor or barrister on a person in any way qualified to dispense legal advice. You want legal advice pay a solicitor. What I will do is what every citizen should be able to do, read the law that parliament has passed and try and understand my obligations.

The GSO is in the TOMSA (Transport Operations Maritime Safety Act), I love acronyms don't you?

Two relevant sections state:

41 General safety obligation of ship owners and masters about condition of ships
(1) The owner and master of a ship must not operate the ship unless the ship is safe.
Maximum penalty 500 penalty units or imprisonment for 1 year.

(2) However, if the contravention of subsection (1) causes a marine incident involving the death of, or grievous bodily harm to, a person, the owner and master commit an indictable offence and are liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.
(3) For the purposes of this section, a ship is safe if it is seaworthy, and is appropriately equipped and crewed, to meet the ordinary perils of the voyage on which the ship is proceeding or about to proceed.

42 General obligation on persons involved with operation of ship to operate it safely
(1) A person involved with a ship's operation (including the owner, master, pilot and crew members) must not cause the ship to be operated unsafely.
Maximum penalty 500 penalty units or imprisonment for 1 year.
(2) Without limiting subsection (1), a person causes a ship to be operated unsafely if the person causes the ship to be operated in a way that
(a) causes a marine incident; or
(b) contravenes
(i) conditions of the ship's registration about safety; or
(ii) a provision of a regulation that is declared by a regulation to be a provision to which this section applies.

(3) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, a person, the owner, master, pilot, crew member or other person commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.

(4) A person does not contravene this section because of subsection (2)(a) if the only basis for holding that a marine incident has been caused is lawful damage to, or danger of lawful damage to, property of which the person is the sole owner.
(5) In this section
lawful damage means damage that is not unlawful under the Criminal Code, section 469.

Section 41 is reasonably straightforward and somewhat less offensive than section 42. Offensive it is to the principles of public policy and criminal law but somewhat less offensive. Its offensive nature comes from lack of prescription. By that I mean that the section says that the ship is safe if it is
(i) seaworthy - who decides that and how
(ii) appropriately equipped - what's that?
(iii) appropriately crewed - in whose mind, does that mean that Dame Ellen MacArthur would be arrested by MSQ if she called in here on her way round the world solo?

The section goes on to talk about "ordinary perils", what precisely are they? So you can see my concern. There are some people who I know that would say that any boat that can sink (i.e. a ballasted monohull) is not appropriate to the perils of a voyage, equally there are some that say a vessel that cannot self right (i.e. a cat) is not appropriate to the perils of a voyage

Section 42 is even worse in its lack of specificity and its ridiculously broad and overreaching position. For example Section 42 purports to say - you commit a marine incident, you have thus have operated the ship unsafely and you are up for one year in the local Correctional Centre (On the plus side, I think Qld's jails are the best around).

But let's have a look at what that means. A marine incident is defined in

123 What is a marine incident
(1) A marine incident is an event causing or involving
(a) the loss of a person from a ship; or
(b) the death of, or grievous bodily harm to, a person caused by a ship's operations; or
(c) the loss or presumed loss or abandonment of a ship; or
(d) a collision with a ship; or
(e) the stranding of a ship; or
(f) material damage to a ship; or
(g) material damage caused by a ship's operations; or
(h) danger to a person caused by a ship's operations; or
(i) danger of serious damage to a ship; or
(j) danger of serious damage to a structure caused by a ship's operations.
(2) A marine incident also includes another event prescribed by regulation.
(3) However, a marine incident does not include an event declared by regulation not to be a marine incident.

For argument's sake let's take Section 123 (1)(e). You are sailing along and you run aground, no big deal, wait for the tide. However, you have committed a marine incident pursuant to Section 123 (1) (e) as you have stranded the vessel, and thus you have breached Section 42 of the act because you have operated the vessel and caused a marine incident. (as an aside you probably won't report the grounding and that's another breach).

It's that simple, cause a marine incident, and you have breached the GSO in the TOMSA. This is offensive to all reasonable policy objectives of the criminal law, the vagueness and inability to particularize the offence are at odds with hundreds of years of criminal law.

However, the High Court of Australia may just have some guidance on this. In a recent decision; COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS v MALGORZATA BARBARA PONIATOWSKA [2011] HCA 43, the High Court discussed offences which are composed of broad non-specific omissions.

The case was about a woman who failed to tell Centrelink about various monies that she received that, had Centrelink known about, would have caused Centrelink to pay her less. Leaving aside the morality of her actions, the HCA did give us some guidance on the likelihood of MSQ sustaining a GSO prosecution.

The abridged judgement says: "The respondent pleaded guilty before the Magistrates Court of South Australia to each of the charges and was sentenced to 21 months' imprisonment, subject to the direction that she be released immediately upon entering a bond to be of good behaviour for two years. The respondent unsuccessfully appealed against the severity of the sentence to the Supreme Court of South Australia. The respondent then appealed to the Full Court of the Supreme Court of South Australia, challenging her convictions on the grounds that the counts did not charge offences known to law, and that the counts were deficient in their failure to identify the transaction, act or omission on which liability was said to depend. The Full Court allowed the appeal and set aside the respondent's convictions".

The prosecution appealed to the HCA and lost. The decision when read in full seems to give rise to a reasonable interpretation that some "catch all" provisions in criminal law may be invalid in some cases. And that is as it should be. We should not breach the law by accident but rather by intent.

We will see. One of the things I love about legal matters these days is that all the legislation is on line as are the appeal court cases. I will follow with interest. As always this is just my view, I am not a solicitor or admitted to practice law in anyway. And as always my final piece of advice is be sensible, take care and if you are pinged get some quality legal advice before you rush off and pay the fine.

What is Killing Our Turtles???



Fairfax media, Oct 26th 11

The deaths included 158 turtles in the Gladstone area compared with 36 for the same period last year, and eight dugong, up on two recorded in 2010. But marine experts, including James Cook University's Dr Ellen Ariel, say the figures would be a fraction of the reality and most of the dead animals simply would not have been found. Environment Minister Vicky Darling has said surveys done after January's floods show seagrass cover is the lowest ever recorded. She blamed starvation for the deaths.. There was no mention, however, of the any threats posed by the escalating industrial activity around Gladstone.

From an ABC report, sept 12,11

Dr Col Limpus, chief scientist with Queensland Department of Environment and Resource Management, says that sick and vulnerable creatures are dying because the floods and the cyclone have killed the seagrass which is major element of their diets. However, he is optimistic that their numbers will recover.

From ABC's AM program, July 22

Witness from Magnetic Island: *My daughter and I were so excited seeing this large number of turtles in close but they just kept hanging in close and when we were over our first initial excitement, my daughter remembered that a marine biologist had told her suddenly the night before about this problem and them hanging in close like that, because they were right up to our feet, that that meant that they were dying.*

From the Gladstone Observer Aug 24

NEW statistics reveal the severity of this year's horrendous run of marine animal deaths.

The dead bodies of 119 turtles have been found in Gladstone Harbour this year. The figures will do nothing to ease the sense of frustration gripping the region's coast-loving public. Eight dugongs and five dolphins have also been found dead. There is still no sign of a list containing specific information, such as locations and dates. This is despite calls from Gladstone Region Mayor Gail Sellers for every autopsy result to be made public.

Perhaps what is most clear from reading the data, is the fact we still know nothing at all.

That is because, of the 119 turtles found dead, the cause of death was determined for only 24 of them.

Cr Sellers has, on three occasions, asked the Minister to make every autopsy result public, in order to reduce speculation and provide the community with a clearer view of what is happening in the harbour.

From The Townsville Bulletin OCT 21st

Dozens of turtles caught at Edgecumbe Bay have been infested with tumours believed to be caused by a herpes virus.

The virus is similar to the disease that causes cold sores in humans.

In the turtles' case, however, the tumours have been interfering with organs and damaging their eyesight.

"It's a very small area, the area we're studying in Bowen, but every second turtle we've caught has shown signs of the disease," she said.

Since January, there have been nearly 1000 of the marine reptiles stranded on Queensland beaches, most of them dead. In comparison there were 538 turtle strandings during the same period last year.

It is suspected the turtles have been dying due to a lack of seagrass, which was decimated during the floods and Cyclone Yasi.

From a DERM web page created in 2007

Threats to turtles

Besides ingesting marine pollution, diseases can also be fatal for turtles.

Diseases caused by bacteria, viruses and parasitic worms may cause a gaseous build up in their intestines and prevent them from diving. A number of turtles in Moreton Bay are infected with a disease called "**Green turtle fibropapilloma disease**" which causes tumours to grow on and inside the turtle and may even result in death. While the cause of this disease is not currently known, evidence suggests pollutants and toxicants in the water may trigger these tumours.

TCP Comment

In research for this article it seems claims that marine animals are dying off from starvation may not add up. No specific numbers could be found but search results focus on the coast between Wide Bay and Townsville. The hot spot being from Gladstone to Townsville. While these areas had flooding, Gladstone for example, certainly didn't have the flooding that other areas, not reporting the kind of die offs reported from that harbour, had. TCP was not able to find reports of significant die offs similar to those in Gladstone from areas around and north of Cairns where the greatest flooding occurred.

The excerpt from an old DERM webpage lower right describes symptoms similar to current reports that are being blamed on sea grass shortage. In that archived reference, "pollutants and toxicants" are connected to tumours and other diseases.

All the areas that are reporting significant turtle, dugong and other sealife die offs, are on the coast where there are coal loading facilities and/or major river systems that have coal mining activity adjacent to their beds.

During the floods last season the state government gave mines "permission" to discharge their holding lakes of AMD, (Acid Mine Drainage), into the flooded rivers. For more on AMD, see; www.thecoastalpassge.com/amd.html

Just north of Bowen is Abbot Point, one of the largest coal loading ports on the coast. Abbot Point has undergone extensive enlargement in recent years as a new rail link has brought in much more coal. Other areas of concern are Townsville, Hay Point south of Mackay, The Fitzroy River, Gladstone is concentrated industrial activity and finally Bundaberg Port which we believe will soon be shipping coal from new mines opening in Maryborough. The local residents don't want it, the local state representative says he is against it but in our experience, if a coal mine wants it, that's it.....

From an ABC report October 20, 2011

Marine researchers will begin tagging healthy turtles off the north Queensland coast this week to learn more about a deadly herpes-like virus.

Last year, a number of turtles were found off the coast of Bowen, south of Townsville, with a **deadly virus known as fibro-papilloma**. (TCP note; see quote at lower right concerning the disease. Bowen is near a large coal loading facility)

World Wildlife Fund spokesman Cliff Cobbo says the organisation is joining forces with James Cook University researchers in north Queensland to study the disease in the next three years.

"At this point in time there are only a couple of hot spots of the type of fibro-papilloma along the Barrier Reef," he said.

The researchers are hoping the tagging system will help them pinpoint the origin of the disease.

Mr Cobbo says the virus is an added concern on top of the recent sightings of hundreds of sick and dying turtles along the coast.

Gladstone Harbour A Poison Pit?

and taking the reef with it?



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This photo from Gladstone fish markets shows sharks have also been affected along with other breeds when the government only provided their explanation for the harbour's Barramundi stock. A wide variety of creatures that have been exposed to harbour waters have shown these rashes including humans. TCP advises yachts travelling near Gladstone to avoid contact with the water if you can. TCP also expresses thanks to the Gladstone Fish Market and professional fishermen for putting our health ahead of their income by refusing to supply fish they are concerned about.

More on this story as it develops. Many feel that the events at Gladstone and government plans for a similar development in Bathurst Bay in the north end, may be the final battleground for the future of the reef. do you have photos? story? email us!

<mailto:mail@thecoastalpassage.com>

Government Exonerates Gladstone Port Development but Public Isn't Buying It

Queensland Fisheries Minister Craig Wallace says there is no loophole in the monitoring process.

"There's about 1,800 separate sets of approvals for this particular dredging to take place," he said.

"Regular water testing - not only by Gladstone Ports Corporation but the Department of the Environment and also Queensland Health - and we cannot find any concerns with water quality in the harbour - certainly concerns that might affect fish health."

"Loophole"? Independent water quality expert, **Jon Brodie, told the ABC's "Four Corners" program** the report has serious limitations.

"Water quality is a really complex business and there's lots of different contaminants," he said.

"So although you can do some water quality investigations and come up with some crude interpretation, if you've got biological effects still going evidently I'd say the fish tell a truer story than the water quality data does.."

In other words, there are a plethora of potentially dangerous contaminants that have NOT been tested for.. or results from those specific test were omitted from the report. All testing thus far has been done by state agencies and locals are calling for true independent testing.

"Queensland Seafood Industry Association (QSIA) president Dr Michael Gardener said the reports left many questions unanswered and reiterated his call for independent experts to be brought in to carry out testing."

Up to 20 fishermen have issued statements to Queensland Health telling of painful boils on their arms and legs.

Medical doctor and Queensland Seafood Industry Association president Michael Gardner believes the fishermen developed the sores when the harbour water infected cuts and abrasions.

But Queensland Health said the department had interviewed several of the fishermen, but there was no evidence of a common cause.

Gladstone Observer, 1st November 2011

GLADSTONE Harbour is like a "person dying of terminal cancer"

At yesterday's council meeting, Cr Cameron gave a councillor's report about the state of the harbour, saying he had tried to find out where a 'dead harbour' would fit in with other environmental disasters.

He said the scientists' reports being conducted were 'mumbo-jumbo' and that he would go on what he could see. *"That is being left out of the equation. The harbour is a mess,"* Cr Cameron said.

"We've let our harbour die on our watch." He maintains that *"we will mess around with the scientists" and then they'll say "oops, sorry".*

Recent Posting on local Gladstone blog site, one of many of this tone

(quoting from local news report) "Up to 20 fishermen have issued statements to Queensland Health detailing painful boils that cover their legs and arms..."

"... this is more than a coincidence and it's not an isolated event."

This is just yesterday, remember...

And yet, today we have our enlightened, concerned, oh-so-transparent government re-opening the harbour to fishing and saying, "Everything's fine. Nothing to see here folks... move along, move along..." Unbelievable. Incredulous.

You don't have to be a genius to smell a cover-up. A very bad one, at that. I would not be going within cooee of that water, let alone touching or TASTING it or the fish, or working in or near it. And EATING the fish caught in Gladstone harbour...?

Not if it was the last fish in Australia. 20 sick fishermen and dead and dying sea life everywhere is more than enough for me. I don't care what the stupid, lying government says.



Neil Aboard his Terengganu junk, Burong Bahri

Neil Parry photo

Customs Apologises to Neil Parry

Bob Norson

Neil Parry could have taken the easy way out and just let it go but he felt he had to stand on the principles. It took many months and tens of thousands of dollars to pursue the issue but every Australian owes the gentleman a debt of gratitude.

As Neil said to TCP: "The money came easily but the apology was hard fought for. I don't think they will be bothering me again but it's a shame I can't say that about the rest of the yachting community!"

TCP hopes the "yachting community" may be safer in that Customs CEO, Mr. Carmody may have been less than happy about signing the letter below and perhaps the agents under his administration will be less inclined to create a situation that warrants another one.

Mr Parry's detailed complaint as sent to the Ombudsman, who gave him the flick back to Customs, and to his MP, Damien Hale, who NEVER BOTHERED TO RESPOND, is published in full in the E-TCP of this edition.

As Reported in TCP #46: Sailor Jailed by Customs for Smuggling..... Pantene Shampoo?

The Report:

Neil Parry is a professional skipper and yachtsman with many border crossing with Customs until 2010. When he arrived on a flight into Darwin from Singapore last June 4th and a customs inspector demanded the pass word for his lap top; he refused.

After that things got very hostile according to Neil. His bottles of shampoo and hair conditioner were taken away and customs "tested" them and reported finding they had 1.6 kg of MDMA or "Ecstasy" in them according to an ABC report of June 11.

Whilst he was imprisoned, his boat was searched where it was berthed. Although Neil claims to have provided a contact that

would open the boat for them to inspect, they broke into his vessel by smashing it open, tossed it, then leaving it open when they left. Neil claims also that some of his acquaintances had their homes searched as a result of the charges against him.

He remained in jail until the 7th when he was able to arrange bail and then summoned back to court the 9th to have his case dismissed. TCP understands that the contents of the two bottles was examined by the AFP and found to contain... Pantene Shampoo and conditioner.

Neil as quoted in the ABC report; "Anyone can be locked up at anytime without having done anything and it's not right,"

The ABC also reported that "The Australian Federal Police and Customs have not responded to the ABC's request for an interview."

Mr Parry wants an explanation and apology.

My final statement on Australian Customs and the Government responsible for them

by Neil Parry
25th November 2011

I was arrested, incarcerated, charged in court with criminal offences and threatened with life imprisonment for a nonexistent crime of which there was no evidence.

I have never been involved in the drugs trade or any criminal activities whatsoever and at 58 years of age do not have a criminal record of any sort.

After 17 months and over \$50,000 in legal fees I have been able to induce an apology from the people responsible. Otherwise, the next step would have been Supreme Court action

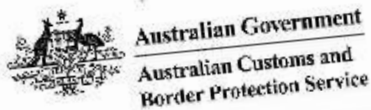
The \$100,000 paid is not compensation but serves only to cover my costs and that of my legal team. They even have the audacity to withhold \$10,000 until they can be sure I have not claimed any treatment for my distress through Medicare or similar.

Customs still claim it was all a mistake in their statements to the press. There was never any evidence and the accusations were totally false. This should not be called a mistake; the only mistake was that it was all so poorly done.

These people who claim they are here to protect us are the very ones we should be afraid of; their arrogance is only surpassed by their incompetence. I have become completely disillusioned in the integrity of the Australian Government and their henchmen who would have us believe they are the champions of human rights and yet treat their own citizens and those who come under their control with contempt. These same authorities are well known throughout their short history (TCP note; and around the world) for their arrogance and obviously this arrogance still continues today.

What I find most distressing is the vigour and the methods Customs and their legal team employed in defending their actions.

I sincerely believe my only crime is that of being a yachty which makes a mockery of the authorities' ideas on security and the way of life to which they insist we should conform. I view those involved in this incident, those responsible for them and those who would defend them with complete contempt for what they are doing in the name of my country.



Australian Government
Australian Customs and
Border Protection Service

Customs House
5 Constitution Avenue
Canberra ACT 2601

Dear Mr Parry

The Australian Customs and Border Protection Service (Customs and Border Protection) unreservedly apologises to you for its staff not following correct procedures in testing which resulted in your belongings wrongfully being identified as containing a prohibited substance.

We apologise for the distress you suffered and for the following consequences:

1. your being detained and held in custody by Commonwealth Officers; then the Northern Territory Police; and then the Northern Territory Correctional Services at Berrimah Gaol between the 4th and the 7th June 2010;
2. your being charged with charges that should never have been laid;
3. your being charged with importing 1.6 kgs of a prohibited substance when in fact there was no evidence of any such substance, or in fact a substance of any such weight in your belongings;
4. objections being made to your application for police bail on 4th June 2010;
5. the prosecution resisting your bail application in the Darwin Magistrates Court on the 7th June 2010 and wrongly submitting in open Court that you:
 - were facing a potential penalty of life imprisonment; and
 - are charged with having brought into the country 1.6kgs of MDMA; and
6. police conducting forceful and invasive searches of your yacht and the homes of your two friends in Darwin.

We acknowledge that these events have caused you considerable stress and anxiety; that they have caused you deep humiliation and hurt and have had a detrimental impact on your reputation in the Darwin community at large and in the sailing community in particular; and your sense of well-being and security in Australia and Australian waters.

We offer you this written apology and agree to consent to judgement in the Supreme Court proceedings that you have instituted requiring payment to you of the sum of \$100,000 (all inclusive) by way of some reparation.

Yours sincerely

Michael Carmody
Chief Executive Officer
21 November 2011

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Neil Parry's complaint

Burong Bahri



24th June 2010

Complaint against Australian Customs which resulted in my False Imprisonment.

Dear Sir,

I am a resident of Darwin of thirty two years and have been living aboard my sailing vessel Burong Bahri which I imported and registered in Darwin in 1981. During this time I have flown and sailed in out of Australia many times without encountering any major problems until June this year when the following incident occurred:

4th June 2010 Arriving in Darwin at 04:20 hrs onboard the Jetstar flight from Singapore things went normally until on approaching the Customs check point I was quite purposely led aside for a check of my bags. The young officer who was assigned to job was polite and friendly but was quite invasive in his search, removing my laptop, opening it, turning it on and then requesting the password. I was indignant at this and said so; possibly a little roughly as by this time as I hadn't slept for 24hrs and was eager to depart the airport for a cigarette and rest. I refused his request. The officer then left the room taking my shampoo and conditioner bottles with him and didn't return until all the other passengers had left the area. I was then asked to repack my bags and handed my shampoo and conditioner bottles. I was in the process of repacking these items when another older officer asked for them again and left the room with them. This officer's attitude was quite hostile although he said very little I judged from his body language that he was acting suspiciously and it was then that I first began to feel that something was amiss. I inquired at the time as to who this officer was and was informed that he was the shift supervisor.

I was then informed that both the shampoo and conditioner bottles had tested positive for traces of MDMA and that I was under arrest. I was flabbergasted; these hair products had been purchased in Darwin before my departure and I had washed my hair with them the previous morning before my departure from my hotel. I inquired as to what tested positive, the outside of the bottles or the contents and I was informed that it was the contents. I was then led into another room where I was cautioned by pointing to a poster on the wall and told to read it. I was held in this room with two guards until the Federal Police arrived at approximately 08:00 hrs.

The two Federal Police Officers then escorted me to Customs House in Lindsay Street in the city and into an interview room. I was asked if I wished to contact anyone and repeatedly stated that I wished to contact my friend Phil Bell who was at the airport at the time of my arrival to pick me up and who is the occupier of my home when I am away. This request was repeatedly refused. I was also asked if I wished to call an attorney which I declined as I do not have an attorney and had no idea as to how to go about this or who to call. At no time was I personally searched internally or externally apart from a quick frisking by the Federal Police before leaving the airport and my wallet remained in my back pocket untouched until approximately 16:00hrs. I was questioned over the next eight hours during which time I was completely cooperative with the officers expecting at anytime to be released with an apology. This was not to be.

During this time Phil Bell's and other friend's homes were searched as was my yacht Burong Bahri in Tipperary Marina which is my place of residence. Although I had given the phone number of the occupier of the yacht for the Police to contact to obtain the key they chose not to do this instead breaking into the boat with impunity, completely trashing the contents and leaving it unlocked when they left. They later stated that they had repeatedly tried to contact the occupier by telephone but he failed to answer, this is quite clearly and provably

untrue.

At approximately 16:00hrs after being without sleep for 35 hours I was then informed that I would be taken to the local watch-house and handed over to the Territory Police. While at the watch-house I received a phone call from a magistrate asking me to give him reason why he should grant me bail. I had no idea what to say and by this stage I wasn't in any condition to be considering any legal arguments. Bail was flatly refused before I could muster any rational response. At approximately 18:00hrs I was taken in a paddy wagon to Berrimah jail where to my consternation I was to spend the next three days.

7th June 2010 At 07:00 on Monday morning I was escorted handcuffed to Darwin Courthouse. The prosecutor read the charges and opposed bail citing that I could be facing life imprisonment for the import of 1.6kg of MDMA. It should be noted that the shampoo and conditioner bottles were marked as 800ml bottles and were approximately one quarter full which would have weighed approximately 0.4kg had they been weighed and supposedly they had tested positive for traces of MDMA only. Also the shampoo and conditioner are quite different products with no complex chemicals in common (see chart below); the possibility of the two items failing four separate so called presumptive tests of different types is hardly likely. Have Australian Customs not tested Pantene Shampoo and Conditioner previously and ascertained the reliability of their tests in these substances? My appointed Legal Aid Attorney, Helena Blundell pled my case realistically and I was released on bail of \$10,000 cash to be paid before the close of business the same day with another surety of \$10,000 and a surety from an associate of \$5,000.

9th June 2010 I was contacted by my attorney at approximately 17:00hrs informing me that all charges were to be dropped and that I was to appear at Darwin Magistrates Court at 10:00hrs the following morning.

10th June 2010 I appeared before the magistrate at Darwin Courthouse where all charges were formally dropped. I then presented myself to the cashier at the front desk expecting my \$10,000 bail money to be returned but was informed that a cheque would be posted to me in approximately three weeks. It arrived seven weeks later!

This incident appears to stem from a single officers aversion to me and his imagined suspicions. I wouldn't be so upset if I was doing something illegal, but I have never done anything like that in my life and I never would for both moral and law-abiding reasons. It should be noted that I do not have any previous convictions for any crimes and consider myself to be a law-abiding citizen. I do believe that a customs service is necessary and that importing of illegal substances into our country is of primary concern but at what expense to those of us who do take the law seriously? What I do question is the intimidating and invasive way it is done.

In a separate incident with customs in February 2010 on arriving in Darwin from Malaysia and Indonesia alone aboard my sailing vessel Burong Bahri, eight officers arrived onboard dressed in dark military uniforms with heavy boots and guns accompanied by two dogs and proceeded to ransack my yacht instructing their dogs to run freely across my bedding etc. Four people down below on a 33 foot vessel in the wet season heat I Darwin is not likely to produce a very efficient search and if searching is not their prime motive for being

onboard in this manner then what is? Some form of intimidation?

I was given a bizarre questionnaire to complete suggesting that piracy is rife in Indonesia and asked to add to these rumours. This I feel to be quite offensive and I question the motive of any authority which propagates such rumour mongering. In the 30 years I have been sailing Indonesian waters I have never experienced anything but warm hospitality from the Indonesian and Malay peoples and their authorities nor have I spoken to anyone who has experienced any real threat in Indonesian waters and I suggest that the most intimidating people I have ever come across in my travels are the Australian Customs themselves. In light of this latest incident one wonders if Australia would pass the standards placed on other countries when issuing travel warnings to tourists.

Of course I have a problem with the one customs officer who I believe set this latest incident in motion and expect criminal charges to be brought against him if any wrongdoing is proved with his immediate removal from the customs service as an example to other officers tempted to abuse their powers in this way. I do however realise that this type of behaviour is inevitable as power can corrupt even the best of individuals.

The real problem I believe lies with the controls, or lack of them, that allow innocent citizens and their friends to have their whole lives torn apart; the authorities ransacking their homes, searching bank records, copying the contents of computer hard drives, confiscating property, withholding cash, making public accusations and incarcerating them without any concrete evidence of any crimes. Is this the way to behave in what is supposedly an advanced society or is this particular commonwealth department unconstrained by Australian values?

I am quite unsettled by all of this and am feeling somewhat insecure. Suggestions from friends that we as a group are likely to be subject to future harassment if I continue with my complaints against Australian Customs only serves to compound these feelings. Further to that the impact on my good name, which my career as a freelance Shipping Master is very much dependent, has yet to be considered.

I strongly believe there should be an immediate public inquiry into the operation of Australian Customs in general and a review of the laws which allowed this incident to take place in an effort to prevent this sort of disturbing storm trooper type behaviour from becoming the norm.

I give thanks to the Federal Police who I believe rescued me from Australian Customs and to all other authorities involved in this case for their respectful behaviour towards me with a special thanks to Helena Blundell my Legal Aid Attorney for her perception and impressive participation in this case. I would appreciate your attention to this matter as soon as is convenient.

**Yours sincerely,
Neil Parry**



And TCP would add, more profitable?

Last issue TCP featured an article on the "mysterious" demise of the turtle population along the coast but apparently concentrated in Edgcombe Bay near Abbot Point coal terminal and Gladstone. The following clips from various news sources should tell the story. Why would industry spend millions on protecting the environment as they industrialise the Great Barrier Reef?

From website earthmover.com

New shiploader for Abbot Point complete! John Holland has completed the \$52m Abbot Point X50 shiploader SL2 project for North Queensland Bulk Ports. The shiploader construction forms part of a **\$287m dual contract awarded to John Holland by North Queensland Bulk Ports** in August 2008. When installed and operational, it is expected to boost coal loading capacity at the Abbot Point terminal to a peak average rate of 7,200 tonnes an hour.



Abbot Point Coal Terminal

ABC radio Broadcast:

Friday 14 May 2010 6:30PM

Documents filed this week in the Magistrates courts of Bowen and Mackay in Queensland allege that construction company John Holland Pty Ltd and the John Holland Group have breached the state's Environmental Protection Act. The complaints relate to work undertaken to expand the coal-loading ports of Dalrymple Bay and Abbott Point. In court documents lodged in Bowen, and obtained by *The National Interest*, the Queensland Department of Environment and Resource Management details 11 alleged breaches of the Environmental Protection Act at Abbott Point by each company - 10 counts of **'wilfully contravening a development condition of a development approval'** and one count of **'willfully and unlawfully causing material environmental harm'**.

In documents filed in the Mackay Magistrates court, the Department of Environment allege that John Holland and John Holland Group each committed 27 breaches of the Act at Dalrymple Bay. The action launched by the Queensland government is unprecedented - the maximum **finest payable could be in excess of \$68 million.**

From the website of Australian Mining

Contractor pleads guilty to environmental breaches

29 November 2011

The Queensland Department of Environment and Resource Management (DERM) may level its maximum fine of \$5 million at the company, however a fine of between \$180 000 and \$220 000 is more likely, [the Daily Mercury reports](#). Despite 76 charges being laid against John Holland, the DERM will only pursue seven charges over environmental breaches.

The company reportedly consistently failed to capture abrasive sand blasted from metal and plastic structures at the coal loader terminal extension projects. Heavy metals are also believed to have been mixed with the discharges, such as zinc and barium.

These breaches occurred from September 2008 until June 2009, and while the company was warned of its environmental transgressions, it allegedly did nothing until the DERM inspections were instigated.

The company has been fined \$195 000 company reportedly consistently failed to capture abrasive sand blasted from metal and plastic structures at the coal loader terminal extension projects,

From E-TCP 51

What is Killing Our Turtles???

From an ABC report October 20, 2011

Marine researchers will begin tagging healthy turtles off the north Queensland coast this week to learn more about a deadly herpes-like virus.

Last year, a number of turtles were found off the coast of Bowen, south of Townsville, with a **deadly virus known as fibro-papilloma**. (TCP note; see quote at lower right concerning the disease. Bowen is near a large coal loading facility)

World Wildlife Fund spokesman Cliff Cobbo says the organisation is joining forces with James Cook University researchers in north Queensland to study the disease in the next three years.

"At this point in time there are only a couple of hot spots of the type of fibro-papilloma along the Barrier Reef," he said.

The researchers are hoping the tagging system will help them pinpoint the origin of the disease.

Mr Cobbo says the virus is an added concern on top of the recent sightings of hundreds of sick and dying turtles along the coast.



From a DERM web page created in 2007

Threats to turtles

Besides ingesting marine pollution, diseases can also be fatal for turtles. Diseases caused by bacteria, viruses and parasitic worms may cause a gaseous build up in their intestines and prevent them from diving. A number of turtles in Moreton Bay are infected with a disease called **"Green turtle fibropapilloma disease" which causes tumours to grow on and inside the turtle and may even result in death. While the cause of this disease is not currently known, evidence suggests pollutants and toxicants in the water may trigger these tumours.**

Reflections

By Alan Lucas, SY Soleares

Great Barrier Grief

I have an affinity with Gladstone: it was where I had my first job in Queensland (at the meatworks just before it was bulldozed for the alumina refinery), then a couple of years later I worked for concreter, Roy Wolfe, pouring the Moura coal pile pad near Auckland Point after which I helped Bob Grant rebuild his resort's dining room on Quoin Island whilst refitting my 31-foot ketch for charter.

In 1972 I bought my second yacht as a bare hull and fitted her out in Norm Hurley's yard on the banks of Auckland Creek, then to cap it all I discovered that my Great Grandfather, Francis Peter MacCabe, was the first person to survey Gladstone during the 1860s. Conjuring up images of Great Grandad setting up his instruments in bush and mangroves, digging a deep well up the Calliope River for his drinking water and laying out the town streets, I feel betrayed by the mindless industrialisation of my very special part of Queensland.

In the last fifty years, Gladstone has become a no-holds-barred resources boomtown with an ever-widening chasm between the wishes of multi-national corporations and those of local residents. And now, with increased coal-loading capacities and Curtis Island becoming part of the industrial landscape, there is outrage that governing bodies failed in their obligation to advise World Heritage under which the Great Barrier Reef and its islands are listed.

Officially, I could find only good-news corporate press releases in Gladstone, so I spent my time randomly chatting to locals to find not one citizen happy about events. There were life-long residents planning to move out because their quality of life had eroded; complaints galore about air pollution; the meteoric rise in the cost of living; permanent caravan park residents evicted after their park had been bought by industry to house its workers; local recreational sailors

fed up with having to report their every move to a very busy Harbour Control and skiff sailors worried about how races might be run if industry restricts them to Auckland Creek. I even found a number of employees of the Liquefied Natural Gas plant on Curtis Island shocked by the devastation they had become part of, and if we add the outraged farmers whose land has been taken by coal seam gas drillers, a sense of doom prevails about the Great Barrier Reef in general and Gladstone in particular.

Those who complained about Gladstone's atmospheric pollution have our sympathy because Patricia and I spent two weeks on a swing mooring last October bucketing off coal dust on a daily - and sometimes hourly - basis. Even after a full wash-off, the fallout was so bad we walked coal dust into the cabin if we didn't rinse our feet then for weeks after departure we scrubbed coal-blackened hands after every contact with ropes and sail covers.

The act of washing coal dust off the deck of a recreational vessel highlights the contrast between the rights of corporations and the rights of individuals because, under EPA rules and regs, we could have been *deemed to be changing the chemical characteristics of a waterway* and be heavily fined. I'm not kidding. An early example used in EPA officer training after the Clean Water Bill was passed was that a person seen lifting a bucket of water aboard a boat and then tipping it overboard again was liable to a heavy fine on the *assumption* of having changed the water's chemical composition.

The clean water act, when stripped to its bare bones, is frighteningly undemocratic. In essence, it states that **NOTHING CAN BE PLACED IN THE WATER**. So how does this fit with corporate behaviour? Is dredging millions of tonnes of spoil 'nothing in the water'? Is black dust blowing off coal loaders 'nothing in the water'? Are diseased fish 'nothing in the water'?



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What appears to be extraordinary laxity in policing this rule is opening the floodgates to an explosion of resource development along Queensland's coast, all of which will threaten if not be situated in - the *Heritage Listed* Great Barrier Reef.

As well as the four LNG plants being built on Curtis Island, coal loaders are planned for Port Alma, Balaclava Island (both on the Capricorn Coast) and Bathurst Bay, the latter being the most contentious of them all because it is theoretically at least - situated in a National Park as well as being an inseparable part of the Great Barrier Reef.

Bathurst Head is Princess Charlotte Bay's eastern sentinel over one hundred miles north of Cooktown where it looks out over the pristine Flinders Island Group and some of the best coral formations on the coast. The headland is the pointy end of one of three National Parks, which will need to surrender in one way or another to resource barons and royalty-hungry governments.

It may well be asked, how is it possible that anyone in their right mind can even think about industrialising the far north, let alone overriding both National Park and Marine Park legislations? Surely, we might well ask, how can this happen?

Sadly the answer is 'easily' - and here is why.

Bathurst Head is a National Park in concept only. It is sandwiched between Cape Melville and Lakefield national parks and was originally Kalpower Cattle Station that came under the protective umbrella of National Parks and Wild Life in 1994 with a 'Permit to Occupy' and act as conservation manager. Regrettably, there remain a scattering of private landowners, councils and traditional

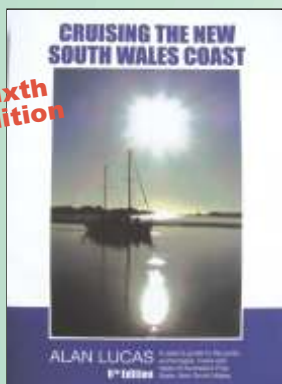
owners standing in the way of true National Park status. Furthermore, according to my information, amongst the traditional owners there is a minority who actually want the coal loader.

National Parks and Wildlife usually struggles for funds, giving it little to no power to block an avalanche of multi-billion dollar investments, facts that make the building of a coal-loader at Bathurst Head a probable fait accompli - especially with the added economic argument of being close to Chinese markets.

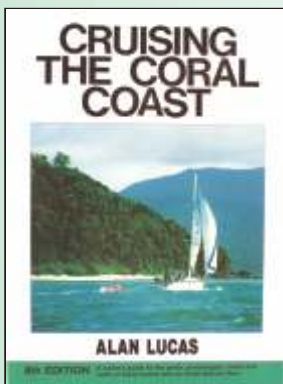
It's interesting that during the right-wing National Party's reign of the 70s-80s, the rights of individuals were regularly over-ridden in favour of rampant development. How can we forget Brisbane's heritage listed building that the government bulldozed in the dead of night, or Russell Hinze who became known as the 'Minister for Everything', or Premier Belke Petersen's brown paper bags of 'donation' money. It was an ironic circumstance, therefore, that another right-wing party, the Federal Liberal Government, stopped the National's blind determination to drill the Barrier Reef for oil, then established the Great Barrier Reef Marine Park Authority to stand guard over one of the world's most unique and delicate natural structures.

Now, with reigning Labour Governments swinging further right than Genghis Khan, we see their protection of the reef surrendering to the lure of resource royalties. No one seems to understand that humans cannot exist if they destroy nature. Governments need reminding that nature is a precious capital base, not something to mindlessly sacrifice on the alter of the open market. As a place of natural beauty, we're already kissing the Capricorn Coast goodbye: will the entire Great Barrier Reef be next?

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If AQIS-DAFF-Bio-Security (whatever) are confident of the facts regarding their protocols; **WHY** are they lying about yachts??

That government lies to us is no profound revelation. It is an habitual occurrence and the one fortunate thing about it is that they are so seldom called to account by Australian media, that they got lazy about it. In years past a lie was an easy thing but now there is so much published information that to construct a good quality lie, a good deal of work is involved, beginning with government agency websites!

A quote from a letter (see letter below) from **Bio-Security** to an enquiring yachty:

Cruising yachts can also pose a high risk due to the exotic locations they visit, as was found in 2007 when a cruising yacht is attributed with introducing the Asian Honey Bee to Australia.

A quote from the **Department Of Primary Industries** website:
http://www.dpi.qld.gov.au/27_12662.htm

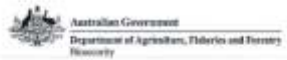
*The strain of Asian honeybees found in Cairns is the Java strain, which is common in Asia, particularly in Indonesia and Papua New Guinea. These bees probably arrived in shipping containers from our northern neighbours and **managed to elude quarantine processes** to remain undetected.*

Further research by TCP reveals that due to this bee's feeding habits, they would be unlikely to survive a voyage aboard a yacht.

Customs and so-called, Bio-Security inspect only a small fraction of containers entering Australia but every yacht. TCP hardly considers Asia, specifically Indonesia and Papua New Guinea as being "exotic locations".

"..managed to elude quarantine processes.." Indeed. Bio-Security utterly fails in it's duty and goes shopping for a soft target to blame for their failure and a justification for the excessive entry and treatment fees that have made Australia a pariah state for the international cruising fleet.

Let's repeat that: "Every Yacht" entering Australia is inspected and charged a large fee. Maybe one in ten containers gets a brief look in. According to TCP research NO yacht has been found entering Australia with these bees though a local Cairns yacht was one of the first victims of an already swarming local population of them.



Let's take another look at that one paragraph from the DAFF letter, shall we?

Cruising yachts have traditionally been assessed as posing a high quarantine risk due to their construction and predisposition to high risk exotic timber pests such as borers and termites. Cruising yachts can also pose a high risk due to the exotic locations which they visit, as was found in 2007 when a cruising yacht is attributed with introducing the Asian Honey Bee to Australia. Under the *Quarantine Act 1908*, DAFF Biosecurity is tasked to prevent new pests and diseases from arriving to Australia and help control outbreaks when they occur. Our records also indicate that the number of cruising yachts visiting Australia has not declined in recent years.

Dear
Thank you for your email of 17 December 2011 to the Hon. Martin Ferguson AM MP, Minister for Tourism, about the yachting industry and your concerns regarding the declining visitor numbers to Australian ports. Your correspondence has recently been forwarded to the Department of Agriculture, Fisheries and Forestry (DAFF Biosecurity, formerly known as AQIS). I have been asked to reply as the officer responsible for biosecurity clearance of cargo and shipping to Australia and I apologise for the length of time taken to respond to you.
I appreciate your concerns about the cost of biosecurity clearance and welcome the opportunity to explain our approach.
Australia is home to around 4000 fish species, 1700 coral species, 80 types of marine mammals and a wide range of seabirds. About 80 per cent of marine species found in southern Australian waters occur nowhere else in the world and we are one of the 17 biological mega diverse countries which collectively host more than 70% of the Earth's species.
The Australian community and the Australian Government are committed to protecting Australia's biosecurity and DAFF Biosecurity is responsible for operating services around Australia to assess and manage biosecurity risks which may adversely impact on our unique environment and the ongoing prosperity of our agriculture, trade and tourism.
I accept that most recreational yacht owners are strong advocates for biosecurity. However, the cost of operating a national biosecurity operation is complex and expensive. All commercial and non-commercial maritime vessels visiting Australia are assessed and vessel inspections are conducted based on the known risk posed by the particular type of vessel.
Cruising yachts have traditionally been assessed as posing a high quarantine risk due to their construction and predisposition to high risk exotic timber pests such as borers and termites. Cruising yachts can also pose a high risk due to the exotic locations which they visit, as was found in 2007 when a cruising yacht is attributed with introducing the Asian Honey Bee to Australia. Under the *Quarantine Act 1908*, DAFF Biosecurity is tasked to prevent new pests and diseases from arriving to Australia and help control outbreaks when they occur. Our records also indicate that the number of cruising yachts visiting Australia has not declined in recent years.
Through a long standing arrangement with the Australian government, DAFF Biosecurity operates on a fee for service cost recovery basis. All guarantee fees and charges are prescribed in the *Quarantine Service Fee Determination 2005*, with Part 5 of the Determination applying to maritime vessels. DAFF Biosecurity fees and charges are calculated to recover the actual time spent inspecting each vessel. This arrangement ensures that the cost of running a national system to protect Australia's biosecurity status is shared by all vessels arriving in Australia.
DAFF Biosecurity is continually reviewing our approach to the assessment and management of biosecurity risks. Your comments and observations have been noted and will be taken into account in our next formal review.
A positive partnership with the cruising yacht community is essential and I hope that we can engage more regularly and constructively with you and your peers on this important matter.
Thank you again for bringing your concerns to our attention.
Yours sincerely
Cargo and Shipping
Department of Agriculture, Fisheries and Forestry (DAFF) Biosecurity
29 February 2012

...Yachts...traditionally assessed as.. high risk..? That is stupid or dishonest on the surface of it. The very nature of a relationship of vessel to crew in the case of a yacht makes that improbable. A yacht is the major investment to a cruiser and the thing that stands between life and death. What of ships owned by a syndicate of foreign suits crewed by third world peasants? A ship that despite it's steel hull contains enough timber fitout and cargo to equal every timber yacht in the Pacific? A ship that can transit continents in a fraction of the time a yacht can to deliver foreign species by the ton in time for the critters to survive? According to an ABC report on file "Bio-Security" doesn't consider those vessels a threat. It wasn't a yacht that brought the Fire Ant invasion to Australia that is currently costing millions in a vain attempt to control and it wasn't a yacht that brought in the bees.
It was the failure of Bio-Security to address the known high risk of commercial shipping.

...such as borers... does the government mean marine borers? If so the claim is laughable! Timber yachts have been the victim of marine borers such as Teredo that were spread throughout the globe by timber ships and floating logs centuries before "yachts" existed in Australia.

...and termites... Australia is already well endowed with a variety of native termite species including the "drywood" types like *Cryptotermes primus* found from North Queensland to southern NSW. There are many species of Native Drywood Termites in Australia, and identification of species is a specialist task. Foreign invaders like; "*The West Indian drywood termite Cryptotermes brevis* was first reported in Australia in Queensland in 1966 and it is now endemic in Brisbane, Maryborough and Rockhampton. A fumigation program initiated by the Queensland Government in 1976 has resulted in the treatment of almost 600 buildings and many items of furniture. On average 10 buildings are fumigated annually at a cost of around \$500,000. The termite is also found occasionally in Sydney but it is not established. Most occurrences are in transportable household timber items." The preceding is quoted from a NSW DPI alert. Notice yachts are not mentioned in the quote nor the rest of the report. Imported timber furniture is the focus of the alert.

".... yachts visiting Australia has not declined in recent years." Define "recent years". The number of visiting yachts has plummeted since 2007. Since the first attacks against entering yachts by Australian Customs exposed to the international yachting community by The Coastal Passage, the fleet has been steadily diminishing. Subsequent reports from individual yachts and even world cruising rallies have debunked the propaganda efforts of the Australian government and boating media to convince skippers that the *victims* were to blame.

WHY? Why this monumental miss-allocation of resource directed at yachts when known and proved high risk shipping is ignored? WHY? Why do most all departments of government focus so much attention on yachts?

Hoping for Change?

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A Letter to the new minister for Transport on behalf of the Queensland Boating Industry

**To: Hon Scott Emerson MP
Member for Indooroopilly
Level 15, Capital Hill Building
85 George Street
Brisbane QLD 4000
GPO Box 2644, Brisbane QLD 4001
Sent via email April 26 2012**

Dear Mr. Emerson,

First of all, congratulations on your government's spectacular performance in the recent election. Not to take away from the effort in the campaign but it is no secret much of Labor's loss was self inflicted. A lot of Queenslanders had been personally affected by the previous government and many cautiously hopeful eyes are now turned your way. The LNP government will either succeed or fail spectacularly. I don't believe Queenslanders will accept platitudes or gestures. Your government must make reforms as quickly and as publicly as possible. The marine industry offers the low fruit in this regard.

Many agencies of government will require budgets and time to make a visible turn around but not the marine industry. Many injustices perpetrated upon land owners or other groups must be balanced against the investments of the private sector. Difficult settlements must be negotiated and resolved, but not with the marine sector.

The Queensland marine industry, especially associated as it is with tourism, offers the opportunity to government to visibly benefit the people of Queensland with the stroke of a pen.

It would be hard to find a sector of the state economy more adversely affected than that of recreational boating, particularly the more lucrative cruising yacht fleet. Oppressive and redundant intrusion by a litany of overbearing regulators have driven thousands away from the lifestyle, either abandoning it altogether or driving them to leave the state or country. Malaysia and Thailand (for example) are very pleased to accommodate the ex-pat fleet and the income that provides for their economies. In the name of "safety" but not remotely related to that in fact, Queensland suffers directly in lost domestic and international trade because of our reputation as officious and overly bureaucratic.

For years *The Coastal Passage* has been publishing features by respected experts in law and enforcement that have been critical of marine enforcement agencies, particularly Marine Safety Queensland (MSQ). The recent government was fond of providing vague legislation that left the agency with an argument even on the very fringes of interpretation. On many reported occasions, officers of the agency have gone well beyond the law, reliant on intimidation but in spite of that, individuals have stood up to them and persevered.

Whilst some sectors of the economy enjoy government support far beyond their value, the marine industry often suffers harassment and attack as illustrated by a law suit we understand has recently been filed against MSQ by Peter Kerr of Lizard Yachts that alleges interference with an important contract by MSQ personnel. If this charge is proved true, it means a potential boat building industry in Tin Can Bay was written off as a result.

The offer is extended to supply you with copies of at least a sample of the articles mentioned, or the complete library if you wished.

It is hard to imagine a better industry for Queensland than cruising boats. Tourists that see Queensland from the Bruce Highway are shocked if they happen to view Queensland from coastal waters. It is hard to believe it is the same place. The coast is a greater asset than the mines in the long run and cruising boats are high volume consumers and environmentally very, very low impact.

So there you have it. By merely removing an antagonism immediately, and allowing an industry friendly leadership in MSQ to reform or trash the current Tomsa (Transport operations marine safety act) altogether in favour of the act it superceded, the government doesn't just make an important reform *but is seen to act in a meaningful way* by more Queenslanders than you may imagine. And no one loses!

I would look forward to an opportunity to provide additional support for items mentioned above and to expand on the issues.

**Sincerely,
Bob Norson
Publisher
The Coastal Passage**

The Public Anger TCP Has Been Reporting Has Been Proved Genuine!

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comments by Bob Norson

whilst other boating media has downplayed public angst, The Coastal Passage has been aware of it and given voice to Queenslanders and all Australians, that have been affected personally. This has been proved responsible reportage by results of the recent state and local elections where the now virtually defunct Labor party was wiped out in historical proportions in a 'flood' of anger. Whilst Australian media lionised the government in the aftermath of last years floods, TCP reported how people really felt about governments response and it wasn't pretty. The page snippets at right are indicative. To read that whole edition, click here:

<http://thecoastalpassage.com/papers/tcp47special.pdf> When the government tried to convince the public that the actions of it's ports corporation weren't the cause of the marine life die off in Gladstone Harbour and supplied "scientific proof" to

Gladstone Harbour A Poison Pit? and taking the reef with it?



This photo from Gladstone fish markets shows sharks have also been affected along with other breeds when the government only provided their explanation for the harbour's Barramundi stock. A wide variety of creatures that have been exposed to harbour waters have shown these rashes including humans. TCP advises yachts travelling near Gladstone to avoid contact with the water if you can. TCP also expresses thanks to the Gladstone Fish Market and professional fishermen for putting our health ahead of their income by refusing to supply fish they are concerned about.

More on this story as it develops. Many feel that the events at Gladstone and government plans for a similar development in Bathurst Bay in the north end, may be the final battleground for the future of the reef. do you have photos? story? email us!

mail@thecoastalpassage.com

Government Exonerates Gladstone Port Development but Public Isn't Buying It

Queensland Fisheries Minister Craig Wallace says there is no loophole in the monitoring process.

support their claim, TCP challenged their "proof" and reported how the locals felt about it. A page snippet is shown at left and here is a link to that edition; <http://thecoastalpassage.com/papers/E-TCP51.pdf>

SAME SH*T, DIFFERENT DAY? The ball is in the court of a new government and we are watching as we know YOU are. Here is a test.



The Gladstone Fish Research Fund commissions true independent research

Dr. Matt Landos, an aquatic veterinarian commissioned by Gladstone Fish Research Fund, has completed his second interim report into the marine health problems in the harbour during the past year. The Gladstone Observer reported; *"The Gladstone Fish Research Fund is a collection of people from the commercial fishing industry, and other locals, who have sought to produce an "independent" scientific study of the harbour's recent troubles. The group believes health problems in several species have been caused by the dredging project in the harbour."*

It was reported that the new Environment Minister Andrew Powell, through a spokesman, ventured no opinion so far. Quoted; *"The Minister for Environment and Heritage Protection has yet to consider the report by Dr. Landos, and will do so after the department has had an opportunity to analyse the report findings. The Minister also notes that this is an interim report, and as such, may be subject to further change."*

Gladstone Ports Corporation declined to comment to the paper.

A few notes from the interim report: Interim conclusions

Gladstone harbour has ongoing disease processes occurring in fish, crustacean and shellfish populations. These data, together with data in GAWB documents, do not support the DERM/DEEDI/GPC (state agencies and state owned corporations) hypothesis that freshwater run-off was the cause of sickness in the barramundi, or all of the other aquatic animals in Gladstone Harbour, or on the oceanic side of Facing Island. The data also does not support DERM's statements that there has been no change to water quality as a result of dredging activities and port construction in the harbour.

Dermatitis is a very common lesion across all the fish examined. This epidemiological pattern is suggestive of a common water-borne irritant across all groups. As no consistent infectious disease agents have been identified to be associated with this lesion across all taxa examined, non-infectious causes need to be considered. One non-infectious risk factor is consistently spatially and temporally associated is exposure to dredge spoil and their associated toxicants. The prevalence of shell lesions in mud crabs is markedly increased above historical levels. The prevalence of lesions increases as the distance to dredging gets closer. Previous research in Gladstone has shown that shell lesions in mud crabs are associated with increased exposure to heavy metals.

The final project report is expected to be completed around late May, 2012

For a copy of this impressive report:

http://www.gladstonefishingresearchfund.org.au/download/i/mark_dl/u/4009759501/4567954646/QSIA%20FFVS%20Update%20002%20160412%20final.pdf

ANOTHER CUSTOMS HORROR STORY

Dear TCP,

In early June 2011 I arrived with my 58ft yacht, *Walk on the Wildside* and 3 crew into Cullen Bay Marina in Darwin from Kupang, after leaving Fremantle in April to do the Fremantle to Bali yacht race.

I had made an appointment with customs via radio after arriving late evening the night before, we stayed onboard until the 9am appointment. We were then boarded by 7 customs officers (all armed) and a dog and read a caution with a charge of failure to notify them 96 hours before entry to Australia. I was interrogated at customs headquarters in Darwin the next day with 2 officers. I was again read my rights and this interview was recorded.

I explained to them that when I applied for my cruising Indonesia certificate (CAIT) in Perth it stated quite clearly that I would be re/entering Australia through Darwin and gave them a estimated date which was pretty close to the date I did arrive.

I considered that as notification but my wife, who was in Darwin rang the Customs number in the Darwin phone book 3 days before we arrived, to notify them, but was told that no one there knew of any procedure to do this. We have since found out that this call, even though Darwin address would have gone straight through to Canberra. Customs did then verify a few days later that this call was made. Also on our voyage we were in radio contact with the customs surveillance aircraft 3 days out from Darwin.

Originally the spokesman for Customs said I could face a \$6500 fine plus costs, however I met him accidentally at a venue a few days later and he informed me that it was now 2 charges as my crew has not notified them either, so if charged it would be \$13,000 plus \$4000 costs. He went on to say however as the calls to Canberra were logged and a reasonable attempt to notify them had been made we probably would not hear from them again and if they were going ahead we would hear from them in 2 weeks.

I thought that was the end of the matter until in Jan., 2012 a bailiff from Darwin court rang me in Perth to tell me the charges would be heard in Darwin in late Feb., 2012. This left me astonished and unprepared. I appointed a barrister to act on my behalf in my absence. I was disgusted that she informed me that at the hearing they went back over the last 50years or so of my life to try to uncover any minor offence and even traffic offences to blacken my character.

The presiding Judge was not very sympathetic to Customs and likened it to a steamroller sent to crack a walnut and fined me \$1000 on each charge with \$1000 costs.

I am still sure I am not guilty as the required notice was given and I do not have access to internet or fax on my boat so could not fax them 96 hours prior which they say is a requirement.

I am a nearly 70 year old retiree who is a loyal taxpaying Australian, just trying to sail my boat and enjoy my retirement and to be treated in this manner is just appalling.

Regards,
Garth Curran,
SY *Walk on the Wildside*



News n Views

By Bob Norson



Customs CEO Carmody Resigns - Department Under Cloud of Corruption

Corruption and scandal plagued agency headed by Michael Carmody, former Commissioner of taxation to get new leadership.

During this CEO's administration many in the international sailing community had come to look at Australia as a pariah state because of numerous cases of over the top enforcement using 'creative' interpretations of law for justification. Chief among them was the surprise attack on visiting yachts using a law (the 96 hour rule) never intended to apply to anything other than commercial shipping (TCP# 23), but which Customs chose to apply to yachts on it's own authority and without notice. Also the arbitrary boarding of domestic craft in domestic waters challenged by SV *Bifrost*

and reported by TCP #44. This was an attempt to shift powers from anti-terrorism laws to board offshore craft to domestic coastal craft acknowledged in writing from Custom's to be outside of Custom's jurisdiction. Then the demands for private information (computer password) resulting in possibly contrived and false criminal charges levied against Neil Parry at Darwin airport (TCP # 52) that forced an apology from the CEO and a payout for damages. Earlier this year operation "Polaris" uncovered rampant corruption in Customs (see report E-TCP # 54 copied below). But it was the most recent

corruption involving drugs and bribes that was apparently Carmody's last straw...

Sydney airport customs agent, Paul Katralis was arrested in August along with two drug couriers and charged with trafficking and taking bribes. Three days after Katralis appeared in court Carmody resigned.

Carmody's career prior to Customs was as a key player in the "wickenby" tax investigations that netted various wealthy Australians like Paul Hogan who has vehemently and publicly protested his innocence. Other victims have recently won on appeal.

From E-TCP # 54

Customs CORRUPT?

AUSTRALIAN border security officials are alleged to be helping organised crime smuggle shipments of drugs and guns into Australia.

According to a Sydney Morning Herald report of March 28, 2012: *...the corruption watchdog has received more than 50 files on suspected corruption involving Customs officials since early last year; Customs has suspended or sacked 15 officers since 2010 over misconduct or corruption allegations, including one with close ties to a Middle Eastern crime family in Sydney and an official caught snorting cocaine.*

Nearly every day news reports another shooting in Sydney or the Gold Coast. Often with a Bokie gang connection suggested. Also suggesting that the shootings are "turf wars" for drug businesses. The volume and value of guns and merchandise must be staggering.

The Australian Commission for Law Enforcement Integrity has no power to investigate agencies that may have corrupt officials and the government has rejected a recommendation by a parliamentary committee to give the commission oversight of the quarantine and customs officials.

And the government's solution? *The Home Affairs Minister, Mr. Clare said he had recently ordered a review of the commission's oversight of Customs and had written to the heads of the Australian Crime*

Commission, the federal police and Customs "outlining my expectations of them in detecting, disrupting and preventing corruption and seeking their advice about what further action they believe is required to make their organisations more corruption resistant". Insist on the organisation policing itself which has failed to date.

Customs has suspended or sacked 15 officers since 2010 over misconduct or corruption allegations, including one with close ties to a Middle Eastern crime family in Sydney and an official caught snorting cocaine.

Quoting from an ABC report: *Opposition Leader Tony Abbott says the Coalition believes there should be a full independent inquiry. "We called for a full inquiry in Parliament the other week because we certainly have been hearing there are significant problems," he*

said. "The issue we raised in Parliament of guns coming into the country is one manifestation of the fact that Customs doesn't seem to be as on the ball as it should be."

TCP and contributors have made mention on many occasions that Customs misdirects it's resources by being so hard on yachts.

It turns out that if Customs want to bust a dooper, they are better off looking at the desk next to them.

Will new leadership be a benefit to the boating community? Time will tell...

Australian Security Intelligence Service (ASIO) Asking for powers to tap phones and monitor internet of citizens, and to commit crimes without being charged.

According to an ABC report the director-general of ASIO, David Irvine, launched a publicity campaign with a rare interview to defend ASIO's proposal to extend its powers under national security laws.

The Sydney Morning Herald reports Professor George Williams, the Anthony Mason professor of law at the University of NSW, speaking at the NSW Council for

Civil Liberties dinner in Sydney where a national campaign to roll back the nation's anti-terrorism laws was unveiled.

In the report he described ASIO'S current powers as, "excessive and disproportionate" and "represent the greatest assault on civil liberties in Australia since World War II".