

IN THE CORONER'S COURT  
OF WESTERN AUSTRALIA  
HELD AT PERTH

IN THE MATTER OF  
THE INQUEST INTO THE DEATHS OF  
17 PERSONS ON BOARD SIEV 358  
(SAR 2012/4106)

**OPENING BY COUNSEL ASSISTING THE CORONER**

1. On 18 June 2012 the boat known as the "Kaniva" (SIEV 358) left a coastal area in Java Indonesia destined for Christmas Island.
2. The majority of people on it were asylum seekers from North West Pakistan on or near to the border between Pakistan and Afghanistan fleeing from the Pakistani or Afghani Taliban or other associated terrorist groups.
3. It is believed that on board were 214 people, 210 were from Afghanistan Pakistan and from Iran and 4 Indonesian crew members. The crew were inexperienced or inattentive during the journey. They were all males.
4. Survivors' statements from KVA 010 and 094 indicate they used different people smugglers in Pakistan but paid in the vicinity of \$4,500 to \$6,000 US.
5. They were taken to that the Kaniva by two separate boats each containing over 100 people.

6. The majority of the survivors state that upon boarding the Kaniva they thought it to be overcrowded by more than 100 people, it was an old boat, and it was not suitable or safe for the journey.
7. The Kaniva was described by KVA10 as “a wooden boat which looked old”. The boat was very crowded. There were life jackets on the boat but there were not enough of them. A Hazara refugee said to a person identified as one of the organizers that the boat was too small it would not get to Christmas Island and it would capsize.
8. The organiser replied the effect that he would send another boat to take 50 people and also more life jackets. However neither the extra life jackets nor an extra boat arrived.
9. Upon boarding the Kaniva a number of passengers and crew expressed their concerns about the overcrowding to a crew member. He responded by telling them they were to keep sailing to avoid Indonesian police and he would send a follow-up boat to allow people to get off and ease the overcrowding: KVA 010.
10. Many of the passengers were given life jackets which appeared to be new because they were still in plastic wrapping: KVA 053.
11. However, survivors believe they were of sub-standard quality. When they were worn in the water for an extended period of time, they took on water, fell apart at the seams and did not provide suitable floatation. Passengers were not told how to wear the life jackets or any safety procedures: KVA 018.

12. KVA 093 describes the Kaniva as a fishing boat about 20 metres long and 5 metres wide. Wooden poles on the boat appeared to have been eaten by termites and looked old. This is confirmed by KVA 008.
13. KVA 053 states the timber floor below deck was not stable and “you had to be careful when you walked on it, otherwise you may have fallen through the floor.”
14. KVA 094 says it was a fishing boat made of wood it was overcrowded when he reached the boat. People on board said not to come on as it was overcrowded, we will drown.
15. The organizers were telling them to hurry up and get on board or they would be caught by the Indonesian Police. He was scared of getting caught by the Police and at the same time, he scared about getting on the boat. Everyone was scared.
16. KVA 097 describes the Kaniva as constructed of wood with 2 rooms and a shelter at the front of the boat. When he boarded the boat it made noises, “like the boat was going to break.”
17. On the first day of the voyage the Kaniva became stuck on a sandbar, or mud bank. The crew had a number of the asylum seekers disembark from the Kaniva to fishing boats that came to their assistance while they freed the Kaniva.
18. The asylum seekers were told by Kaniva’s crew not to tell the crew of the fishing boats that they were bound for Australia. After being freed from the sandbar or mud bank, the Kaniva carried on its journey to open sea.

19. These matters are referred to in the Statements of KVA050 KVA041, and KVA083.
20. The passengers had located themselves on the roof above the captain's room, the main open deck and a room below the deck near the engine. The Kaniva travelled a period of about 5 or 6 hours before it became stuck in mud or a sandbank. Attempts were made to free the boat with the assistance of local fishermen which took somewhere between 4 and 8 hours.
21. It is not known whether any damage was sustained by the Kaniva's hull as a result of running aground.
22. KVA 097 says that after being stuck in the mud there was something wrong with the engine.
23. KVA 050 says the boat was going slower after being stuck in the mud.
24. However, the majority of other survivors and crew say the engine sounded no different after the Kaniva had run aground.
25. KVA 010 will explain what steps were taken to contact the Indonesian Police to ask for help on the second day of the voyage and no help arrived.
26. The person described as an Indonesian policeman gave him a number to call. He called that number but the call was never returned. There was only one call.
27. KVA 010 will say that people on the boat were afraid for their lives and the boat was overcrowded and many people wanted to turn back.

28. KVA 010 will say that if a naval vessel or a marine and search vessel had come to the rescue of the people on the boat, they would have turned back because it was better to turn back than to die.
29. KVA 010 confirms that no Indonesian helicopter, naval, marine search and rescue, or other rescue vessel from Indonesia approached the Kaniva, or any aircraft from close to Indonesia.
30. No contact was made with anyone on the boat from any Indonesian authority.
31. One of the four crew members left the Kaniva and returned to Indonesia on another fishing boat early into the voyage.
32. KVA 108 says this occurred when the Kaniva became stuck in shallow water on the first day of the voyage. One of the crew announced he did not believe the Kaniva would make it to Australia and returned to Indonesia on one of the fishing vessels which had come to the assistance of the Kaniva.
33. At this point, no consideration was given to the safety of the passengers.
34. On 19 June 2012 at 7.52 pm Australian Western Standard Time (11.52 UTC plus 8 hours) RCC Australia received the first of several satellite telephone calls from an unknown male person on board the Kaniva. The call was difficult to understand with RCC Australia advising the caller to move out of the wind so he could be heard.
35. The caller stated that the vessel had no life jackets and they were in a small boat with 250 people on board, and the boat was coming from Indonesia. Transcript of calls to RCC Australia from unknown male, pages 1 and 3, paragraphs 1 and 55, Annexure 2.1.

36. Between about 8.00 am and 8.38 pm on the 19 June 2012, Rescue Coordination Centre Australia received another 8 calls from the vessel. An Arabic interpreter was engaged during the last two calls and the position of the vessel was not able to be established.
37. During the several telephone calls information was received that the vessel was in international waters, there were over 200 male persons on board a small boat, no life jackets on board, there was no emergency beacon on the boat, no water, the boat was old and it was too small and had a lot of water, requests to “please help me” the boat was in danger and that the vessel was from Indonesia. They were asylum seekers heading for Christmas Island.
38. At about 8.23 pm (AWST) on 19 June 2012 RCC Australia contacted the Australian Maritime Security Operations Centre who advised that there were no known SIEV vessels approaching Australia.
39. At about 10.04 pm on the 19 June 2012 (AWST) RCC Australia sent a message to Indonesia’s Search and Rescue Authority, Basarnas, requesting advice about any boat’s departure matching the description given and seeking assistance from Basarnas. RCC Australia asked for acknowledgement of the message and assistance from Basarnas. This message was also addressed to a customs officer working out of the Australian Embassy in Jakarta.
40. At about 10.59 pm on the 19 June 2012 (AWST) the customs officer in Jakarta replied offering to help with information to be provided to other Indonesian agencies, such as the Navy and Maritime Police.
41. About 2 hours and 28 minutes later, RCC Australia received more calls from the boat at about 11.06 pm, 11.26 pm and 11.28 pm on 19 June 2012 (AWST) indicating the boat was broken on one side, the situation was bad,

water was high and water was coming into the boat, there were 204 people on board, all men, and giving a position of the boat at 11.26 pm and again at 11.28 pm. The position given was 07 27. 873 South and 105 07.481 East. The position of the boat was in Indonesian waters about 36 nautical miles (almost 67 kilometres) south of the Sunda Strait.

42. During the call at about 11.28 pm, RCC Australia advised the caller that the boat was still in Indonesian waters and the boat needed to turn back to Indonesia. The caller replied, “Okay, okay, okay,” and the call ended.
43. The transcript of the calls between the person on the boat and RCC Australia in relation to the response to turn back being “okay” (said on three occasions) is confirmed by the transcript of that conversation at paragraph 735 (page 39) as well as Rescue Co-Ordination Centre Source Document Number 17.
44. At about 12.00 pm on 19 June 2012, RCC Australia contacted Mr Rob Byrne, the customs officer in Jakarta providing him with the first position given for the boat, and asked him to pass that information on to the relevant agencies in Indonesia and to push where he could. RCC Australia would contact Basarnas.
45. At about 12.01 am on 20 June 2012 RCC Australia sent a message, copied to Basarnas, copied to Head Quarters Joint Operations Centre Border Protection Command and Australian Maritime Safety Operation Centre confirming the position and other information provided by the caller.
46. The written communication makes it clear that the vessel had requested assistance it had suffered hull damage on one side and was taking on water. There were 204 people on board all male no women or children. The advice by RCC Australia that the vessel should turn back to Indonesia was

conveyed together with acknowledgment that this information was received by the caller. RCC Australia requested that Basarnas take coordination of the incident. The Source Document is number 21 from Annexure 2.3 (in Volume 1).

47. At about 12.06 am on 20 June 2012, (AWST) RCC Australia rang Basarnas confirming the information about the position of the boat and requesting that Basarnas accept coordination of the incident. The Basarnas officer advised that accepting coordination of the incident was being discussed and he would be advised by fax. There was another telephone call with Basarnas at about 1.01 am (AWST) on 20 June 2012.
48. Early on the morning of 20 June 2012 at 4.46 am (AWST) (16.46 UTC on 20 June 2012), the customs officer in Jakarta sent an email to AMSA and RCC Australia indicating the actions that were in train were that the Australian Federal Police were passing information to the Maritime Police, the Navy had passed information to a foreign liaison office, and customs had passed information to the Bakorkamala Crisis Centre in Indonesia.
49. He indicated that this did not mean that the Indonesian authorities had assumed operational control of the search and rescue instead it was an indication that they were considering what capability was available which may assist them to make an informed decision about taking operational control.
50. He noted that since Basarnas was across the facsimile from RCC Australia, he had decided not to call them directly as it appeared actions were in train and he would follow-up should AMSA or RCC Australia wish.

51. At 5.05am (AWST) on 20 June 2012, a written communication was sent to Indonesian Basarnas requesting they advise acceptance of coordination of the incident. This is Source Document number 26.
52. There was a delay of almost 4 hours before the next call was received from someone on the boat by RCC Australia.
53. At about 5.21 am on 20 June 2012 (AWST) (19.21 UTC on 19 June 2012) another call was received from someone on the boat providing a new position that was 42 nautical miles south of Sunda Strait in Indonesia (almost 78 kilometres). The caller said the boat was taking on water.
54. The transcript of the call, Annexure 2.1 at page 45, also indicates that RCC Australia indicated they were trying to get Indonesia to help the people on the boat and send a boat to them because they were close to the Indonesian coast. RCC Australia asked if it was possible for the boat to turn north and head back towards the mainland of Indonesia. The transcript indicates an indistinct reply
55. It was confirmed there were 204 people on board. An attempt was made to get the telephone number for the phone being used on the boat, and a number was given. The person on the boat indicated that they had life jackets, although not the number of life jackets.
56. When RCC Australia tried to find out if the boat was sinking, there was an indistinct reply. The person from RCC Australia indicated his understanding that the Indonesians were trying to send a boat and that they were trying to get Indonesia to coordinate this incident. (Pages 45-50).
57. At about 4.15 am on 20 June 2012 (AWST) (20.15 UTC) this information was passed onto Basarnas.

58. At about 4.50 am on 20 June 2012 (AWST) (20.50 UTC), RCC Australia received another call from the caller on the boat who advised that the boat had a problem and was going down in the water and was slow because of the water.
59. Up to this point Basarnas had not confirmed it was co-ordinating the search and rescue.
60. The source documents and the transcript of the conversations between RCC Australia other than the boat being "close" to Indonesai do not record any discussion about the reasons of RCC Australia requesting that Basnaras accept coordination of the incident, whether Basnaras were better placed to respond and why, what resources would be deployed and when, and no record of any discussion of a combined search and rescue.
61. AMSA had the responsibility to co-ordinate the search and rescue operation and commence response operations until the Indonesian Basarnas accepted and communicated it would be co-ordinating the search and rescue.
62. This is explained by Mr Alan Lloyd in his first statement.
63. Under the Search and Rescue Arrangements 2004 in writing and in place between Australian and Indonesia, the first Rescue Co-Ordination Centre to learn of a distress situation will retain coordination and commence response operations until the RCC that is responsible for the SAR can take overall coordination. The arrangement between Australia and Indonesia for the coordination of search and rescue services is Annexure "ARL 6" to the First Statement of Mr Alan Lloyd.

64. Maps will be produced depicting Australia's search and rescue region and including a map depicting the northern part of Australia's search and rescue region, including its relationship with Christmas Island.
65. Notwithstanding that SIEV 358 was in Indonesian territorial waters or its search and rescue area, the reality was the Australian Maritime Safety Authority has responded to distress calls from people on the boat in Indonesia's waters or search and rescue zone locating those persons and was under an obligation to commence rescue operations.
66. The 2004 Arrangement acknowledges that each search and rescue region covers land areas of the other party and that cooperation should be as close as possible.
67. The 2004 Arrangement provides for less formality in entering the other state's airspace or territorial sea to respond to an incident, but approval will first be sought and notified by the appropriate rescue coordination centre before entering air defence identification zones.
68. That obligation to give notice to Indonesia does not appear to apply to naval or other vessels deployed by the Australian Maritime Safety Authority to enter into Indonesia's search and rescue zone.
69. The 2004 Arrangement provides the coordination of a search and rescue incident may be transferred to the other rescue coordination centre if it is more favourably placed to assume control by reason of better communications, proximity to the search areas, more readily available search and rescue units or other facilities, and sets out a procedure for the transfer.

70. The 2004 Arrangement provides that the initiating rescue coordination centre will retain responsibility until the accepting rescue coordination centre formally advises the initiating rescue coordination centre that it has assumed responsibility for the overall search and rescue coordination or part of the coordination.
71. Clause 2 of the 2004 Arrangement sets out the scope of the arrangements.
72. The rescue coordination centres of both parties relevantly to this Inquest will:
- (a) Assist each other, to the extent possible, in the conduct of search and rescue missions in their respective search and rescue regions and across their common search and rescue boundaries. Clause 2.2;
  - (b) Take appropriate measures for the use of facilities in each other's rescue regions while engaged on a search and rescue mission. Clause 2.3;
  - (c) Exchange information on current search and rescue resources available to ensure mutual knowledge of each other's search and rescue capabilities. Clause 2.4;
73. The contact area between the Australian Aeronautical and Maritime Search and Rescue Regions and the Aeronautical and Maritime Search and Rescue Regions of Indonesia are delineated in clause 3 of the 2004 Arrangement.
74. Clause 4 provides for cross border search and rescue missions and in urgent life saving situations all possible assistance will be rendered to enable the SAR to be carried out successfully. Diplomatic clearance for aircraft or

vessels to enter the other parties SAR region is not required in an emergency.

75. Clause 5 refers to the procedures for the rescue coordination centres to determine the responsible rescue coordination centre and the transferring of the overall coordination responsibility. While the responsibility for declaring and initiating local action in the case of a marine emergency rests with the relevant maritime authority (Indonesian Basarnas), the responsibility for initiating all subsequent search and rescue action results with the rescue coordination centre (AMSA).
76. It is accepted by Mr Lloyd in his first statement that the Australian Maritime Safety Authority was the coordinating search and rescue authority from the time that it was first advised that the vessel was in distress and that it was proceeding to Christmas Island, unless and until a transfer of responsibility for the overall search and rescue coordination takes place.
77. Clause 5.2 deals with the circumstances in which a transfer of overall coordination responsibility can occur.
78. When a transfer of responsibility for overall search and rescue coordination is to take place, either from the subsequent establishing of a ship's position or movement, or because a rescue coordination centre other than the one initiating the action is more favourably placed to assume control of the mission by reason of better communications, proximity to search and rescue area, more readily available search and rescue units or facilities, or any other reasons, the following procedures will be adopted:
  - (a) Direct discussions or communications will be conducted between the search and marine centres concerned, to determine the best course of action;

- (b) If it is decided that a transfer of responsibility is appropriate for the whole mission or part of it, full details of the previous action taken will be exchanged;
  - (c) The initiating rescue coordination centre will retain responsibility until the accepting rescue coordination centre;
  - (d) The responsible RCC will determine the search area, issue Notice to Airmen (if appropriate) and issue necessary safety messages to shipping;
  - (e) During the SAR the RCC's concerned will maintain close liaison, keep the other informed at regular intervals of the number of units involved in the SAR, areas searched, actions taken
79. The Inquest will examine whether the Australian Maritime Safety Authority was best placed to take responsibility for the search and rescue and the co-ordination of the search and rescue from the outset until SIEV 358 sank, and complied with the terms of the 2004 Arrangement.
80. The Inquest will examine whether the Australian Maritime Safety Authority had better communications, more readily available search and rescue units or facilities or better procedures and capability to respond to the search and rescue compared to its Indonesian counterparts.
81. The Inquest will examine whether the transfer of responsibility from the Australian Maritime Safety Authority to Indonesian Basarnas accorded with the transferring of overall coordination responsibility and the criteria set out in the 2004 Arrangement.

82. Indonesia was not a signatory to the Safety of Life At Sea Convention in June 2012.
83. Basarnas had a limited capability in terms of methods of communication, a helicopter, two search and rescue boats and a naval vessel that could be used. The Commonwealth was aware of these limitations in June 2012.
84. At about 6.31 am on 20 June 2012 (AWST) (22.31 UTC) an officer from Basarnas called RCC Australia and advised that Basarnas was coordinating the search and rescue and asked to be advised if further information came from the boat.
85. The transcript indicates Basarnas were still coordinating with the Navy at West Java, the Police and Coast Tower Radio Station. It appears the Navy, the Police and Coast Tower Radio Station had not been informed about the calls from SIEV 358 and there was discussion about the telephone number from the vessel which RCC Australia had unable to get.
86. The Indonesian caller indicated that they were coordinating with their assets in the Jakarta Rescue Coordination Centre, and RCC Australia gave the last position of the boat and that it was believed the boat was drifting to the south-east at 1 knot. The transcript of that telephone call is in Annexure 2.21 at pages 5-7.
87. At about 7.00 am on 20 June 2012 (AWST) (23.00 UTC), RCC Australia received a fax from Basarnas advising that Basarnas had taken action to give an urgency broadcast to all vessels close to the distress position by Indonesian Coast Radio Station, Navy and Marine Police and that Basarnas had taken coordination of the incident. That is Annexure "ARL 7" to the Statement of Mr Lloyd.

88. Other than the reference in the facsimile to those steps being taken, there is no evidence in the subsequent RCC Australia source documents or the statement of Mr Lloyd that such a broadcast was given how often to who and that any vessel close to the position which had been advised would or had responded to that emergency broadcast.
89. A period of approximately 11 hours had elapsed since the first telephone call by a caller on the boat before an emergency broadcast was made. Several distress calls were received by RCC Australia and communicated to Basarnas. No or efficacious search and rescue action had been initiated by anyone.
90. There is no documentary record or evidence to show that any of the relevant matters set out by Counsel Assisting and referred to in the 2004 arrangements had been considered discussed or taken place. The major focus of RCC Australia was on transferring the search and rescue operation to Indonesia and relaying the distress messages and position of the boat.
91. During that period of about 11 hours no emergency broadcast was issued by Rescue Coordination Centre Australia to any vessel close to SIEV 358 to search for and rescue the people on that boat.
92. No or satisfactory explanation was given for not doing so is recorded in the source documents, the transcripts of the calls between RCC Australia and Basarnas, or in the first statement of Mr Lloyd.
93. It does appear Basarnas issued an emergency broadcast. However, it was ineffectual since there is no reported helicopter, naval, marine police, merchant or other vessel searching for and locating SIEV 358 while it was still relatively close to Indonesia.

94. There is no reference in any of the survivors' statements to any Indonesian helicopter, naval or marine police vessel approaching them, or any other vessel, other than those that assisted in getting them off the mud or the sandbank and those that came to their assistance (or were fishing and did not assist) after the boat sank.
95. The Inquest will explore whether any calls for help were made by people on the boat to Indonesia police or maritime authorities when and what response there was.
96. At about 11.16 am on 20 June 2012 (AWST) (03.16 UTC), RCC Australia received another call from the boat. This was about 6 hours and 26 minutes since the last call. A new position of 07 47 37.23 South and 105 06 48.59 East was provided.
97. The caller provided a telephone number and said the boat was taking on water and people were scared. The caller was advised that Indonesia had coordination of the incident and that this information would be passed to the Indonesian authority. The transcript of the call is Annexure 2.1 at pages 44 – 52.
98. At about 11.42 am on 20 June 2012 (AWST), this information was sent to Basarnas by fax and was also passed to Basarnas during a telephone call at about 04.00 UTC, referred to below.
99. At about 12.00 pm on 20 June 2012 (AWST) (04.00 UTC), RCC Australia called Basarnas in relation to the boat. The boat was heading towards Christmas Island but was very close to Indonesia.
100. RCC Australia was seeking confirmation that Basarnas had received a fax and an email with an updated position and that Basarnas were coordinating

the search and had received the updated position. There was discussion about the telephone number which had been obtained by RCC Australia which they had not rung because Basarnas was coordinating.

101. The boat had advised they were still taking on water and were still moving south and a position had been plotted about 60 nautical miles (about 111 kilometres) south of Sunda Strait. A number of the answers from the person at Basarnas are indistinct on the transcript – Annexure 2.2 at pages 8 – 12.
102. There is no enquiry about what helicopter, naval marine police or other vessels had been deployed by Basarnas in that conversation or the outcome of any such deployment.
103. There was no offer to assist by RCC Australia issuing an emergency broadcast by the various radio and communication channels available to it.
104. At this juncture a period of about 16 hours had elapsed since the first distress call. There had not been any effective search and rescue initiated or undertaken by either RCC Australia or Indonesia Basarnas.
105. There was no discussion about a possible combined search and rescue. There was no discussion or record of communications about who was best placed to respond, when how and why.
106. The issue of whether asylum seekers would have got off the boat and returned to Indonesia rather than face likely drowning had there been an early response and opportunity to get off the Kaniva will be canvassed in the Inquest.
107. Further calls were made from the boat to RCC Australia providing a position and repeating there was a problem with the boat and giving a telephone

number for the boat, and indicating it was still in Indonesian waters but there were difficulties hearing the calls with broken coverage.

108. At about 7.00am (AWST 10.58 UTC) on 20 June 2012, RCC Australia tried to call the boat but there was no answer. RCC Australia passed the phone number to Basarnas and AMSOC. RCC Australia received information from Basarnas that they had also tried to contact the number but there was no answer.
109. Using the positions provided from the boat and its known speed underway RCC Australia developed a projected route for the vessel to calculate where it may be expected to be located in 10, 20 and 30 hours and this information was faxed and emailed to Basarnas.
110. RCC Australia Document Number 051 contains a handwritten note that the boat was sinking, the coordinates given, and that there was poor telephone coverage. There is no record of discussion about a possible combined search and rescue. There is no record of communications about who was best placed to respond, when how and why.
111. There is a facsimile at RCC Australia Document Number 054, referring to Indonesian Basarnas, with a courtesy copy to Border Protection Command in the Australian Maritime Safety Operational Centre, at about 8.00am (AWST 11.29 UTC on 20 June 2012) confirming information received from the boat about its position, telephone number, that they were taking on water and there were 206 people on board, not 204 as previously advised.
112. RCC Australia asked Indonesian Basarnas if they would like RCC Australia to issue a maritime broadcast to shipping on various frequencies in relation to the Kaniva.

113. RCC Australia had good capabilities to have done so which are superior to those available to Basarnas, but the offer was not accepted by Basarnas. It is unclear why the offer was not accepted.
114. Another issue which arises is whether AMSA could have issued the safety alerts in any event having regard to the scope of the arrangements and their flexibility.
115. There is an email response from the duty officer at Indonesian Basarnas indicating they had contacted the phone number given and could reach it but there was no response. They had coordinated with Indonesian Maritime Safety Authority (Bakorkamala) and the Indonesian Navy and would give further information as soon as possible.
116. There was no positive response to the offer by RCC Australia to issue a maritime broadcast.
117. There was no offer by AMSA to access its telecommunication capacities to try and reach the satellite phone.
118. This was an unsatisfactory response by Indonesian Basarnas. The nature of the coordination with Indonesian Maritime Safety Authority (Bakorkamala) and the Indonesian Navy is not set out in the email or what steps were actually being taken, by whom and when any assets deployed would reach the Kaniva. Also they had very limited capacity.
119. At about 3.15 pm (AWST) on 20 June 2012 an Australian Customs and Border Protection Service Dash 8 aircraft undertaking routine surveillance reported to Rescue Coordination Centre Australia they had detected a vessel suspected as being the source of the distress calls.

120. The Kaniva was underway, travelling in a southerly direction at about 4 knots, and there were no visual signs of distress reported. There is video footage from the Dash 8 at Annexure 2, tab 2.10. Photographs will be produced and the video footage may be played.
121. On the same day at 4.19 pm, RCC Australia provided Basarnas a report of the sighting of the Kaniva and at 6.18 pm Basarnas advised they had been unable to contact the Kaniva and they had initiated coordination with the Indonesian Maritime Safety Authority (Bakorkamala) and the Indonesian Navy. RCC Australia Document 47 and 54, Annexure 2, 2.3 Volume 1.
122. It appears that no further enquiry was made by the Australian Maritime Safety Authority to ascertain what assets were or would be deployed and whether the boat had been located by the Indonesian Navy, or Indonesian Maritime Safety Authority, or by merchant vessels that had received any emergency broadcast from the Indonesian authorities or the expected time of arrival of any search and rescue vessels.
123. There was no discussion about a combined search and rescue or a transfer of the search and rescue to AMSA.
124. On 10 December 2012, AMSA received confirmation that no Indonesian naval vessels were involved in the search and rescue for the Kaniva without any explanation.
125. The extent to which the Indonesian navy is deployed in search and rescue or was likely to be deployed to assist SIEV 358 and the Australian Maritime Safety Authorities knowledge about the likely deployment of a naval vessel to search for and assist SIEV will be considered.

126. Further calls were received by Rescue Coordination Centre Australia from the Kaniva on 20 June 2012 giving the position of the Kaniva and a telephone number and that number was passed on to Basarnas. Attempts by Rescue Coordination Centre Australia and Basarnas to ring the number were unsuccessful.
127. On 21 June 2012 at 11.00 pm (AWST) a Dash 8 aircraft left Christmas Island specifically tasked to locate the Kaniva and clearance was sought to enter Indonesian airspace to facilitate the search. That's RCC Australia Document 100, Annexure 2.3 Volume 1.
128. The reasons for not seeking permission to enter Indonesian Airspace before then will be canvassed in the Inquest.
129. Survivors have described the weather during the journey as generally fine, however, the swell and sea conditions got progressively worse.
130. KVA 009 states that as waves hit the boat timbers at the rear of the boat would dislodge and passengers would hit them back in place. The boat travelled for a further 3 full days before experiencing problems of the morning of the fourth day.
131. In the early hours of the fourth day passengers noticed large amounts of sea water flowing into the hull of the boat. This was due to an engine cooling pipe becoming dislodged. Repairs were carried out by the crew. However, the pipe became dislodged again on several further occasions requiring constant attention.
132. On the last occasion the pipe was repaired. KVA 005 states he awoke at around 3.00 to 4.00 am to see passengers attempting to wake a sleeping crew

member who they believed to be responsible for maintaining the engine and bilge pump.

133. At this time the bilge pump was not turned on. When he awoken he immediately attempted to activate the pump. The water level was deep and rose so rapidly the bilge pump could not cope. Repairs could not be carried out and within a short period of time the water covered the engine causing it to stop. Almost immediately Kaniva listed heavily to one side and capsized.
134. KVA 004 states he heard the engine making funny noises and other passengers declaring it was broken. A short time later the boat flipped and threw him into the water.
135. KVA 009 says that about 4.30 am he woke to a loud bang and saw a flash come from the engine muffler. Soon afterwards the Kaniva listed sharply, completely rolled, staying afloat as an upturned hull.
136. Most survivors say the boat was overloaded and just prior to it capsizing most of the people on board moved to one side of the Kaniva after panicking at seeing it take on so much water.
137. It appears that the majority of people who are missing, presumed drowned, were located in the hull of the boat when it capsized. Most of the survivors were on the deck or roof of the captain's room when it sank.
138. At about 1.00 pm the Dash 8 aircraft detected the Kaniva which was capsized approximately 110 nautical miles (almost 204 kilometres) south of the Sunda Strait in Indonesia. People were seen on the upturned hull and in the surrounding waters.

139. The lifejackets were inadequate and they were short of lifejackets probably by up to 103. 101 lifejackets were recovered as part of the search and rescue.
140. At about 1.30 pm (AWST) on 21 June 2012, AMSA issued a broadcast to merchant vessels in the area and offered assistance to Basarnas.
141. This was a period of about 2 days before any emergency broadcasts were issued by the Australian Maritime Safety Authority.
142. On 21 June 2012 at about 6.00 pm, Rescue Coordination Centre Australia assumed overall coordination of the search and rescue incident at the request of Basarnas.
143. The situation was there were about 204 people, the majority of survivors were wearing life jackets, and clinging to the upturned hull of the Kaniva and debris from the vessel. Survivors were in groups with a number floating on their own in the vicinity of the upturned hull. The current was moving the survivors away from the upturned hull.
144. A distress broadcast to shipping was issued by Rescue Coordination Centre Australia at about 1.30 pm, and, in addition, Australian Customs and Border Protection assets were sent to the area.
145. The first vessels to respond were merchant vessels. Three merchant vessels arrived.
146. At 1.32pm MV Dragon received a mayday distress relay and an Australian aircraft contacted that vessel on VHS Channel 16 with the coordinates which were 30 nautical miles (about 55.56 kilometres) from its position. About one hour later at 2.28pm MV Dragon arrived at the scene and 40-60 people were observed in the water scattered in a 2.5 mile radius.

147. The captain of MV Dragon manoeuvred the ship trying to get close to the people in the water. Life rings were thrown to them and they were pulled close to the ladders and they were able to climb onto the ship. The first survivor was rescued at about 2.30 pm. This was only one and a half hours after being seen in the water by an Australian Dash 8 aircraft.
148. An RAAF APC Orion reached the scene at about 3.00 pm and commenced dropping life rafts to people in the water.
149. At the request of an Australian and Customs Border Protection Service aircraft, MV Dragon began to lower their rescue boat into the water. Due to the heavy swell the rescue boat was slammed violently into the starboard side of the ship a number of times.
150. Subsequently, the superstructure and engines of the rescue boat were damaged and the engine would not start. The crew of the rescue boat abandoned the boat in the water and returned to the ship. It was left to drift in accordance with the captain's orders.
151. MV Dragon assisted in searching for survivors and remained in position until HMAS Wollongong and HMAS Larrakia arrived to assist in the search and rescue and took coordination of the search and rescue.
152. MV Dragon would sight survivors in the water and pass the information onto HMAS Wollongong and HMAS Larrakia who would deploy their rigid hull inflatable boats to rescue survivors.
153. At 1.50pm MV Vulpecula received a mayday distress message via satellite when it was 64 nautical miles (about 118.5 kilometres) from the incident position indicating it would take about three hours to arrive.

154. At 4.28pm MV Vulpecula arrived at the scene.
155. On arrival, the Kaniva was seen with people on the hull. The ship's pilot ladder and gangway were lowered in preparation to rescue people.
156. As the Vulpecula approached it kept the Kaniva on its starboard side, but because of a 2 to 3-metre swell and 20 knot breeze it was not possible to complete the manoeuvre. The captain turned his ship around and approached the Kaniva from the ship's portside. The sea conditions were too rough to launch their rescue boat.
157. When the Vulpecula was about 25 metres from the upturned hull people began to jump from the hull and swim towards the ship. Due to the rough weather they began to spread out along the ship's side.
158. Vulpecula's split into three groups along the ship and manned the ladders.
159. As survivors swam to the ship and climbed up, they were helped on board.
160. Merchant vessel, Cape Oceania, received a VHF call from Australian Customs requesting the vessel to standby on VHF Channel 16 and wait for instructions from RCC Australia. That occurred at 1.20 pm on 21 June 2012.
161. At 2.24 pm RCC Australia gave the coordinates to MV Cape Oceania to attend and assist with the rescue operation.
162. Approximately 3 hours later at about 5.30 pm, Cape Oceania arrived at the rescue area and could not see any upturned vessel in the water, only floating objects in the region of 20 or 30 life jackets in the water.
163. A rescue boat was launched with four crewmembers to search for survivors.

164. The prompt response search and the rescue efforts of the captain and the crews of all three merchant vessels can only be admired.
165. They show the prompt and efficacious manner in which merchant vessels can be deployed, and underscore the question of why there had not been an earlier request sent to the closest vessels to SIEV 358 at a much earlier time.
166. MV Dragon rescued 8 people. MV Vulpecula rescued 27 people, and MV Cape Oceania rescued 4 people.
167. At 12.05 pm the captain of HMAS Wollongong was advised that in conjunction with HMAS Larrakia they would respond to the safety of life at sea incident and was given the coordinates and departed for the location and preparations for the rescue were undertaken.
168. The priority to recover survivors was to rescue people without life jackets first, then people with life jackets, and then anyone from life rafts. Similar planning was undertaken by both of those Australian vessels.
169. At about 5.30 pm Wollongong and Larrakia arrived at the scene. It had taken them about 5½ hours to arrive at the location. It was estimated by the commanders of those Australian naval vessels that survivors were in a 3 mile nautical radius and two unmanned small wooden fishing boats were seen that appeared to be fishing and did not assist in the rescue operation.
170. It is not known if those fishing vessels rescued any survivors or recovered any deceased people from the Kaniva.
171. The commanding officer on the Larrakia saw many people in the water wearing life jackets, screaming and blowing whistles to attract attention, describing the noise as overwhelming.

172. HMAS Larrakia was at Smith Point, Christmas Island refuelling when it was contacted by Headquarters Northern Command and informed that the Kaniva had capsized and directed to sail immediately to the search and rescue location and the position given.
173. It was estimated that the search and rescue location was 120 nautical miles (or 222 kilometres) away and it would take approximately 5 hours to reach.
174. At about 5.29 pm Larrakia arrived at the scene and sighted the upturned hull of the Kaniva and that there were only about 40 centimetres of freeboard that could be seen.
175. Rigid hull inflatable boats deployed from the Larrakia attended at the upturned hull and saved 13 people.
176. An assessment was made by the commanding officer that it was unlikely that any survivors remained inside the hulk of the sunken boat. This was based on the low freeboard and the time that had elapsed since the Kaniva sank, the lack of signalling, pointing or gesturing from those who were rescued which may have indicated other people were trapped inside.
177. Also, there was a lack of suitably qualified diving personnel and scuba equipment which made it unsafe to put the crew onto the hull or a swimmer into the water to investigate for any other survivors.
178. The condition of the ocean was severe at sea state 4. Sunset occurred at 6.48 pm and total darkness at about 7.49 pm.
179. The prompt and efficacious efforts of the captains and crew of HMAS Wollongong and HMAS Larrakia can only be commended and serve to

underscore that Australia has the capability to respond quickly and effectively when tasked to do so.

180. At 12.06pm on the 21 June 2012 HMAS Wollongong was deployed and tasked to attend the scene to a location 24 nautical miles north of Christmas Island.

181. HMAS Wollongong rescued 55 people. HMAS Larrakia rescued 16 people.

182. 110 survivors were rescued and 3 deceased persons were recovered. Survivors had been in the water for over 13 hours in ocean which is 5,000 in depth rough seas large swells and strong currents.

183. The subsequent search resulted in the recovery of another 14 deceased people but no more survivors. In total 17 bodies were recovered. 85 people were not recovered and are presumed drowned.

184. The area is part of the Indonesian Search and Rescue zone and not in Australian Search and Rescue Zone or within Australian Territorial waters. However that did not preclude a search and rescue jointly with Basarnas or under the command of AMSA at its request or the request of Basarnas had an assessment been made that AMSA was best placed to coordinate the search and rescue.

185. The issues which arise in the inquest are:

- (a) identifying the deceased person;
- (b) establishing the cause of their death;
- (c) examining the circumstances in which SIEV 358 sank;

- (d) the search rescue efforts of the Indonesian Basnaras, and the Australian Maritime Safety Authority,
- (e) the causes or contributing causes to the deaths of 17 people including but not limited to the search and rescue efforts;
- (f) Possible improvements to emergency communications or search and rescue efforts between Australia and Indonesia in Indonesia's search and rescue zone.

DATED: 25 June 2013

Counsel Assisting the Coroner:

Marco Anthony Tedeschi