



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Reference: Certain maritime incident

THURSDAY, 11 JULY 2002

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SENATE
SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Thursday, 11 July 2002

Members: Senator Cook (*Chair*), Senator Brandis (*Deputy Chair*), Senators Bartlett, Collins, Faulkner, Ferguson, Mason and Murphy

Senators in attendance: Senators Brandis, Collins, Cook, Faulkner and Mason

Terms of reference for the inquiry:

For inquiry into and report on:

(a) the so-called ‘children overboard’ incident, where an Indonesian vessel was intercepted by HMAS *Adelaide* within Australian waters reportedly 120 nautical miles off Christmas Island, on or about 6 October 2001;

(b) issues directly associated with that incident, including:

(i) the role of Commonwealth agencies and personnel in the incident, including the Australian Defence Force, Customs, Coastwatch and the Australian Maritime Safety Authority,

(ii) the flow of information about the incident to the Federal Government, both at the time of the incident and subsequently,

(iii) Federal Government control of, and use of, information about the incident, including written and oral reports, photographs, videotapes and other images, and

(iv) the role of Federal Government departments and agencies in reporting on the incident, including the Navy, the Defence Organisation, the Department of Immigration and Multicultural Affairs, the Department of the Prime Minister and Cabinet, and the Office of National Assessments; and

(c) operational procedures observed by the Royal Australian Navy and by relevant Commonwealth agencies to ensure the safety of asylum seekers on vessels entering or attempting to enter Australian waters.

(d) in respect of the agreements between the Australian Government and the Governments of Nauru and Papua New Guinea regarding the detention within those countries of persons intercepted while travelling to Australia, publicly known as the ‘Pacific Solution’:

(i) the nature of negotiations leading to those agreements,

(ii) the nature of the agreements reached,

(iii) the operation of those arrangements, and

(iv) the current and projected cost of those arrangements.

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Committee met at 9.36 a.m.

CHAIR—I declare open this meeting of the Senate Select Committee on a Certain Maritime Incident. Today the committee continues its public hearings in relation to its inquiry. The terms of reference set by the Senate are available from secretariat staff, and copies have been placed near the entrance to the room. Today's hearing is open to the public. This could change if the committee decides to take any evidence in private. The committee has authorised the broadcasting of the public aspects of proceedings. I remind members that there will be a private meeting of the committee during the dinner break. The waiting room two doors down is for witnesses only and is a private area to which the press and the public have no access. I remind everyone that mobile phones are to be switched off in the hearing room.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. If at any stage a witness wishes to give part of their evidence in camera, they should make that request to me as Chair, and the committee will consider the request. Should a witness expect to present evidence to the committee that reflects adversely on a person, the witness should give consideration to that evidence being given in camera. The committee is obliged to draw to the attention of a person any evidence which, in the committee's view, reflects adversely on that person and to offer that person an opportunity to respond.

An officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy. However, officers may be asked to explain government policy, describe how it differs from alternative policies and provide information on the process by which a particular policy was arrived at. When witnesses are first called upon to answer a question, they should state clearly their names and positions. Witnesses will be asked to make an oath or affirmation. Where witnesses are accompanied by counsel, counsel may be seated at the witness table but counsel may not answer questions on behalf of the witness, nor will the committee direct any questions to counsel.

[9.39 a.m.]

DAVIDSON, Mr Clive, Chief Executive Officer, Australian Maritime Safety Authority

CHAIR—Our first witness today is Mr Clive Davidson. Do you have any comments to make by way of an opening statement?

Mr Davidson—I have none.

CHAIR—Are you happy if we now, therefore, proceed to questions?

Mr Davidson—Yes.

Senator JACINTA COLLINS—Mr Davidson, I had not actually sought for you to appear today, but I will take the opportunity to go through with you the questions on notice that you answered, in relation to file notes referring to communications with the RCC. That was you; you are the relevant person to raise this with?

Mr Davidson—Correct.

CHAIR—These are answers given to questions on notice that have not, as I understand it, been released. Is that right?

Senator JACINTA COLLINS—I believe perhaps not. It is unclear whether the clearing process we went through last week in relation to the Defence documentation also incorporated these. Perhaps I can clarify one point, Mr Davidson: did these answers to questions on notice go through the minister's office?

Mr Davidson—No, they are answers from me to the committee.

Senator JACINTA COLLINS—They have not been through the minister's office?

Mr Davidson—They have.

Senator JACINTA COLLINS—They have been through the minister's office?

CHAIR—Before we proceed, can I put this question: does the committee resolve to release this material? There being no objection, it is so agreed. You may proceed, Senator Collins.

Senator JACINTA COLLINS—Mr Davidson, I would like to take you to the last file note that we were given, I think, through the secretariat. We sought some clarification so that we could read the words. Perhaps I will take you through what I understand this file note to read, and you can confirm that for me firstly. There is a call; was it a telephone call between Headquarters Australian Theatre, Defence, and the RCC on 22 October at 5.46? Is that a.m.?

Mr Davidson—That would be UTC time.

Senator JACINTA COLLINS—What does UTC time convert to?

Mr Davidson—About nine hours behind current Eastern Standard Time.

Senator JACINTA COLLINS—Is the basis of this file note a telephone conversation?

Mr Davidson—Yes, it is.

Senator JACINTA COLLINS—Defence rings the RCC and says, ‘Just got your fax. What is your source?’ Now, that fax is?

Mr Davidson—The fax is the one that appears at the second page of the documents that were released.

Senator JACINTA COLLINS—This is the fax advice to BASARNAS re overdue SIEV?

Mr Davidson—No, it is the fax from Coastwatch to AusSAR. Sorry, you are correct. I apologise; you are right.

Senator JACINTA COLLINS—I am right.

Mr Davidson—You are right. It is the fax just prior to that.

Senator JACINTA COLLINS—Just before we go back to that file note, what does ‘Marabahaya Marabahaya Marabahaya’ mean?

Mr Davidson—‘Attention Attention Attention’.

Senator JACINTA COLLINS—So this fax that Defence is about to conduct this telephone conversation about indicates that—and I quote:

RCC Australia has been advised that a vessel carrying an unknown number of persons departed the west coast of Java on Friday 19 October 2001 transiting the Sunda Straits heading for Christmas Island. This vessel has not yet arrived and concerns have been expressed for its safety.

Passed for information and action as considered necessary.

Defence then talks back to the RCC in this phone conversation, saying:

Just got your fax. What is your source?

The RCC says Coastwatch is the source.

Mr Davidson—That is correct.

Senator JACINTA COLLINS—Defence then says—I am not sure what the ‘R’ here refers to, before we get to the content of that next phrase.

Mr Davidson—‘Response’.

Senator JACINTA COLLINS—Okay. Defence says:

We already have a large search for this vessel for surveillance matters.

The next comment is: ‘Search and rescue?’

Mr Davidson—Yes.

Senator JACINTA COLLINS—Defence then says back:

No. Only surveillance.

Mr Davidson—That is correct, yes.

Senator JACINTA COLLINS—And then there is just an ‘R’ at the bottom. I wonder if you can explain to me what that ‘R’ at the bottom means.

Mr Davidson—It would have been a response, which would have been ‘Thanks’ or ‘Goodbye’.

Senator JACINTA COLLINS—It is a closing-off?

Mr Davidson—Yes. It just says the ‘end of the transmission.’ It says they responded to that in some fashion, but it was not material in terms of anything.

Senator JACINTA COLLINS—Are there any further communications relevant to AMSA that are related to this incident?

Mr Davidson—That is the sum total of our file on the matter.

Senator JACINTA COLLINS—This is the last of it?

Mr Davidson—Yes.

Senator JACINTA COLLINS—So even though you issued a warning and Defence came back to you and said, ‘We are conducting a large search for this vessel but only for surveillance matters,’ no further action was taken regarding the expressed concern for the safety of the people on board the vessel from AMSA’s perspective?

Mr Davidson—That is correct, yes.

Senator JACINTA COLLINS—From what I can gather, the main reason you are here this morning—and in the light of that communication I think this issue is even more important—is

to give you an opportunity to clarify an apparent conflict between your evidence and the evidence of Admiral Bonser of Coastwatch. Let me take you through that. The fundamental issue here is: why did AusSAR not issue a broadcast alert to shipping on 22 October once advised by Coastwatch that SIEVX was assessed as probably overdue? The material we have from your last appearance says that normally you would not issue a broadcast in the absence of a specific known distress alert—that is on the *Hansard*, reference 1372. But we need to understand why Bonser, when he appeared before us, indicated that his understanding was that a broadcast to shipping can be issued once an assessment has been made that a vessel is overdue, and that could be not only in cases where specific distress signals have been received. Indeed, that was the point of Coastwatch informing AusSAR that the vessel was overdue on 22 October. Could you address that point for us, please?

Mr Davidson—To the best that I can, Senator. I think the circumstance is that there is no certainty that AMSA would broadcast to shipping, particularly when the nature of the information coming from Coastwatch was very small and unclear. In the follow-up phone call coming from Defence there was a suggestion that they in fact had a large surveillance exercise going, presumably to locate the vessel. The specific question was asked: was there a search and rescue? The answer was no. On that basis, since the matter had been brought to our attention by Coastwatch, since within Coastwatch the sense was that the RCC ought to be advised, and since the vessel was believed to be in the Indonesian search and rescue region, we felt that, in the same way, we ought to immediately convey that information to our counterparts in BASARNAS. But at that stage there was no knowledge of location of the vessel or whether, indeed, it had departed; and there was no indication that it was in distress or likely to be in distress. The sum total of our information was that contained in the fax from Coastwatch and it said, ‘A vessel carrying an unknown number’ of potential illegal immigrants.

Senator JACINTA COLLINS—Can you take me to that.

Mr Davidson—In the material that was tendered in response to the questions there is a telephone conference note, and the second page is the fax received from Coastwatch.

Senator JACINTA COLLINS—Let us go to this very first one because I want to understand the difference between what information was before Coastwatch and what was identified as already residing elsewhere in the system. The first page here is advice from Coastwatch.

Mr Davidson—There was a telephone call from Coastwatch to the Rescue Coordination Centre in AMSA, which said:

Coastwatch intel wants me to advise you of a suspected over due SIEV. (gave contact of manager).

The response: ‘Please fax across.’ The reply to that was ‘OK’. That was at UTC 4.37 and it came across subsequently to that. It is on the next page.

Senator JACINTA COLLINS—Where it says ‘A number of sources are reporting ...’.

Mr Davidson—And that is the sum total of AMSA’s information on the nature of that vessel.

Senator JACINTA COLLINS—It says ‘By our calculations this vessel is now overdue’. Where does the reference to concerns for safety come from? What then goes into the warning is that concerns had been expressed for its safety.

Mr Davidson—I will go to the next telephone conference, which was from the Rescue Coordination Centre to Coastwatch. It says:

Touching base to ensure Defence are aware and that this area is out of our SRR—

that is the search and rescue region. The answer from Coastwatch said:

Yes—realise that—ensuring you are aware and we will keep you in the loop over the coming days.

The response was:

Can we use your exact words in a fax to BASARNAS (SAR colleagues Indonesia)—

that is search and rescue colleagues in Indonesia. The reply from Coastwatch was:

Yes—exact words.

RCC said:

OK, thank you.

The next one is a file note, which is a calculation of the approximate steaming time of a vessel at four knots, five knots and six knots to cover 300 nautical miles. In other words, it was confirming, in our minds, that it was potentially overdue if it had departed and was indeed steaming towards Christmas Island.

Senator JACINTA COLLINS—So the express safety concern was based on Coastwatch’s calculations that, on steaming times, it was overdue?

Mr Davidson—I think the generation of concerns expressed for its safety would have been the sense that our people would have got from having been informed by Coastwatch in the manner in which they had been.

Senator JACINTA COLLINS—But without detail about—

Mr Davidson—Having absolutely no—I suspect that it was adding colour, probably from conversations or just from the sense that we had been informed and were passing it to BASARNAS.

Senator JACINTA COLLINS—This is where we need to go back to the question of the relevance of whether it was in the Australian search and rescue zone as compared with Indonesia’s. My impression—and correct me if I am wrong—is that Coastwatch often conducts search and rescue in the Indonesian search and rescue zone.

Mr Davidson—Coastwatch conducts surveillance; I would not say often. In fact, from memory, I would be hard-pressed to recall an activity in which they were conducting search and rescue. In the evidence I gave the last time, I explained that the first party anywhere in the world that becomes aware of a distress situation must take all steps to attempt to get some sort of rescue in place. At the same time, they take steps to hand that off to the competent authority that has responsibility for that search and rescue region. In this particular case, there was no evidence of a distress. There was a suggestion that a vessel may have departed and that, on calculations, it was overdue, if it had indeed departed. Since Coastwatch felt it was important that that information be provided to us, we equally felt it was important that it should be provided to BASARNAS. That, in essence, is the beginning and the end of it.

Senator JACINTA COLLINS—So when the *Palapa* was identified in the Indonesian search and rescue zone, it was solely for surveillance purposes, was it?

Mr Davidson—It was under surveillance from the Coastwatch aircraft, yes.

Senator JACINTA COLLINS—And, similarly, SIEV4—was that solely for surveillance purposes?

Mr Davidson—I am not familiar with that one.

Senator JACINTA COLLINS—By the time we were in SIEV4, Coastwatch had been moved away and Defence was conducting surveillance; that is right. If we go to the final telephone conversation, why would the question be asked as to whether Defence was searching for the vessel solely for surveillance matters?

Mr Davidson—It was asked because our responsibility is exclusively about search and rescue, and it is quite appropriate that the people responsible for search and rescue would confirm with the Defence people that there was no search and rescue issue.

Senator JACINTA COLLINS—Just go back a moment: you indicated a moment ago that one of the maritime principles, for want of a better expression, is that it is the responsibility of any party that is out there to assist, if it becomes aware of distress, in search and rescue. This conversation confirms that Defence are conducting a large search for this vessel but at the same time say, ‘But we are not concerned about search and rescue.’ Why would that be?

Mr Davidson—I can only assume that, at the time, they were not concerned about it for search and rescue purposes.

Senator JACINTA COLLINS—Why weren’t they concerned? You had just issued a warning.

Mr Davidson—No, we provided the information that had been given to us by Coastwatch to BASARNAS. It was simply advising them in the terms that we had, essentially, received from Coastwatch. We had received the information and it was appropriate that the adjacent search and rescue authority also receive it.

Senator JACINTA COLLINS—As I understand the way BASARNAS operates, it often calls on Australia to conduct its search and rescue for it. That is what happened with the *Pelapa*.

Mr Davidson—That is not correct.

Senator JACINTA COLLINS—In the case of the *Pelapa*, Australian aerial surveillance was not looking for BASARNAS?

Mr Davidson—In the case of the *Pelapa*, Coastwatch were conducting surveillance for potentially illegal immigrant vessels, and they located one.

Senator JACINTA COLLINS—They were not performing any search and rescue role at the request of Indonesian authorities?

Mr Davidson—No.

Senator JACINTA COLLINS—And that never occurs, to your understanding?

Mr Davidson—No, it did not.

Senator JACINTA COLLINS—No, I am asking whether it ever occurs, to your understanding.

Mr Davidson—I am not aware of any circumstance where BASARNAS has requested us to conduct search and rescue events on their behalf.

Senator JACINTA COLLINS—Okay. I still want to go back to your earlier point, which was this: if, in terms of maritime standards, you become aware that there is a potential distress situation and you are there, it is your responsibility to assist with search and rescue. Is that the case?

Mr Davidson—Yes, that is the case.

Senator JACINTA COLLINS—If we look at this last conversation from Headquarters Australian Theatre, they know because they have received a copy of your fax to BASARNAS saying that there is a potential distress situation in the zone where they are surveilling. When RCC then says to them, ‘Search and rescue,’ they say, ‘No, only surveillance,’ and nothing else gets done.

Mr Davidson—The true circumstance is that the Headquarters Australian Theatre had precisely the same information that was conveyed to AMSA in that fax that came from Coastwatch. When they read the fax from us to BASARNAS they wanted to confirm that we were talking about the same vessel and that the language that was in essence added to that, which was, ‘concerns have been expressed for its safety,’ was introducing other knowledge that someone else had injected into the issue. So Defence were trying to confirm whether there was something different or more knowledge that they did not have. That conversation then took

place and it confirmed that we had generated that fax to BASARNAS based on only the knowledge that was in the Coastwatch fax and—

Senator JACINTA COLLINS—Where is that conversation?

Mr Davidson—It is the final conversation from Headquarters Australian Theatre: ‘Just got your fax. What is your source?’ We said, ‘Coastwatch.’ The basis of that was to confirm that, indeed, everyone was dealing with the same situation and the same vessels. They were just trying to confirm whether, in some process, some more information had not been injected that led to the concern for its safety. I would say that the colour of that has been injected either from conversations with Coastwatch or by people within the Rescue Coordination Centre. There was no information that would suggest that that was the case, other than its condition.

Senator JACINTA COLLINS—What you have in part confirmed is that AusSAR was not aware of the detail of the AFP report, but Defence was.

Mr Davidson—That is all we had in that—

Senator JACINTA COLLINS—According to our evidence from Bonser, the AFP information that went to Defence that described further the issue about concern was not received by AusSAR.

Mr Davidson—That is correct. It was not.

Senator JACINTA COLLINS—The remaining question I have about AusSAR’s role here is that when you reached the decision not to issue an alert to shipping, which Bonser seems to indicate was the purpose for advising you in the first place, why was the point not made at the time that there was insufficient information to warrant such an alert and Coastwatch was not asked to provide further information if that were necessary?

Mr Davidson—With due respect to Admiral Bonser’s knowledge of search and rescue, the actual processes that take place within the search and rescue centre are matters of judgment within the centre, and the conclusion that my people drew was that it did not warrant a broadcast to shipping. That is a judgment that they have to make in each circumstance. There is general guidance in various manuals about the various phases of a SAR—a search and rescue—and, in the technical parlance, this is the uncertainty phase: there is insufficient information, a concern has been expressed and then people search for collateral or confirming information that warrants some action being taken. If we were to send a broadcast out to shipping on every overdue notice we get, there would be a continuous, unending stream of overdue notices out to shipping, because people are overdue every single day.

Senator JACINTA COLLINS—What concerns me is that we do not see any sign of the search for further information. We do not see AusSAR going back to Coastwatch and saying, ‘There is not enough information here. What more have you got?’ We do not hear of AusSAR going back to Coastwatch and saying, ‘Fine. Thank you. But there is not enough concern to warrant what you seem to anticipate would occur.’ We do not see AusSAR saying to Defence, ‘What else is there?’ We just see a conversation with Defence, where Defence says, ‘We are conducting a large search.’

Mr Davidson—I think you need to set it in the context of the resources that were available at the time and that would have been deployed to act if there was a search and rescue event. Quite frankly, the nature of the information from Coastwatch was hardly alarmist and hardly raised a high degree of concern. That was confirmed in a conversation with the Headquarters Australian Theatre, where the sense of the conversation and, indeed, the results of that were essentially that they were out there looking for it, so if there was a situation they had the assets on the ground and in the air. I am not terribly sure what you are expecting the search and rescue centre to have done over and above that. We confirmed, in terms of the calculations for a vessel travelling at the various speeds, that it was indeed overdue. It was passed to us from Coastwatch and therefore it was appropriate that we pass that on to BASARNAS. As Coastwatch obviously felt there was sufficient reason for us to be pre-alerted, we should pre-alert BASARNAS in exactly the same fashion, because it was in their search and rescue region.

Senator BRANDIS—Are you quite satisfied that in its assessment of this vessel your agency treated this vessel in the same way that it would treat any other vessel? In other words, were the operational procedures of your agency applied in this case in the same way as they would have been applied in any other case?

Mr Davidson—Yes, I am, Senator.

Senator JACINTA COLLINS—Going back to the last communication, I want to understand what confidence AusSAR received from this final communication. As you have said, this was the end of the matter as far as you were concerned once you spoke to Defence. You spoke to Defence and they said:

We already have a large search for this vessel for surveillance matters.

Would AusSAR take that to mean that they were looking specifically for this vessel or that they would expect to pick up this vessel in their routine surveillance?

Mr Davidson—It was taken to mean that they were specifically looking for that vessel.

Senator JACINTA COLLINS—Would you expect that, in line with your earlier comment, if Defence is in the area where a potential distress alert has been issued, then search and rescue is also their responsibility?

Mr Davidson—Yes.

Senator JACINTA COLLINS—Thank you. That concludes my questions.

Senator FAULKNER—I have a question on another matter. Thank you for answering the questions in relation to conversations you had with Mr Moore-Wilton, at least in part. Did Mr Moore-Wilton have other contact with AMSA apart from you in the period from 26 August through to early September?

Mr Davidson—No, he did not.

Senator FAULKNER—So those two conversations, one on the morning of Wednesday, 29 August and one on 4 September are the only conversations that Mr Moore-Wilton had with officers of AMSA?

Mr Davidson—Yes, to the best of my knowledge.

Senator FAULKNER—I am sorry, you have just qualified—

Mr Davidson—He did not have any other conversations.

Senator FAULKNER—Thank you. I did ask you about the content of those particular conversations. I will just turn up the answer to the question on notice that you provided. You said:

... neither of which had an impact on AMSA's operation.

My question is: could you outline those contacts for the benefit of the committee, please? Your answer to that is that they did not have any impact on AMSA's operations. With due respect, that is not really an answer to my question. So what were they about?

Mr Davidson—To the best of my recollection, the phone call of 29 August at about 9.30-odd in the morning resulted in a fax that was sent to the *Tampa* at 9.25 a.m. on that day.

Senator FAULKNER—And that was about?

Mr Davidson—That was advising the *Tampa* that helicopters were being readied, and a range of issues.

Senator FAULKNER—Have you made a copy of that fax available to this committee?

Mr Davidson—The *Tampa* timeline material has that fax. It said:

... sent message to *Tampa* forbidding vessel to enter Australian territorial waters. *Tampa* was advised that helicopter being readied to effect transfer of doctor and medical supplies today.

Senator FAULKNER—So would it be possible to get a copy of the original fax, the original note?

Mr Davidson—Yes.

Senator FAULKNER—Thank you very much, if you could take that on notice. And the second conversation of 4 September?

Mr Davidson—To the best of my recollection, it concerned newspaper articles that were being circulated at the time.

Senator FAULKNER—Could you give me more detail, please.

Mr Davidson—I honestly don't recall.

Senator FAULKNER—Through this period, you only had two conversations with Mr Moore-Wilton. That is right, isn't it?

Mr Davidson—Yes.

Senator FAULKNER—How often did you have a contact with the head of the Department of Prime Minister and Cabinet? Not that often, obviously.

Mr Davidson—Infrequently.

Senator FAULKNER—What was the purpose of a call on 4 September—what newspaper articles? What was the concern?

Mr Davidson—I believe that he had been contacted by a newspaper about some matter concerning AMSA and he wanted to confirm whether we had been talking with the press.

Senator FAULKNER—But what was the matter? Surely you remember, because you do not have too many conversations with Mr Moore-Wilton. What were you being accused of leaking?

Mr Davidson—To the best of my recollection, I think there had been an article in the press—I think it was the *Weekend Australian*—which was a relatively long piece that made various statements that included references to Mr Max Moore-Wilton. He wanted to know if we had been the source of that, if we had indeed talked to the press at any stage. I confirmed that no conversation had taken place with the press.

Senator FAULKNER—So Mr Moore-Wilton initiated both those calls?

Mr Davidson—He did, yes.

Senator FAULKNER—Did you take a file note of either of those calls?

Mr Davidson—No.

Senator FAULKNER—You have answered my question in relation to Ms Philippa Godwin and her conversations with AMSA. In question No. 6, I asked about Ms Godwin, and you have indicated that none of the two or three conversations with Ms Godwin on the evening of 26 August 2001 had an impact on AMSA's operations either, which is helpful. Could you tell me what they were about, please?

Mr Davidson—Essentially, it was exchanging information with Immigration on what my understanding was of the intent of the *Tampa* at that time and what Immigration's understanding was. Both the Rescue Coordination Centre and officers from Immigration were having conversations with the vessel separately, and we were merely exchanging the information that we had subsequent to those conversations.

Senator FAULKNER—In this period did you have any contact from any other senior members of the Department of the Prime Minister and Cabinet?

Mr Davidson—I need to refresh my memory on that.

Senator FAULKNER—Could you take it on notice to indicate who the contact was from and what the nature of the contact was. Also, could you do the same in relation to any senior members of DIMIA and DFAT and any other relevant members of the precursor to the People Smuggling Task Force, just so that we do not delay the committee. You may care to check your records; I appreciate that.

Mr Davidson—Yes.

Senator FAULKNER—I am interested not just in relation to you but in relation to any others. Obviously, on a Sunday evening when you are on duty I do accept, of course, that at the end of the day the buck stops with you as far as AMSA is concerned, but there may be other senior members of your organisation who may have been contacted at that time. If they were, the detail of such contact and the nature of such contact would be appreciated. I had the chance for a very cursory examination of the time line. At any stage was the captain of the *Tampa*, Captain Rinnan, given permission by AMSA to go to Christmas Island?

Mr Davidson—No, he was not.

Senator FAULKNER—Thank you.

CHAIR—We seem to have concluded our questions to you, Mr Davidson. I do not think it is likely that you will receive a recall, so thank you very much.

Proceedings suspended from 10.15 a.m. to 10.35 a.m.

GALLAGHER, Colonel Patrick John, Commander, Australian Theatre Joint Intelligence Centre

CHAIR—Welcome. Do you have any opening remarks to make?

Col. Gallagher—Yes, I do.

CHAIR—Please proceed.

Col. Gallagher—I would like to begin by thanking the committee for its invitation to appear before it. I am the current Commander of the Australian Theatre Joint Intelligence Centre, commonly referred to as the ASTJIC, which is collocated with the Headquarters Australian Theatre in Sydney. I assumed my position as Commander ASTJIC on 14 January 2002. I am aware that the committee has received a letter from the Minister for Defence concerning my appearance today. Further to that letter, I hope to assist you by describing the arrangements for receiving and distributing intelligence within the Australian Theatre, thereby providing you with some context for the chronology that has been provided to the committee in relation to the vessel that has become known as SIEVX.

Without wishing to hinder the work of the committee, I ask you to note that, whilst I am happy to respond to any questions posed, I am always mindful of security considerations. If required to answer a question that pertains to classified matters, I may request the committee to move to an in-camera session. I thank the committee in advance for its understanding in this regard.

To begin with, it may assist the committee if I provide some background about my organisation by describing its role and its place within the Australian Theatre and the wider defence intelligence system. The role of the ASTJIC is to provide Commander Australian Theatre, COMAST, and his operational and tactical level commanders with fused, near real-time, all source intelligence to support the planning for and day to day conduct of Australian Defence Force operations. To achieve this level of support, the ASTJIC operates 24 hours each day, every day of the year. During October 2001, in addition to providing intelligence in support of Operation Relex, the ASTJIC provided high levels of support to actual or potential ADF operations in the Middle East, Central Asia, the Arabian Gulf, East Timor, Bougainville, the Solomon Islands and the Southern Ocean. During the same period, the ASTJIC was also monitoring the security of ADF deployments to Bosnia and Kosovo, Israel and Lebanon, the Sinai, Sierra Leone, Eritrea and Ethiopia, and Mozambique. It was clearly a busy time for the ASTJIC and the Australian Theatre as a whole.

My organisation works directly for COMAST and provides intelligence to his headquarters and to ADF forces conducting operations under his command. As an all source operational level intelligence agency, the ASTJIC does not collect intelligence; instead, it receives information and intelligence from Defence and other Australian government agencies. Once information or intelligence is received, the ASTJIC, within its capacity, analyses and tailors it to develop a theatre-wide intelligence picture. In developing that daily picture, the ASTJIC considers each of

the many operations being planned or conducted across the theatre. The picture is continuously updated and disseminated throughout each 24-hour period.

In the normal course of events for military operations, ASTJIC receives the bulk of its information and intelligence from Canberra based Defence intelligence agencies and from deployed ADF forces. However, you will note from the chronology on SIEVX that has been provided to you that, in the case of Operation Relex, almost all of the relevant information and intelligence was received from DIMIA, then known as DIMA, and from Coastwatch.

Once it was received, ASTJIC routinely correlated the DIMA and Coastwatch intelligence reports and presented a consolidated forecast of anticipated SIEV activity to COMAST and to subordinate ADF headquarters and units. The forecast was disseminated by daily briefings, formal messages and Defence intranet webpage updates. In summary, the ASTJIC is an advisory agency responsible for providing intelligence that contributes to the situational awareness and decision making processes of COMAST and his subordinate ADF commanders. As Commander ASTJIC, I am not part of the operational decision making process, and I am therefore only able to offer authoritative comment on intelligence related matters. Thank you for the opportunity to make this statement; I hope it is of some assistance to your inquiry.

CHAIR—Thank you, Colonel Gallagher. Before I ask the committee whether they have any questions of you, I seek some advice on a point of clarification. We sought from the Minister for Defence the appearance of Rear Admiral Gates, and he suggested to us that you were a more appropriate officer. Can you describe for me where in the hierarchy you sit in relation to Rear Admiral Gates?

Col. Gallagher—I am outside of his direct chain of command; I work for the Commander Australian Theatre.

CHAIR—But you supplied to Rear Admiral Gates some information in compiling the report, did you not?

Col. Gallagher—Indeed, Senator. That is because he was heading an inquiry into the distribution of information within Defence relating to these matters.

CHAIR—Were you the significant source for his report?

Col. Gallagher—No, I was not. A number of agencies within Defence would have contributed, I am sure. Certainly I can recall commenting on the papers that were forwarded to this committee, as I am aware Headquarters Northern Command also did.

CHAIR—Could you tell us which other agencies, apart from your own, contributed to that report?

Col. Gallagher—I do not know for certain; I would have to find out precisely. If you wish me to, I will take that on notice.

CHAIR—Indeed. As Senator Collins opened the batting, do you have any questions, Senator Mason?

Senator MASON—I have no questions at this stage.

Senator FAULKNER—Colonel Gallagher, can you indicate to the committee whether ASTJIC actually made a written contribution for inclusion in Admiral Gates's report on the SIEVX incident?

Col. Gallagher—The written contribution that we made, as far as I am aware, was that we had no comment. We reviewed it to see that it was consistent with our understanding of the chain of reporting available to Defence at the time, and I was happy that it was an accurate reflection of the information available to Defence at the time.

Senator FAULKNER—Did ASTJIC provide material, apart from any written material—I am drawing a distinction here between anything created by ASTJIC for inclusion in Admiral Gates's report and any primary sources, if you like, that might have been passed from ASTJIC to Admiral Gates? I want it to be clear that I am drawing that distinction; it may not be a valid one but I want to be clear on that point.

Col. Gallagher—I recollect that some of our primary source material was passed to the people doing the investigation.

Senator FAULKNER—Thank you. In relation to the primary source material, and without getting into detail, can you indicate broadly what the nature of the primary source material would be?

Col. Gallagher—Yes, it would have been copies of daily briefings that we would have presented, copies of material that would have been posted to our defence secure intranet webpages and I am sure also copies of formal message traffic that would have left the ASTJIC regarding these matters.

Senator FAULKNER—Thanks for that. In each of those three broad categories, it sounds like that is material that is generated within ASTJIC as opposed to material that comes into ASTJIC. Would that be correct? In other words, the daily briefings you are talking about, the material posted on the intranet, the formal message traffic—is this all material that is created effectively within ASTJIC?

Col. Gallagher—No, not in terms of the original source documentation. As I mentioned in my opening statement, the vast majority—and I do mean the vast bulk—of the intelligence that was being provided into the defence intelligence system was coming from other agencies, in particular DIMA, Coastwatch and I am aware that, to an extent, their reporting was based on material coming from other agencies within the Australian government.

Senator FAULKNER—Sure, but what you are saying is that some of that material, also in its raw form, if you like, would have been passed through to Rear Admiral Gates effectively from ASTJIC?

Col. Gallagher—I am not sure that we would have passed the original source documentation because we would then have had to go through the process of seeking a release from the originator to start sending it to people who were not on the original distribution list. I would

assume, and I am always aware of making assumptions, that some of that material was made available to that review.

Senator FAULKNER—Anyway, what happens to it as far as you are aware? I appreciate you may not know all the detail of this. In the preparation of Admiral Gates's report, material that is generated from within your intelligence centre and possibly some other material is passed directly to Admiral Gates for his consideration in the preparation of his material.

Col. Gallagher—I really cannot answer that question. That is a question you would have to put to Admiral Gates or his team.

Senator FAULKNER—That is a very fair answer for you to give to me. You have been offered up, as I understand it, to the committee along with another officer from Defence because the minister has not approved Admiral Gates's appearance before the committee. I do not know if you are aware of that background. I am not able to ask Admiral Gates these questions. You are here effectively we are told as a proxy for Admiral Gates.

Col. Gallagher—I am unaware of the decision making process that was undertaken.

CHAIR—Senator Faulkner, can I interrupt for a moment? Is it possible to get a copy of your opening statement? Is it in a condition that can be photocopied?

Col. Gallagher—Indeed.

CHAIR—One of the attendants will make a copy.

Senator FAULKNER—Did you have a talk with Admiral Gates about how you might handle your appearance here today? It would be perfectly reasonable if you did.

Col. Gallagher—I did meet with Admiral Gates yesterday. He explained his understanding of why I was appearing in front of the committee which was consistent with what the minister wrote in his letter to the committee about my appearance.

Senator FAULKNER—What is your understanding of why you are appearing before the committee?

Col. Gallagher—My understanding is that I am here to explain how information gets into the defence intelligence system and what happens to it once it is in the system and how it is distributed to the people who need it to conduct operations.

Senator FAULKNER—But why you?

Col. Gallagher—The ASTJIC is the primary intelligence production agency that supports the conduct of ADF operations. I am talking about all ADF operations. As I mentioned in my opening statement, you can see that we provide intelligence support to people who are deployed and to the operational decision makers across a large number of operations as a matter of course. That is why we exist. I report directly to COMAST.

Senator FAULKNER—Did Admiral Gates or some other officer inform you that it was appropriate that you attend? You said that the committee invited you—and that is absolutely fair enough—but the committee might suggest that the minister offered you up and that the minister suggested you attend.

Col. Gallagher—That is my understanding. I really cannot explain the process that they went through to make the decision to present me to the committee.

Senator FAULKNER—You have not had any discussions with the minister or the minister's office about this?

Col. Gallagher—I have had absolutely no discussions with anybody else. In fact, I have had no discussions with anybody about anything I might or might not say; indeed, the only discussions I have had with people have been about the sorts of questions I might expect from you.

Senator FAULKNER—That is fair enough and it is extremely wise, Colonel. I think we would all be impressed with that approach.

CHAIR—Perhaps we should ask you what questions we were going to ask and save us a whole lot of time.

Senator JACINTA COLLINS—None of those discussions occurred at the Kurrajong Hotel, did they?

Col. Gallagher—No. In fact, the only people I have had a cup of coffee with this morning are Senator Cook and Senator Faulkner.

CHAIR—I am a witness to that.

Senator FAULKNER—You just misled the committee, Colonel, because I had a cup of tea.

Col. Gallagher—My apologies.

Senator FAULKNER—You had a cup of coffee. On a serious basis, the point is that I am unable to ask Admiral Gates these questions at this stage, though I hope that we will have an opportunity to do that at some stage. I think that would be not only in the committee's interests but also in the interests of the ADF if Admiral Gates were able to appear before the committee and present the broad picture about SIEVX and the report that he has undertaken. But that is a comment for me to make and I do not expect you to respond. Given what you have been able to advise us in your opening statement, and I think that that background was helpful to us, who would you be able to say is the coordinator of intelligence in relation to Operation Relex? What agency would you identify as the intelligence coordinator?

Col. Gallagher—The principal agency responsible for providing intelligence support to Operation Relex from the time Defence took the lead in early September through until 31 October was the ASTJIC. From 1 November onwards, because of the tempo of activity that was

occurring in the ASTJIC trying to support all of those other operations, the responsibility was shifted to Headquarters Northern Command for a number of reasons but, principally, because of operational tempo and their familiarity with the problem.

Senator FAULKNER—Do the raw intelligence reports that you receive necessarily all go through another agency? I am particularly interested in understanding what the role of DIMIA's Border Protection Branch might be and whether that intelligence is all passed through some central assessment agency.

Col. Gallagher—Information that came into Defence went to DIO, the ASTJIC and Headquarters Northern Command almost simultaneously, but DIO was not directly part of the operational intelligence support arrangements. We tended to receive processed material—that is, not the raw reports—from DIMIA and Coastwatch and only rarely were we presented with information that could clearly be sourced to another agency, for example, the Australian Federal Police.

Senator FAULKNER—As far as ASTJIC is concerned, the same material that comes in to you goes to DIO and NORCOM as well?

Col. Gallagher—Yes, that is correct—and almost simultaneously. If it came in electronically it did go simultaneously. If it came in in hard copy, as most of the DIMIA material did, it had to be faxed across secure facsimile connections. So there was obviously some time lag—but not a significant time lag—between the distributions.

Senator FAULKNER—So most of the raw intelligence comes from DIMIA, does it?

Col. Gallagher—I am not sure about the raw intelligence. All I can say is that most of the processed intelligence—the formal intelligence product—came from DIMIA.

Senator FAULKNER—Has that intelligence product, or raw intelligence, that comes from other agencies all gone to DIMIA as well, as far as you understand? You may not be able to answer that, but your understanding might assist us.

Col. Gallagher—My expectation would be that all of that material was made available to DIMIA. As I have mentioned before, I am confident that all of the information that was made available to Defence was shared within Defence.

Senator FAULKNER—So the majority of this comes from DIMIA. Then, of course, there are other sources. You identified the Australian Federal Police—is that right?

Col. Gallagher—Yes. The Australian Federal Police were cited as the source in a number of reports.

Senator FAULKNER—You identified Coastwatch earlier.

Col. Gallagher—Indeed.

Senator FAULKNER—Would you be able to identify other agencies for us, please?

Col. Gallagher—I am not sure about other Commonwealth government agencies, but certainly there is occasional—I make the point, very occasional—material from the Defence Signals Directorate.

Senator FAULKNER—Are you able to identify any other agencies?

Col. Gallagher—I prefer not to. I prefer not to delve into areas where I really cannot comment regarding what DIMIA was receiving from whom. I can only make judgments based on the fact that we very occasionally saw some of our own reporting relating to this and I know that that went to DIMIA.

Senator FAULKNER—What I am asking is the process question of which agencies are inputting to ASTJIC, that is all—I am not asking you about anything beyond that.

Col. Gallagher—Directly to ASTJIC there is DIMIA, Coastwatch, the Defence Signals Directorate and DIO—who, like us, are not collectors but are an all-source analysis agency. There are also our own operational forces. We were getting reports back from the ships at sea, the aeroplanes that were flying and Headquarters Northern Command.

Senator FAULKNER—And AFP?

Col. Gallagher—No, we were not receiving reports directly from AFP.

Senator FAULKNER—Are there any others that you can identify?

Col. Gallagher—No, we were not receiving reports directly from other agencies, apart from those within Defence.

Senator JACINTA COLLINS—I am sorry, did you say you were not getting reports directly from AFP?

Col. Gallagher—As far as I am aware. Certainly the ASTJIC was not. I cannot speak for other parts of Defence.

Senator FAULKNER—What was the working relationship between ASTJIC and DIMIA's Border Protection Branch? How did that work on a day to day basis?

Col. Gallagher—I might say up front that it was a very good relationship. Certainly, our relationship with Coastwatch was equally close. Each day formal reporting would come from DIMIA, usually in the early afternoon. It should be borne in mind that I was not at ASTJIC at the time—I have deduced this from examining the products and talking to people who were there at the time. The analysts at ASTJIC would clarify any areas that were seen as doubtful in order to try and fine down the ASTJIC product, to tailor it to what was required to support the development of situational awareness in the commander's mind about what was going on at the

theatre level—and I assume this was so that the commander could make decisions about the apportionment of resources to conduct Operation Relex.

Senator FAULKNER—Did you receive the DIMIA intelligence notes?

Col. Gallagher—Yes.

Senator FAULKNER—What was the turnaround time in relation to those?

Col. Gallagher—When you say turnaround time—

Senator FAULKNER—Did you get them pretty quickly? It all came through pretty quickly, did it?

Col. Gallagher—Once they were published, yes. We usually got them between midday and three o'clock in the afternoon.

Senator FAULKNER—I appreciate that you can only comment as far as ASTJIC is concerned but what happens after you receive this advice? Can you explain to us what happens once you receive these advices from these agencies?

Col. Gallagher—We would take the various products and the previous reporting and attempt to establish links to earlier reports with a view to determining what had changed and what, on the balance of probabilities, was likely to occur in the future. In the short term we were focused very much like Coastwatch on the seven-day, 14-day period. A lot of the DIMIA product tended to be looking out much further than that and, as you would understand, was therefore less definitive. None of the intelligence that we were receiving regarding any of the SIEVs was definitive. I had a discussion recently with one of my colleagues at Headquarters Northern Command. We came to the view that about 40 per cent of what we received related actually to vessels that turned up or materialised. In the broad scheme of things this is a very imprecise area.

Senator FAULKNER—Did you make an assessment of the weight you might put on intelligence reports that you were receiving? Is that the sort of role you undertook?

Col. Gallagher—We were unable to do that because we did not have access to the original source reports. You can only start making conclusions about the credibility and reliability of different streams of reporting if you have access to the original reporting. In most cases we did not have access to the original reporting. Where we did, it was a very small proportion of the reporting and insufficient to make a judgment on.

Senator FAULKNER—To your knowledge does any part of Defence have access to the original reporting?

Col. Gallagher—Not to my knowledge.

Senator FAULKNER—After you undertake your work what do you do with this intelligence? Once these reports are dealt with in ASTJIC what then is your responsibility in terms of passing such intelligence on to other elements of the Defence command?

Col. Gallagher—If there was anything of sufficient moment, we would phone people who were involved in conducting the operation, and we would follow that with formal message traffic in what we call an intelligence report—a very short, unevaluated message that simply would describe whatever facts were known at the time—and that would be followed by more closely analysed reporting, either in the form of a formal intelligence summary or in a report in the daily theatre intelligence brief.

Senator FAULKNER—Your intelligence reporting is third-hand at least, isn't it? You do not get primary sources, you get intelligence reports that are developed from primary sources, and then effectively you pass on material that has been further analysed. Is that a fair way of summing it up?

Col. Gallagher—That is a fair way of explaining what we were doing, and we recognise this as, from our perspective, a limitation but we were working within the confines of other agencies' preparedness to distribute material directly to us.

Senator FAULKNER—Whatever you are passing on, by the time you pass it on it is at best third-hand, isn't it?

Col. Gallagher—In most cases but it is fair to say that we were comparing the veracity of reporting coming out of DIMIA and Coastwatch. In other words, we were able to make judgments based on what they had said previously, so we were doing our own form of evaluation so that we could put some sort of balance of probability on it for Commander Australian Theatre.

Senator FAULKNER—I have described your assessments as at best third-hand; perhaps a better description would be in most cases third-hand. It would be fair, wouldn't it, if I said that in most cases they were third-hand?

Col. Gallagher—That would be a fair description.

Senator FAULKNER—Where does that go? We start with primary sources. It comes in as intelligence reporting from primary sources. It comes in second-hand to ASTJIC. In most cases it goes out third-hand. What I am interested in understanding is: where does it go to out of your intelligence centre?

Col. Gallagher—It goes to all people involved in conducting the operation, which would have been the ships at sea; the aircraft, or the squadrons that the aircraft belonged to; Headquarters Northern Command; and all four component commands—that is, naval, land, air and special operations. Information copies would have been forwarded to DIO, DSD and DIGO.

Senator FAULKNER—Understanding that, does it mean that in terms of the surveillance operation for Operation Relex that is where the Defence intelligence input comes? Is that right?

Col. Gallagher—It originates from the ASTJIC or—

Senator FAULKNER—Is the surveillance side of the operation, which I appreciate you are not directly involved in, dependent on intelligence reports coming out of your intelligence centre?

Col. Gallagher—To a large extent, yes.

Senator FAULKNER—I hear you say, ‘To a large extent,’ and that is logical but are you able to say how large that extent is?

Col. Gallagher—Yes. I could not quantify it but I guess I could try to describe it. DIO was providing advice principally at the strategic level to, obviously, its customers in Canberra. The ASTJIC’s principal customers are Commander Australian Theatre and his component commanders. In this case I assume that the component commanders you are most interested in are the maritime and air commanders.

Senator FAULKNER—Yes. I appreciate that.

Col. Gallagher—And also to Headquarters NORCOM. But Headquarters NORCOM were also receiving the same material.

Senator FAULKNER—That is right. And receiving it from you, if they did not receive it from direct sources.

Col. Gallagher—Absolutely.

Senator FAULKNER—But to a large extent, the surveillance operation is dependent on what is coming out of your intelligence centre. That is what I assumed would be the case and you have been able to confirm that for us. That is right, isn’t it?

Col. Gallagher—Yes.

Senator FAULKNER—So, if we have a suspected illegal entry vessel—and we had a number during the latter half of last year and the period of Operation Relex—those conducting surveillance, to a large measure, would be dependent on the reporting out of your intelligence centre?

Col. Gallagher—Yes.

Senator FAULKNER—Given that this is third-hand, does that give an unfair picture about the time delay? Or is there a timelag in relation to getting any crucial information that comes from your intelligence sources to those responsible for surveillance?

Col. Gallagher—There were a number of timelags involved. But within the defence system, which is all I can really speak to, the time delays were never more than about 24 hours. That was simply a case of a number of the reports related to vessels that may or may not be expected

to sail from any number of ports during the next number of days. Given the transit times involved, it was not imperative to be waking people in the middle of the night to tell them that a vessel was expected to leave in three days time, because the transit times, as previous witnesses have testified, are quite lengthy, ranging up to 72 hours.

Senator FAULKNER—Your intelligence assessments and reporting to other parts of defence is obviously quite crucial in terms of surveillance activity, isn't it? There is absolutely a direct link.

Col. Gallagher—There is a nexus between intelligence and surveillance. They are interactive to a large extent. My recollection is that Admiral Ritchie testified about the relationship between intelligence and surveillance in his mind. I would agree with what he said at the time, which was that the intelligence relating to these vessels was of insufficient fidelity to allow precise targeting of surveillance assets. My understanding of the approach that was being taken was by a process of logic to work out the tracks that these vessels were likely to take, and to concentrate appropriate resources along those tracks.

Senator FAULKNER—Are you aware of any problems caused by the timelag that we have been talking of? Can you give the committee examples of any tangible problems?

Col. Gallagher—Yes, I can. Different agencies did not work on weekends, which meant that there was often 48 hours or more timelag in material arriving on a Monday, or even on a Tuesday, that had come into the system at some point either late on Friday or over the weekend. I hasten to add that it was not a factor within Defence, because the ASTJIC runs 24 hours a day. As soon as we got information or intelligence, it was processed and, if it was of sufficient moment, it was immediately advised to people. Otherwise, we waited until the next day to include it in the morning briefing for the commander and his component commanders.

Senator FAULKNER—As you are aware, the issue of SIEVX has been canvassed. In the examination that has been done internally within Defence about SIEVX, are you aware of any concerns about timelags or delays relating to that particular illegal entry vessel?

Col. Gallagher—I cannot speak to the timing of the receipt of original source reports, because they are outside Defence. I can say that, on each occasion that we were advised of anything to do with SIEVX during the period from about 14 October onwards, it was passed on to the people who needed to see it or know about it as quickly as was required under the circumstances. For example, earlier that week, briefings waited until the next day because there were these reports: 'It's coming,' 'It's going,' 'It's leaving from this port,' or 'It's leaving from that port.' It was very obscure as to exactly what was occurring. Once we were advised by Coastwatch on 20 October that the vessel was reported to have departed at a time and from a place, as you have heard in previous testimony, we reported it immediately to all the people who received the normal distribution of intelligence. It is most unfortunate that, at the time we were reporting it had departed, the vessel had already foundered.

Senator FAULKNER—One of the issues is to try and establish an understanding of why that was the case, because there was obviously a lot of raw or primary intelligence about this particular vessel. Is that a fair comment to make?

Col. Gallagher—I really cannot comment on how much raw intelligence there was involving this vessel. I simply do not know and I would suggest it would be difficult for me to find out in a short period of time. That is possibly a question that might be better directed at other witnesses.

Senator FAULKNER—What you can say, though, is what intelligence reports came in to ASTJIC. You can say that—not primary sources but intelligence reports. Are you able to advise us of any delay or any process issues that arose in relation to that reporting, assessment at ASTJIC and then passing this information on to those who were directly involved in the surveillance activity? This is one of the issues that have been raised, and I think it is important that the committee and, for that matter, the public have an understanding of whether that was an issue in relation to SIEVX.

Col. Gallagher—During the period when ASTJIC was the lead theatre intelligence production agency for Operation Relex, the ASTJIC intelligence watch system was running 24 hours a day. My predecessor constituted a small analytical team to support Operation Relex. It consisted of between two and four people, it worked seven days a week and it worked on extended hours from 0500 in the morning until 2100 in the evening—occasionally later, but they were the core hours covered. That was because it had become apparent, certainly by the end of September, that all of the relevant reporting arrived at ASTJIC during the early morning and late afternoon-early evening.

Once material was received and people had done their analysis, prepared items for the following morning's briefing, issued any relevant intelligence reports, sent out intelligence summaries, or posted material to the web page, that was it. There was not much more we could do if material was not coming in overnight. Very rarely did material come in overnight. When it did, the theatre intelligence watch officer would call a member of the analytical team to determine the significance of whatever had come in.

Senator FAULKNER—In the assessments that have been done internally in Defence in relation to the events surrounding the sinking of SIEVX, has any issue or concern about the time delay been identified?

Col. Gallagher—Not to my knowledge. I can simply make the observation that, based on the ASTJIC's records, when material was received it was reported as soon as it was appropriate to report it. In other words, if it related to long-term issues it was reported over the next day or so; if it related to issues of immediate concern it was reported immediately. How that material was handled once it went to the recipients in terms of timeliness I cannot speak to.

Senator FAULKNER—Rear Admiral Bonser from Coastwatch talked to the committee about what Coastwatch did when they received intelligence advice about a vessel like the Abu Qussey vessel, and that is that they would pass it on to your intelligence centre and NORCOM, and would do so by secure phone. Rear Admiral Bonser has given evidence to this committee about that process but he has done so from, if you like, the Coastwatch perspective, which is what you would expect. For the benefit of the committee, could you give us an insight into what would occur at ASTJIC when such a call comes in?

Col. Gallagher—Probably the best example is what occurred on 20 October, when Coastwatch contacted the ASTJIC by secure phone at 0950 local time. That call was completed just after 10 o'clock local time, in Sydney. That was a Saturday. I am not sure whether the ASTJIC analytical team were at work on that day, but I am sure that they were contacted because at 1100 that day an intelligence report was issued from the ASTJIC which encompassed the issues that are identified as being in the NORCOM INTSUM, which is in the record of intelligence reporting that you have.

Senator FAULKNER—There is about an hour's turnaround in this case?

Col. Gallagher—Yes.

Senator FAULKNER—That would go to, amongst others, those who were responsible for surveillance?

Col. Gallagher—Yes, that is correct.

Senator FAULKNER—Have you or anyone else in ASTJIC examined what occurred in relation to the events surrounding SIEVX? Have you or anyone else been tasked to undertake that role?

Col. Gallagher—No. I have not been tasked with any sort of forensic examination of material. In order to prepare myself for appearing before you I have familiarised myself with the train of events and reporting, which was the basis of my comment before that what has been presented to the committee is consistent with my understanding of the information that was available to Defence at the time.

Senator FAULKNER—I am sure; that is absolutely fair enough. But what I am wondering, particularly in relation to the preparation of Admiral Gates's report but not exclusively, is what level of investigation there has been. You cannot comment outside ASTJIC, I appreciate; that is why I am limiting my question to your own intelligence centre. I am just wondering what, if any, examinations, inquiries, assessments have been made about events surrounding the SIEVX. It may not have happened, but that is the point of my question.

Col. Gallagher—We were requested to provide material to the people conducting the investigation or the review, and we did such. I am unaware of anybody coming to visit the ASTJIC, for example, to interview people who may or may not have been there at the time.

Senator FAULKNER—So the supply of documentation is the limit of it, as far as you know?

Col. Gallagher—Yes.

Senator FAULKNER—In relation to the SIEVX vessel specifically—which is the reason that you are here today—are you able to outline to the committee what reporting you received and what reports were sent from ASTJIC? Are you able to detail that for the benefit of the committee?

Col. Gallagher—I can explain it; I am not sure I can detail it to the level that you—

Senator FAULKNER—Perhaps I could ask you to explain it, Colonel.

Col. Gallagher—The initial reporting that is relevant, I think, to the period began with the receipt of Coastwatch Civil Maritime Surveillance Program operation summary on 14 October, which was the one that first identified that the Abu Qussey vessel was delayed, and that was based on an intelligence report of 11 October. I am unaware of who that report came from. That was a Sunday. What happened then was that the information was processed in the ASTJIC, it was included, given that the vessel was reported as—

Senator FAULKNER—Do you know how it came to you?

Col. Gallagher—Yes. It would have been come to us by—I am just trying to remember how the Coastwatch summaries were coming to us. It could have been either electronic or secure fax. Because of the fact that the vessel was delayed, that would have been reported the following day. It was reported that day, I think, in the updating of the web pages and it would have been reported the following day, which would have been Monday the 15th, in the daily Theatre intelligence brief. Then there was a formal message that went out following that intelligence brief encapsulating the key points from the brief. So people who attended the brief would have heard about the beginning of the chain of events and, as I say, a formal message also followed, summarising what was contained in the daily brief. So if they were not there they had access or would have been able to access that information.

Subsequently, the next reporting that is of interest are the reports from Coastwatch that the vessel was reported to be moving from one port to another. It is a common occurrence—as I am sure has been testified to before—that the people smugglers would move their vessels through a number of ports. That was reported by the ASTJIC in the Theatre intelligence briefing on the morning of Thursday, 18 October. On Thursday, 18 October, Coastwatch provided telephone advice initially and then followed that with formal advice, on the afternoon of 18 October, that the vessel was reported to have departed Java for Christmas Island. The date of departure was unclear and, to my mind, remains unclear. Nonetheless, on the basis of the transit times that we have been talking about, which are quite lengthy for these vessels, that was reported in the Theatre intelligence briefing on the morning of 19 October.

On the afternoon of 19 October, there was a Coastwatch summary issued that reported that the vessel would be a ‘possible’ arrival at Christmas Island. I am assuming, because I have not actually been able to get some of the original reports now because they have been archived or destroyed as part of the process of dealing with a lot of these reports, but I am sure the originator would be able to speak to the contents of the report in more detail than I can. That report repeated the suggestion that the vessel departed from somewhere in Java—and there were a number of ports along the southern coast of Java that were used by these people smugglers. They ranged from ports in about the centre of Java right to the eastern and western ends, and it really depended where they were heading as to where they were likely to have departed from. That information, as I said, was reported in a written briefing which was posted to the web page on 20 October. That would have been the Saturday morning when it would have been posted to the web page that the vessel was likely to be inbound. I understand that that has been testified to

before. Then we arrive at 20 October, and I have explained to you how the information came into the ASTJIC and how it was dealt with on 20 October.

Senator FAULKNER—In relation to those other Coastwatch contacts before the 20th—so we are talking about 14, 17, 18 and 19 October—was there any intelligence reporting going out of ASTJIC on any of that material?

Col. Gallagher—Only the reporting that I have just described to you—the daily intelligence briefing in the morning to the commander, the component commanders and the key staff officers, which was followed by a formal product which summarised the key points that came out of the Theatre intelligence briefing and was also posted to the web pages on the Defence intranet. The only time we ever issued specific immediate intelligence reports was, as I mentioned earlier, when we thought it was of sufficient moment that people needed to be aware of it.

Senator FAULKNER—And that was on the 20th?

Col. Gallagher—Yes.

CHAIR—This is a question I was going to ask earlier, but this looks like an appropriate juncture. Did the advice that you have just referred to go to the People Smuggling Task Force headed by Ms Halton?

Col. Gallagher—I do not know. Are you talking about the advice late in the week or the advice on the Saturday morning?

CHAIR—All of your advice really, but this particular advice especially.

Col. Gallagher—I am not sure. I could not answer that question because they are outside Defence. I know who the recipients of our material are within Defence. I really cannot say whether it was made available to them.

CHAIR—Did Air Vice Marshal Titheridge seek any information from you at any point?

Col. Gallagher—Not from the ASTJIC but in his position at that time, he would have dealt with Headquarters Australian Theatre, which is my superior headquarters. A question might have come from the headquarters to the ASTJIC but that is speculation and I cannot answer that.

CHAIR—On about 6 or 7 October—these are the dates for SIEV4—did you or anyone in your agency get a phone call from Air Vice Marshal Titheridge about an update so that he could brief the minister?

Col. Gallagher—I do not know.

CHAIR—Could you check that point for us?

Col. Gallagher—Noting that I was not in command at the time—

CHAIR—I understand that.

Col. Gallagher—and that I have limited my research to the issue of SIEVX in the 36 hours that I have had to prepare for my appearance, I will get an answer to that and try and provide it to you as quickly as possible.

Senator FAULKNER—You were only told 36 hours ago that you were going to appear here?

Col. Gallagher—It depends how you count the hours but I found out by reading the Defence news summary and seeing in the *Canberra Times* column that I was going to be appearing.

Senator FAULKNER—That would be right. When did the minister advise us—

Col. Gallagher—In a formal sense I have to be fair and say I did have a phone call the afternoon before that article appeared saying that I might be appearing.

CHAIR—I had a letter from the minister on 8 July suggesting this officer may be one that we should invite. We responded to that shortly afterwards. How did your agency, ASTJIC—

Senator FAULKNER—We all learn a lot of things from the *Canberra Times*, I can assure you.

CHAIR—relate to Air Vice Marshal Titheridge? Was he on your mailing list?

Col. Gallagher—In the normal course of events ADHQ or certainly the ADF Intelligence Centre, which is part of DIO that lodges within Strategic Command Division, would receive correspondence from us because they are part of DIO.

CHAIR—So he would be on your mailing list?

Col. Gallagher—Not directly.

CHAIR—Do you know how your intelligence information was presented to the task force— or was it presented at all?

Col. Gallagher—I honestly cannot speak to that. I do not know how the processes in Canberra were working at that time. I was not in Canberra and I was not in the ASTJIC at the time this was going on so I really cannot answer that question.

CHAIR—As you know, Commander Banks received a phone call from Air Vice Marshal Titheridge because a minister was appearing on television and needed a brief.

Senator JACINTA COLLINS—Silverstone.

CHAIR—Silverstone. Could you check your records to see whether your agency received a similar phone call at the time for the purposes of updating with state-of-the-art information in preparation for any briefing of ministers or government spokespersons?

Col. Gallagher—I will check that. Mr Chairman, I do have an answer to the question that you asked before regarding the report. My advice is that the original report was drafted by Strategic Command Division. It was cleared through DIO, DSD, DIGO, Headquarters Australian Theatre, Headquarters NORCOM, and the Naval Component Commander at the Australian Theatre. ASTJIC would have been consulted as part of the Headquarters Australian Theatre consultation process. The unclassified chronology provided to the committee was drafted within Rear Admiral Gates's CDF/Secretary task force based on the original, which was drafted by Strategic Command Division. That was then cleared through DIMIA, the Australian Federal Police, Coastwatch, Strategic Command Division, Headquarters Australian Theatre, Naval Component Command, Australian Theatre, and Headquarters Northern Command.

CHAIR—I am interested in how that information got to the task force. There was a high-level task force set up in the government coordinating all the people smuggling activities. Do you know how it then made the leap into that task force?

Col. Gallagher—That was the answer to the question that was asked earlier about the drafting of Admiral Gates's report. Are you now going back to the original—

CHAIR—Yes. If you do not have that information you might let me know.

Col. Gallagher—Yes, Senator.

Senator FAULKNER—On 17 October, ASTJIC was phoned by Coastwatch?

Col. Gallagher—I can't say one way or the other whether we were phoned on the 17th. We did receive a formal Coastwatch summary in the afternoon. I can say that it was normal practice for the analysts in ASTJIC to then discuss it with either Coastwatch or DIMIA in order to try and assign, as I said before, some sort of balance of probability to the potential arrivals.

Senator FAULKNER—I would appreciate it if you could take these matters on notice: if Coastwatch telephoned ASTJIC on the 17th, when did that occur? Also, was there any telephonic contact that you are aware of from Coastwatch on the 18th?

Col. Gallagher—Yes. As I have mentioned already, they phoned through the information that the vessel was reported to have departed from somewhere in Java. That was followed by formal reporting later that day.

Senator FAULKNER—Do you know what time that phone call was?

Col. Gallagher—No, I don't. I would have to check to try and find out what time that phone call was.

Senator JACINTA COLLINS—Can you explain to me the footnote relating to that phone conversation in the report?

Col. Gallagher—I am sorry, I cannot. I did not draft this report. Having looked at some other material, I think that there is great uncertainty about when that vessel departed anyway. I certainly cannot explain that footnote.

Senator FAULKNER—Who is the secretary of the task force?

Col. Gallagher—The task force that was set up, which was headed by Admiral Gates, was called the CDF/Secretary task force—meaning the secretary of the department. It was set up jointly by the CDF and the secretary, I understand.

Senator FAULKNER—So you do not actually have the original of that operational summary report that the footnote relates to?

Col. Gallagher—I would have to check but, in this case, it would be easier to ask the originator.

Senator FAULKNER—What about information that is coming from the defence and naval attaches in Jakarta? Does that material come through to your intelligence centre?

Col. Gallagher—Yes.

Senator FAULKNER—How does that work?

Col. Gallagher—It comes in usually via a DFAT cable, which we would receive electronically, soon after it was initiated at the other end. Occasionally, we would receive phone calls but more often than not we would receive advice regarding reporting from Jakarta via either Strategic Command Division or the ADF Intelligence Centre which lodges in with Strategic Command Division.

Senator FAULKNER—Are you able to explain what the role of the defence attache and the naval attache was in Jakarta in relation to Operation Relex?

Col. Gallagher—No. I am not in a position to explain what their roles were, principally, because I do not know.

Senator FAULKNER—That is another reason why it would be helpful to have Admiral Gates assist the committee. To what extent is it your understanding that Maritime Command is in the loop with what is occurring in ASTJIC? You report to Maritime Command, do you?

Col. Gallagher—We report to all of the commands within the Theatre as a matter of course. Where a command is involved in a particular operation and we have the role of being the principal source of intelligence to support that operation—source in the sense that we are the place where a lot of this material comes together—we report formally by message. We usually

advise people by telephone if an issue is of sufficient import but, certainly, formal messages are sent to the component commanders and other elements involved in the operation.

Senator FAULKNER—Are you aware of any defence intelligence reporting out of Indonesia during the period of Operation Relex apart from what is coming from the attaches at the embassy?

Col. Gallagher—No, I am not.

Senator FAULKNER—I see. Are you aware of any of the disruption or dismantling activities in Indonesia in relation to people smuggling?

Col. Gallagher—No, I am not; I am genuinely not aware. I was aware that they were being conducted but I am unaware of how they were being conducted and who they were being conducted by.

Senator FAULKNER—Who should we ask in Defence about whether they have any awareness about it?

Col. Gallagher—I think that is a question that needs to be directed to another agency, such as the Australian Federal Police. I do not think that that is something that Defence was involved in—not to my knowledge, anyway.

Senator FAULKNER—We will ask them. Have you satisfied yourself in relation to the intelligence reporting about SIEVX—that that reporting was dealt with as seriously and in the same manner as other intelligence reporting in relation to other vessels?

Col. Gallagher—Yes, I am—absolutely. I have no doubt in my mind that this was being planned for and treated as any other potential SIEV.

Senator FAULKNER—How have you been able to satisfy yourself of that?

Col. Gallagher—In the case of the ASTJIC, by looking at the amount of work that was done in relation to the reporting of Abu Qussey's intention to take one or two vessels to Australia around that time. That had been a consistent theme of reporting since, as far as I could check back, about August, I think—it might even have been July—when reports appeared of Abu Qussey intending to bring groups of people to Australia and in particular to Christmas Island.

Senator FAULKNER—A moment ago you said that you were aware of the disruption operation but did not have any detail, which is fair enough, and that you felt it was better directed to other agencies. I just wondered whether you could share with us how you became aware of that. I am not going to go to the detail; it is merely your awareness of those activities that I am interested in.

Col. Gallagher—I actually cannot recall how I found out about it, but it was not in a formal sense.

Senator FAULKNER—You are in front me and I am still trying to find out about it. Were there any DSD inputs in relation to intelligence on the SIEVX issue?

Col. Gallagher—I could not tell you how many there were in a quantitative sense but I think I can recall that there might have been some reporting much earlier in the process—an August sort of time frame—but I cannot speak to the detail of that and I am unaware of any reporting in the period that you appear to be focusing on in October.

Senator FAULKNER—Would you take on notice a question in relation to DSD input or reporting on the SIEVX?

Col. Gallagher—I can, but I can also advise you that their reporting was also going to DIMIA. What I am saying is that my organisation was not receiving it for the direct purposes of producing the sorts of detailed intelligence summaries that were being prepared by DIMIA.

Senator FAULKNER—Yes, but it remains a defence agency, doesn't it?

Col. Gallagher—Yes. I will try to get an answer to the question.

Senator FAULKNER—Which is why I am asking you about it. I appreciate that you may not have been aware of it directly. Are you aware of the People Smuggling Task Force notes of 18 October?

Col. Gallagher—No, I am not aware of them. In fact, I have not seen the actual notes. I have seen little bits that have appeared in people's previous testimonies, but I have not actually seen any of the notes.

Senator FAULKNER—Fair enough. They talk about intelligence regarding two boats with a possible 600 unauthorised arrivals expected at Christmas Island. This is the People Smuggling Task Force notes of 18 October, which say:

Some risk of vessels in poor condition and rescue at sea. No confirmed sightings by Coastwatch, but multisource information with high confidence level.

Can you explain to us what is meant by 'multisource information with high confidence level'?

Col. Gallagher—I cannot.

Senator FAULKNER—Are you able to assist us with the suggestion in this report that there were some vessels 'in poor condition' and explain what 'rescue at sea' would be referring to?

Col. Gallagher—No, I cannot, but I can make the observation that a number of these vessels—even the ones that arrived and were interdicted—were unseaworthy, so it was not an uncommon sort of observation to make about a SIEV.

Senator FAULKNER—Was that same information that is reported in the People Smuggling Task Force notes given to Defence on or around 18 October?

Col. Gallagher—I am not sure how it went to Defence. We received Coastwatch reporting that afternoon which talked about the departure of a vessel. I do not have the details of what that report actually said about the vessel. You would have to put that question to Coastwatch.

Senator FAULKNER—The notes state:

Some risk of vessels in poor condition and rescue at sea ... multisource information with high confidence level.

Am I being unreasonable in thinking that this would be the sort of message that would trigger concern about the vessel having potentially departed Indonesia? It seems quite logical really.

Col. Gallagher—I cannot speak to that matter. I have not seen the notes you are referring to and I never attended any of those meetings. The role of intelligence within the theatre at this stage was to provide people with advice about when and from where we thought vessels might or might not depart, with a view to informing their decisions about surveillance. We are heading into areas that are outside my purview.

Senator FAULKNER—Do you know when, if at all, your intelligence centre was given an idea about the number of people who had boarded the Abu Qusey vessel?

Col. Gallagher—I am not sure. I will have to get back to you on that. As I said, I have not been able to read a lot of the original source reports. I have been going from our logs.

Senator FAULKNER—Do you know when Defence was advised that the vessel was reportedly small and overcrowded?

Col. Gallagher—I certainly know that my organisation was advised by Coastwatch around a quarter to 10—I think Admiral Bonser recorded it as 9.50—on 20 October. That is the first indication I can definitely put my finger on. But, as I said, I will undertake to find out exactly when the joint intelligence centre first heard about the number of people who might have been involved in travelling on the vessel.

Senator FAULKNER—Admiral Bonser has told us that Coastwatch was aware that about 400 passengers had embarked on the vessel and that some people had either not got on the vessel or had got off the vessel. Do you know whether Defence was made aware of that information?

Col. Gallagher—About the number of people who may have got on?

Senator FAULKNER—The number in total and the fact that some had either not got on it or had got off it.

Col. Gallagher—After the fact.

Senator FAULKNER—You mean after the vessel sank?

Col. Gallagher—After the fact, yes. I am unaware of any reporting into or within Defence that would indicate what you have just described—that people did not want to get on, that some

got off and that some got off part way along the journey. That all seems to have come out after the event. In large part, it seems to be reporting based on the survivors' recollections.

Senator FAULKNER—Given that we now know that there is a substantial amount of intelligence information coming mainly from DIMIA and AFP sources—and, to a lesser extent, I suppose, Coastwatch—do you think some might jump to the conclusion that the intelligence about SIEVX was not being treated seriously?

Col. Gallagher—Some people might jump to that conclusion, but it is my opinion, based on the quantity of reporting about this vessel in comparison to the quantity of reporting in relation to other vessels, that it was being treated as a serious SIEV. However, I really cannot offer you more than that judgment.

Senator FAULKNER—When did your intelligence centre become aware of the numbering of the SIEVs? Do you know how the numbering of the SIEVs works?

Col. Gallagher—Yes. The way it came about, in my recollection, is that the SIEVs were numbered successively from one on the basis of their apprehension by the Navy. It was not a number that was provided by anybody else. It was an after-the-fact numbering of an apprehension.

Senator JACINTA COLLINS—Except on this occasion, when the People Smuggling Task Force, for its own yet-unknown purposes, decided to attribute a number.

Col. Gallagher—I am not sure about the internal deliberations of the task force. My own assessment is that, because it did not arrive and was never apprehended—it did not appear—it was not given a number.

Senator JACINTA COLLINS—Can you just explain to me one further issue about the notes from the People Smuggling Task Force that Senator Faulkner was referring to. One of the points he referred to was the comment that there were no confirmed sightings by Coastwatch, but there was 'multisource information with high confidence level.' Why would Defence not be relevant to sightings since, by that stage, Defence was looking after surveillance of all of the avenue approaches in Christmas Island?

Col. Gallagher—I cannot answer that question. It relates to operational matters. It is really a surveillance issue.

Senator JACINTA COLLINS—This comment that there had been no sightings from Coastwatch is really only addressing part of the picture because, as we understand it, it was not Coastwatch who was surveilling that zone at that stage.

Col. Gallagher—That may have been the case but, as I said, I was not there, I have not seen the notes and it is really an operational issue.

Senator JACINTA COLLINS—Can you tell us the basis of the intelligence for the reported departures on 18 October and 19 October?

Col. Gallagher—No, I cannot. You would have to speak to the originator of those summaries.

Senator JACINTA COLLINS—What I am trying to understand is why it was only regarded as corroborated on 22 October when it appears that the advice received from the AFP on 20 October could equally have been regarded as corroboration.

Col. Gallagher—I cannot speak about what other organisations did with the information, but I can say that even though the point of departure was different, the ASTJIC took that report from the AFP via Coastwatch on the morning of the 20th to be corroboration of the fact that a vessel had left. The issue was that there was doubt about where it had left from. For example, the earlier reports were talking about central Java; the AFP report on the day talked about western Java; in fact, the survivors say that it departed from eastern Sumatra. So there was significant doubt about where this vessel was actually leaving from. I can say in the case of my own organisation that we took that report of a departure to be confirmation that a departure had occurred.

Senator JACINTA COLLINS—On 20 October?

Col. Gallagher—Yes, and that is why we issued an intelligence report—because it was a weekend, because the way to get the attention of people out of normal working hours is to send them an immediate message, amongst other things, such as phone calls and so on to the duty staff.

Senator JACINTA COLLINS—Again, I understand the difficulty here because you did not collate this document: can you apprise us of the basis for the NORCOM assessment that the boat had probably returned back to the Java coast? Is there any intelligence that you are aware of to give weight to that assessment?

Col. Gallagher—No. I cannot explain how NORCOM developed that report.

Senator JACINTA COLLINS—It was not an assessment based on advice from your agency?

Col. Gallagher—No, not that I am aware of.

Senator JACINTA COLLINS—Were you aware that they had reached that assessment?

Col. Gallagher—Only in that this vessel was reported at various stages to have left and then not left, to have left and then returned over a number of days. So I would assume that any judgment that they were making would have been based on their consideration of what they had seen in the past and perhaps what the weather conditions were at the time. But I cannot speak with any authority on the internal processes of Headquarters Northern Command.

Senator FAULKNER—Do you know how much of the intelligence sources were actually on the ground in Indonesia—the primary intelligence sources?

Col. Gallagher—No, I do not.

Senator FAULKNER—Are you satisfied that the primary intelligence material, from what you know—and I appreciate that you were not there at the time; I think you are in a difficult position at this committee today, so I do understand that—was assessed sufficiently?

Col. Gallagher—I cannot answer that question because I have not seen the primary material. That is a sort of professional judgment question that you could only answer by looking at all the material in its totality. From my perspective, that is clearly impractical.

Senator FAULKNER—Do you think the intelligence material in relation to SIEVX was given the appropriate level of priority?

Col. Gallagher—I cannot speak for other agencies, but certainly within my own agency it was being treated just like any other SIEV, of which at the time there were a number expected to materialise during October.

Senator JACINTA COLLINS—On 22 October, the People Smuggling Task Force reported regarding their attribution of SIEV8—and we do not need to go down that path. It was stated: ‘Not spotted yet, missing, grossly overloaded, no jetsam spotted, no reports from relatives.’ Are you aware of any of that intelligence?

Col. Gallagher—No. As I said, I prepared myself for the issue of SIEVX. I would have to speak to the originators of these—

Senator JACINTA COLLINS—This is SIEVX—SIEV8/SIEVX. The minutes say SIEV8 but that is their misappropriation of the title. But their comments about this boat—they have indicated to us their attribution of SIEV8 is referring to SIEVX at this stage, that has been confirmed—are that it is ‘not spotted, missing, grossly overloaded, no jetsam spotted, no reports from relatives’. This is 22 October. Are you aware of any of that intelligence?

Col. Gallagher—No, I am not, in a personal sense. I was not working there at the time. My predecessor and I were not members of the People Smuggling Task Force, never saw the minutes or the notes, or any product out of that committee. I am really not in a position to comment. Again, we are moving out of the intelligence area into operational areas. The fact that people are talking about something that has not been seen and so on, indicates that surveillance was being conducted which is an operational matter outside my purview.

Senator FAULKNER—I think the committee appreciates, Colonel, that you were not in the intelligence centre at the time these events took place. I think the committee appreciates that you only found out from reading the *Canberra Times* that you would be asked to give evidence here today. I certainly appreciate, and I am sure my colleagues do, that there are very many questions that you have been asked that you are not in a position to answer. I am not critical of that at all. That is understood, given the circumstances.

It is for those reasons, Mr Chairman, that I am so keen to see Admiral Gates appear before the committee as he has been responsible for preparing the report on the sinking of SIEVX. We know that Colonel Gallagher’s intelligence centre has just provided some primary source

documents to go to that report, and I am quite sure that Admiral Gates has a much broader understanding of what occurred. And of course, even though I know that Colonel Gallagher has tried to be very helpful—and I appreciate it, I know other committee members would—there are so many issue for us to canvass here that it cannot properly be directed to Colonel Gallagher. It needs to be directed to Admiral Gates or others. I hope we will be able to press the minister on this. I do not understand why the minister suggested that Colonel Gallagher should come before us in this circumstance. The person we need to hear from is Admiral Gates who prepared the report. I would be very surprised if Admiral Gates would not want to come along here and clear up a range of these issues. I think that would be in the interests of Defence. It would be in the interests of this committee, and I only hope that Senator Hill will see some reason in relation to these matters.

CHAIR—I understand your point, Senator Faulkner, and I do appreciate that you have made the observation about Colonel Gallagher.

Senator FAULKNER—There are so many questions, even about matters relating to the intelligence reports that go into Defence, that properly Colonel Gallagher cannot answer. He has assisted us with those matters that he is able to assist us with, but he was not there at the time. Beyond his own joint intelligence centre, he would not be expected to be able to answer a range of questions, and we do require Admiral Gates or someone else—Admiral Gates is the obvious person given he has prepared a report on these matters—to come before us.

CHAIR—I do understand your point and I do acknowledge that you, like I, have formed the conclusion that Colonel Patrick Gallagher has been forthright and direct with the committee in answering all questions, and we appreciate that. Regarding the other observations you make, they are matters that we will have to deal with in our private meeting.

Senator FAULKNER—I have a range of questions that it is simply not fair to put to Colonel Gallagher. I know how he will respond and I understand how he will respond. I am not critical of that at all. These are matters outside his responsibility and control, and as such I must say I feel uncomfortable even putting them to him.

CHAIR—Do I take it therefore you are terminating your questioning at this point?

Senator FAULKNER—I have many questions I would like to ask in relation to the issues that go to intelligence reporting in relation to SIEVX, but I do not think that Colonel Gallagher can assist us on this. I stress that is not a criticism of the colonel.

CHAIR—I have acknowledged that. Are there any further questions?

Senator JACINTA COLLINS—I concur with Senator Faulkner.

Senator FAULKNER—You really have to question the motivation of Senator Hill in asking this witness to come along in these circumstances. But I thank him very sincerely for what he has been able to provide to us.

Senator BRANDIS—I know that is a nice innuendo, Senator Faulkner—

Senator FAULKNER—It is no innuendo; it is a deliberate slur.

Senator BRANDIS—In his letter of 8 July Senator Hill has explained the reason that he proffered Colonel Gallagher—

Senator FAULKNER—It is not good enough. It is a cover-up.

Senator BRANDIS—You cannot question his motivation when he has explained it.

Senator FAULKNER—I do question his motivation. It may be in his interest but it is certainly not in this committee's interest—nor, might I say, is it in Defence's interest—to not allow Admiral Gates, who can assist us on all these matters, to clear up these issues that remain in the public mind. I would have thought the sensible thing was to allow that to proceed. You really do have to question why Senator Hill is blocking Rear Admiral Gates's attendance at this committee.

Senator BRANDIS—That is rich coming from you, Senator Faulkner, who made up your mind about the conclusions of this inquiry before the first hearing day.

CHAIR—Now we are getting into debate that is properly for the committee or for our report. I have a further question to Senator Gallagher, however. On SIEV4, there was a report that Commander Banks became aware of—I have demoted you; I apologise—

Col. Gallagher—I took it as an elevation.

Senator FAULKNER—No-one else would; no-one on this side of the table.

CHAIR—Colonel, on the SIEV4 issue, we are aware that Commander Banks had reported to him to look out for people wearing life jackets on SIEV4. Would that have been a report that came from your agency?

Col. Gallagher—I do not know. I would have to find out.

CHAIR—Could you find that out for us?

Col. Gallagher—Yes, I will. It has been pointed out to me that I need to clarify something I said before in response to a question.

CHAIR—In response to a question from whom?

Col. Gallagher—I think it might have been from Senator Collins. It was about the date of the confirmed departure.

Senator JACINTA COLLINS—About when you formed the view you had had confirmation, yes.

Col. Gallagher—I advised you of the ASTJIC view on that, which we reported at the time, but I need to make it clear that—

Senator JACINTA COLLINS—That was ASTJIC's view and not NORCOM's view.

Col. Gallagher—That is right. There were numerous reports regarding a departure at the time concerning this vessel, and it was not until 22 October that Defence agreed that it was a confirmed departure.

Senator JACINTA COLLINS—But ASTJIC did on the 20th.

Col. Gallagher—We accepted it as being a departure, given that we had had a chain of reports about it. We reported it, as I have mentioned a number of times, by formal intelligence reporting on the Saturday morning after we had been advised by Coastwatch, who in turn had been advised by the Federal Police of the departure.

Senator JACINTA COLLINS—When you say you reported it, what was the report?

Col. Gallagher—It is not in here because it was a classified report, and I cannot speak to the contents of it in detail because the contents originated from other agencies. You would need to speak to the other agencies about exactly what information was passed from the AFP to Coastwatch and then on to us, NORCOM and other Defence addressees on that day.

Senator JACINTA COLLINS—But what you are telling me, though, is that on Saturday morning, on the basis of receiving that report, you sent out a classified notice that as far as ASTJIC was concerned there was a confirmed departure?

Col. Gallagher—I would have to check the wording. It would be our assessment. It would not have been treated as confirmed. I do not believe that word would have been used in it. It would have been along the lines of, 'It is assessed that a vessel has departed from a certain location at a certain time,' which was based on AFP information.

Senator JACINTA COLLINS—Going back to the earlier conversation you had with Senator Faulkner about time lags, why would it then take a further two days for Defence to accept confirmation?

Col. Gallagher—I honestly cannot comment on that. It is outside my area of responsibility. Those sorts of decisions would have been taken in Canberra. I was not here. I do not like saying that, but the fact of the matter is I was not in Canberra at the time. I was not a member of the—

Senator FAULKNER—It is a fair enough thing for you to say. We appreciate that.

Senator JACINTA COLLINS—From your position we understand that. From the committee's point of view though those two days, you will appreciate, were absolutely critical to 400 lives.

Col. Gallagher—Yes.

Senator FAULKNER—Would copies of the actual outwards reporting from the Australian Theatre Joint Intelligence Centre be able to be made available to the committee?

Col. Gallagher—I would have to speak with the originators of the material that was then used in those reports. It essentially leads me back to what I was saying earlier, that the bulk of the intelligence we were receiving was coming from DIMIA and Coastwatch. You would really need to go back to them.

Senator JACINTA COLLINS—The issue is not necessarily the detail of the intelligence that contributed to your reaching that assessment but, rather, that that assessment had been reached. We already have in part the AFP material, because Rear Admiral Bonser has provided that to us. We can accept your comment that there is other material that might be classified that cannot be released that came from you from DIMIA or wherever else. What the committee needs to see—to the extent you need to, after talking to DIMIA, remove the components that cannot be declassified—is the detail of the assessment that ASTJIC reached at that time, not necessarily the classified components of that assessment.

Col. Gallagher—Can we take that on notice? I will have to go up through the chain of command to the minister.

Senator JACINTA COLLINS—Yes.

Senator FAULKNER—Does that go to the question on notice that I asked relating to the material being reported out of the Australian Theatre Joint Intelligence Centre? In relation to SIEVX, would you be able to provide copies of that material for the benefit of the committee?

Col. Gallagher—I will have to take that on notice. A lot of our material would have been sourced from other people's material. The chain of reporting would be a quite significant quantity of documents. I will undertake to seek release of certainly the intelligence report that was issued by the ASTJIC on that day. You are already aware of a similar report contained within the Northern Command Intelligence Summary issued that day as well.

In relation to Rear Admiral Gates's inquiry, there appears to be a misconception that he conducted an investigation into all intelligence received within Australia concerning SIEVX. There has been no such investigation by Defence. To assist the committee in its deliberations, Rear Admiral Gates conducted a review of all intelligence received by Defence, prepared a chronology and provided a declassified version of that chronology, in consultation with the agencies concerned, to the committee.

Senator FAULKNER—Yes, that was to assist the committee. But the point that I am making—which is not a point for you, Colonel Gallagher—is that it would assist the committee a great deal more if Admiral Gates could come and give evidence here and clear up some of these issues and answer some of the questions that the committee is asking. That is a matter that appears to me to be absolutely straightforward. I am not aware of any other Defence witness who has been blocked from attending this committee, Mr Chairman. You really do have to ask the question: why is Senator Hill, the Minister for Defence, so keen to stop Admiral Gates attending? What does Senator Hill have to hide?

Col. Gallagher—With regard to the question that I undertook to investigate regarding the release of classified material originated by the ASTJIC, I am sorry that I cannot help you any further. Defence has already sought declassification of source material from DIMIA and the Federal Police, and those agencies have advised that it cannot be declassified.

Senator JACINTA COLLINS—Yes. But my point was not that I wanted to see the source material but that I would like to see the assessment. I am quite happy if I get a document that is three-quarters blacked out and you cannot see what led ASTJIC to get to that assessment, but I would like to see the detail of what the assessment was.

Col. Gallagher—There are two issues here. That particular message, as I mentioned earlier in my testimony, would have been a very short factual repetition, possibly with a judgement attached to it, of what had been reported by the Australian Federal Police to Coastwatch, then to us and to NORCOM. That would be, I would think, the principal basis of their intelligence summary from later that day. In terms of how the judgment was arrived at and what the basis of the judgment was, I cannot answer that. It is my understanding that the person who was on duty at the time is no longer posted to my organisation. I would have to find out what was in their mind. I cannot testify as to what might have been in somebody's mind and how they reached a conclusion.

Senator JACINTA COLLINS—With respect, there is a fairly fundamental issue for Defence here, which is that you have told us this morning that ASTJIC essentially assessed as confirmed the departure on the 20th. We have had evidence previously—and this document also refers to this—as to the confirmation being reached on the 22nd. These were two very critical days in the lives of 400 people. I cannot understand why, once you remove any classified material, we cannot see the wording of that assessment as reached by ASTJIC.

Col. Gallagher—I accept absolutely what you are saying about the nature of the tragedy. However, I can only reiterate what I have said before, that there was a series of conflicting, contradictory, incomplete, imprecise, circular reports about the supposed or actual departure of this vessel. There were at least, to my knowledge, three different locations it was reported as leaving from, over several different days. I was simply observing before that we issued an intelligence report on the morning of 20 October which was based on the duty watch officer or analyst's judgment that it was a corroboration of earlier reporting from the 18th and 19th which came from Coastwatch, and presumably DIMA before that, that a vessel had left somewhere. But you will note that initially the vessel was reported as having departed Java, as I mentioned before—and my recollection is somewhere in central Java. Then there was the report from the Australian Federal Police on the Saturday morning which said it left the west coast of Java. Then our understanding of the reality, well after the fact, is that it actually left from eastern Sumatra. I cannot speak to what happened after that intelligence report was issued.

Senator BRANDIS—And, Colonel Gallagher, of course, because of the conflict of reporting as to the likely port of departure, that would have produced different conclusions on the question of whether or not, at a given point in time, the vessel was overdue or had not reached a point which it would have been expected to reach on that date.

Col. Gallagher—Yes, that is correct. And further to that, depending on the distances that we are talking about in a lateral sense—east to west—it would have a significant impact on

decisions about where to put surveillance assets. But, again, I go back to my original point: that is really an operational decision.

Senator BRANDIS—I understand that. But in terms of the intelligence reporting, we can say two things with reasonable certainty, can't we. First of all, there was never a report that the vessel was in distress.

Col. Gallagher—Certainly I am personally unaware, after having looked through all of the reporting available to me, that there was any form of distress call. There is absolutely no evidence to suggest that there was ever a distress call of any type.

Senator BRANDIS—And, secondly, there was never any conclusive signal or report to suggest at any material time the vessel was overdue.

Col. Gallagher—In a formal sense, no. There were only people's judgments or assessments that the vessel might be overdue.

Senator BRANDIS—Might be, depending on where its point of departure was, which was itself a matter of complete uncertainty.

Col. Gallagher—Yes, that is correct.

Senator FAULKNER—I have a couple more questions, Chair, then I know we want to go to a lunch break. As I understand it, Colonel, you assumed your position as Commander, Australian Theatre Joint Intelligence Centre, in January this year?

Col. Gallagher—That is correct.

Senator FAULKNER—What was your role in the second half of last year, when the events that we are talking about occurred?

Col. Gallagher—I was the senior intelligence staff officer at Headquarters Australian Theatre, responsible for coordinating the provision of intelligence support to all of the operations we were talking about before. In that capacity, I was not part of the intelligence production process; I was part of a coordination and planning process.

Senator FAULKNER—Did you have any role in relation to Operation Relex at all?

Col. Gallagher—Yes. I was responsible for drafting the intelligence support plan that set up the intelligence support arrangements, which at that time would have placed ASTJIC as the paramount Theatre intelligence production agency. That intelligence support plan was then adjusted as it became clear that the tempo of operations was becoming too much for ASTJIC and other parts of the system, but particularly for ASTJIC, and the Commander Australian Theatre agreed to transfer that responsibility to Headquarters Northern Command.

Senator FAULKNER—Have you had any other role apart from drawing up that plan in its original form?

Col. Gallagher—No; simply as an adviser.

Senator FAULKNER—Sure. Are you aware that you are the only witness who has come before this committee that has not had any direct or even indirect role contemporaneously in the matters which this committee's terms of reference go to?

Col. Gallagher—I am sorry, could you repeat that?

Senator FAULKNER—The current position that you hold you did not hold at the time of the incidents which this committee is investigating?

Col. Gallagher—Yes, that is true—although Admiral Bonser has now moved on as well, as has Admiral Ritchie.

Senator FAULKNER—Yes, I am aware of that, and so have a whole range of others, I can assure you. They have moved on from positions they had which did have a direct role; you have moved into a position that may have had a direct role if you had been holding that position at the time. Do you understand the difference?

Col. Gallagher—Yes, absolutely.

Senator FAULKNER—Don't worry, Colonel—about every second officer of the Department of Prime Minister and Cabinet has been moved out from the role that they had, which means that they are not able to be questioned at Senate estimates committee about their then role.

Senator BRANDIS—You will have to excuse Senator Faulkner, Colonel Gallagher, he is an inveterate conspiracy theorist.

Senator FAULKNER—How is your theory about J.F. Kennedy going at the moment? Have you solved it yet?

Senator BRANDIS—We are working on it.

Senator FAULKNER—I know you are.

CHAIR—The question is: were you on the grassy knoll or not?

Senator FAULKNER—Soon it will be either your opponents in the Liberal Party or the Labor Party who were on the grassy knoll, I am quite sure.

Col. Gallagher—I can state with some degree of certitude that I was not on the grassy knoll!

Senator FAULKNER—Not even Senator Brandis and Senator Mason would make that accusation. You found out you were coming before this committee, what, 36 hours ago?

Col. Gallagher—I got an informal phone call on Tuesday and saw it in the *Canberra Times* on Wednesday.

Senator FAULKNER—What did you do then? Did you hurriedly start to prepare yourself with a document to refresh—

Col. Gallagher—Sorry, late Monday evening I was given informal advice, I saw it in the paper on Tuesday, then I got some emails about it, and I came down here yesterday to start reading myself into the issues.

Senator FAULKNER—Did you have much of a background before yesterday—before you started to prepare all this?

Col. Gallagher—Not in terms of the precise detail. Obviously, I was working in Headquarters Australian Theatre; I knew the overall ebb and flow of activity to do with the SIEVs. At the time, the matter of SIEVX had developed into an operational surveillance issue rather than an intelligence issue, if you understand—

Senator FAULKNER—So which day did you start reading the documentation and preparing? Was it yesterday?

Col. Gallagher—No, I was reading material in my own organisation on Tuesday.

Senator FAULKNER—Two days. I think you have done exceptionally well for someone with that limited amount of preparation. But I do make the point again, Mr Chairman: how postposterous that the minister would place this officer in this situation. What a joke!

Senator BRANDIS—Are you satisfied with your evidence, Colonel Gallagher?

Col. Gallagher—I am satisfied that I have provided evidence to the best of my knowledge and understanding of the circumstances that existed at the time. I can say that I did have an opportunity to review all of the reporting that was available within my own organisation—it took some hours, but I did it.

Senator BRANDIS—About how many hours did it take?

Col. Gallagher—I started after I was formally advised that I was coming here, which was about 10 o'clock on Tuesday morning.

Senator BRANDIS—How long would it take?

Col. Gallagher—I think I arrived home at about 8 o'clock that night.

Senator BRANDIS—So you started at 10 in the morning and finished at eight at night—one long day's work, in effect?

Col. Gallagher—Yes, but I have to be fair and say that I was only looking for material relating to SIEVX; I was not looking at all of the Op Relex material. To look at all of the Op Relex material would take several weeks, if not months, and then to be able to retain some of it would be—

Senator BRANDIS—So you looked at all the material you wanted to look at, is that right?

Col. Gallagher—Yes, it is, and then I—

Senator BRANDIS—And you comprehended it?

Col. Gallagher—Yes.

Senator BRANDIS—To the best of your satisfaction?

Col. Gallagher—Yes.

Senator BRANDIS—So you do not accept the suggestion that has been put in a way that slightly ridicules you, Colonel—

Senator JACINTA COLLINS—No, I think the minister is the one who has been ridiculed, Senator Brandis.

Senator BRANDIS—that you were underprepared for this committee? You do not accept that, do you? You have had sufficient opportunity properly to prepare yourself for this hearing, haven't you?

Col. Gallagher—In terms of what was available within my own organisation, yes, I was able to see it.

Senator BRANDIS—The suggestion that you have been prejudiced by having 1½ days notice is a false suggestion, isn't it, Colonel Gallagher, if you have been able sufficiently to prepare yourself in the time available to you?

Col. Gallagher—Yes. I would say that I had an adequate time to review the material that I was required to review and I had an adequate time yesterday to read previous testimony.

Senator FAULKNER—You were shoehorned in here, Colonel, and that is not your fault or responsibility, and everyone knows it. Let's go to lunch.

CHAIR—Let us go to lunch when we have closed the meeting, which is not just now.

Senator JACINTA COLLINS—Can I ask Colonel Gallagher who rang him informally?

Col. Gallagher—Wing Commander Keith Jurd, who is part of the defence committee—the task force.

Senator JACINTA COLLINS—The task force. Thank you.

CHAIR—For the record, I had a discussion with Senator Hill on Monday morning my time, in Perth, in which the suggestion was made that you and the other Defence witness might come. So it could not have been before then. I have one final question which you may not be in a position to answer. If you are unable to answer it, you can take it on notice, if you do not mind. With respect to the earlier SIEVs, has the Australian Theatre Joint Intelligence Centre at any time advised commanders of any vessels intercepting SIEVs that children may be thrown overboard?

Col. Gallagher—I do not know the answer to that. I would have to take it on notice and get an answer. That is now two questions relating to SIEV4: one about life jackets and one about—

CHAIR—Yes, one about life jackets.

Col. Gallagher—I will try and get an answer and provide it to you immediately after lunch. I have some answers here to questions that you have asked previously, or that other members have asked. If you wish me to, I can—

CHAIR—We should clear it up before we go to lunch.

Col. Gallagher—Shall we deal with it now?

CHAIR—Yes.

Col. Gallagher—On the question of how many people boarded the Abu Qussey vessel, reports until 22 October 2001 said that 200 to 250 people were expected on the vessel and that two boats were being prepared. On 22 October there was the first report that up to 400 personnel were aboard the vessel and that it was overcrowded.

Senator FAULKNER—Who is preparing these answers, Colonel?

Col. Gallagher—I have to say that I have some concerns about that, because my recollection is that the report on the morning of 20 October mentioned a large number of people.

CHAIR—Do you want to review this material and provide these answers after lunch, Colonel? Would that be preferable?

Col. Gallagher—I prefer to go away and make some phone calls, if that is all right with you, Mr Chairman.

CHAIR—That is all right with me.

Senator FAULKNER—Again, I stress this is not a criticism of this witness. The point is that we have a situation where the minister has asked a witness to come here who is unable to answer these sorts of questions because he was not involved in these events directly and has only had a very short opportunity to refer to the written record. Of course, questions taken on

notice ought to be dealt with as thoroughly and as properly as they can be. Defence has an excellent record in this regard and I would be the first to acknowledge it. All of these sorts of questions have been treated seriously. I know that those ones that have been taken on notice will be. My criticism here goes to the extraordinary role of the minister.

Senator BRANDIS—You would almost think that we had not heard the witness say—as he said a few minutes ago—that he has had all the time he needs to prepare.

Senator FAULKNER—And you know what a joke that is.

Senator BRANDIS—Are you accusing Colonel Gallagher of lying?

Senator FAULKNER—No, I am accusing the minister of deliberately shoehorning a witness in here who cannot assist the committee in relation to a whole range of matters. You know it is not a criticism of the witness. Every Defence witness who has come before this committee, as far as I am concerned, has treated their responsibilities seriously. I made the same point about questions on notice. The minister ought to allow the appropriate witness—Rear Admiral Gates—to come before us, given that Rear Admiral Gates has been tasked to prepare information and background for the committee in relation to SIEVX—I know it, you know it and every reasonable person knows it. To shoehorn this colonel in in relation to these matters is just an outrage as far as the minister is concerned.

Senator BRANDIS—Colonel Gallagher has given helpful evidence, which he has had, as he has said himself, sufficient time to prepare for.

Senator FAULKNER—Where he has been able to.

CHAIR—I think we are in the wrap-up stage, because we are now beginning to debate, but I understand Senator Collins has a question.

Senator JACINTA COLLINS—Colonel, I have some concern, not about the content, but about the manner in which you have needed to respond to some issues today—for instance, that issue a moment ago when we were talking about Senator Faulkner's question on when ASTJIC first got advice about the overcrowded nature of SIEVX. Can I just clarify this: for your purposes, where is the information that you have been provided that you have simply just read to us coming from?

Col. Gallagher—It is coming from task force members who are contacting the Department of Defence and seeking advice.

CHAIR—Can I amend my question about any advice about children being thrown overboard to include Brigadier Silverstone at NORCOM and Air Vice Marshal Titheridge—whether the intelligence agency that you head provided any information to those officers or their staff to the nature that children may or to watch for children being et cetera, thrown overboard.

Col. Gallagher—Yes.

CHAIR—Do you have any concluding remarks to make, Colonel?

Col. Gallagher—I have an answer for a question that was put to me before regarding phone calls—

CHAIR—Are you happy to proceed with this answer now?

Col. Gallagher—I am—I can make it very snappy.

CHAIR—Please proceed.

Col. Gallagher—Concerning the arrangement made for Brigadier Silverstone to ring Air Vice Marshal Titheridge on the morning of 7 October 2001, this arrangement was made in a phone call between Air Vice Marshal Titheridge and Rear Admiral Ritchie, then Commander Australian Theatre. To our knowledge, this arrangement was made totally along the command chain and there is no suggestion in Air Vice Marshal Titheridge's phone records that he was in contact with DIO or ASTJIC in the lead-up to his conversations on 7 October. There are a large number of people in DIO and ASTJIC who would need to be contacted to answer this question absolutely and incontrovertibly.

CHAIR—But Air Vice Marshal Titheridge was not in the formal chain of command overseeing this exercise, was he?

Col. Gallagher—I really cannot talk about the command and control arrangements relating to this.

CHAIR—Okay. I think that is a matter of record in any case—I think evidence has been given to that point. You are going to come back to us after lunch with some additional information.

Senator FAULKNER—Those answers could be providing in writing, if the witness would prefer.

Col. Gallagher—Where I can, I would prefer if possible to give them this afternoon.

CHAIR—I think that is desirable too, because that allows for follow-up questions if there are any issues arising. Thank you.

Proceedings suspended from 12.50 p.m. to 2.05 p.m.

CHAIR—Order! The hearing will resume. Colonel Gallagher, you have some additional answers, I believe.

Col. Gallagher—I have been trying valiantly to get answers to some of the questions.

CHAIR—When an Army man tries valiantly, we know he has really tried very hard!

Col. Gallagher—There were a number of questions that I was going to try to get back to you on, some of which may have to wait until a formal response can be prepared. In the first instance, in relation to phone calls from Coastwatch to ASTJIC on 17 and 18 October, on 17 October the watchkeeper received a phone call at 2159 which, as is indicated in the chronology, related to the movement of an Abu Qussey vessel. With regard to the phone call on the 18th from Coastwatch, we received that at 1440. The content of that phone call related to another SIEV. In relation to the numbers on board SIEVX, and when it became apparent exactly what those numbers were, we will have to respond formally. There appears to be some disagreement or a lack of clarity, but it is sufficient to say that the NORCOM intsum on 20 October reflected the fact they were concerned about overcrowding on the vessel, which is essentially the substance of the intelligence report that was put out by the ASTJIC that morning. As to the detail of that report, I suggest that the committee seeks advice from Coastwatch, which advised us; and from the AFP, which in turn advised Coastwatch of the reported departure of that vessel. With regard to the question of whether the ASTJIC reported to anyone to look out for SUNCs in life jackets, the answer is: certainly during the first half of October, no. As to whether the ASTJIC advised anyone that children had been thrown overboard: again, no.

CHAIR—I think that question related to looking out for children being thrown overboard. Does the same answer hold?

Col. Gallagher—Yes, the same answer holds.

CHAIR—You believe that?

Col. Gallagher—Yes.

CHAIR—Is there anything arising from that?

Senator FAULKNER—The phone call at 1440 on the 18th was about another SIEV, wasn't it?

Col. Gallagher—Yes.

Senator FAULKNER—Do you know what SIEV that was about?

Col. Gallagher—I did not inquire. I could not speculate. I would have to go back again.

Senator FAULKNER—Probably SIEV6, but I am just assuming that. But one should not make any assumptions if it is a numbered SIEV. If you go to Admiral Gates's chronology for the 18th, it says:

Coastwatch phone through then promulgate in CMSP OPSUM PM 18 Oct 01 that Quassey vessel 'reported' to have departed *Java*, Indonesia for Christmas Island on 17 Oct 01.

What is the status of that phone call?

Col. Gallagher—That is the phone call I am referring to.

Senator FAULKNER—This identifies an Abu Qussey vessel.

Col. Gallagher—No. My understanding is that the phone call we received did not relate to the Abu Qussey vessel. The Abu Qussey vessel was mentioned in the Coastwatch opsum that day, but the phone call that we received, which was the question I was asked, did not relate to that vessel.

Senator FAULKNER—Hence the significance of the footnote.

Col. Gallagher—I cannot comment on the significance or otherwise of the footnote.

Senator FAULKNER—It changes the date from 17 October to 16 October.

Senator JACINTA COLLINS—Senator Faulkner is trying to ascertain what the status of that opsum is, then, if it was not the phone conversation. It did not pop into someone's imagination.

Col. Gallagher—I cannot answer what the basis of Coastwatch reporting that might have been.

Senator JACINTA COLLINS—But you are saying that the phone call you are aware of at 1440 was about a different SIEV.

Col. Gallagher—Yes.

Senator JACINTA COLLINS—Were there other phone conversations?

Col. Gallagher—None are recorded in our log on that day.

Senator JACINTA COLLINS—Were any recorded on the 19th, in relation to the next opsum where the vessel again was recorded?

Col. Gallagher—Yes, there would have been a phone call. But I would have to go back and find out what time that phone call was. I was asked about the timings of the phone calls on the 17th and the 18th. If you wish me to do that, I will.

Senator FAULKNER—But why wouldn't the phone call of the 19th be recorded in Admiral Gates's chronology?

Col. Gallagher—I cannot answer that question; I do not know how to answer it, other than to say that I cannot answer it.

Senator JACINTA COLLINS—Colonel Gallagher, the other problem we have is that a number of these opsums and other reports are equally classified. But the one report that you referred to earlier this morning as classified is not here because it is classified.

Col. Gallagher—Yes, that is correct.

Senator JACINTA COLLINS—A number of these other reports referred to in the DIMIA reports and others would be classified too, but they make the chronology.

Col. Gallagher—I do not understand the process by which they derived the chronology. My broader understanding is that, where there may be gaps, they relate to material that was sourced from other agencies, and those agencies have declined to declassify the material.

Senator JACINTA COLLINS—But the gap we discussed this morning was your own assessment. If you can remember, I asked you why the assessment that you had reached on the 20th—

Col. Gallagher—Yes, that is right, and that is reflected in the NORCOM intsum.

Senator JACINTA COLLINS—So that is your way of describing that assessment. I thought you were saying that the Australian intelligence centre assessment was different from that of NORCOM.

Col. Gallagher—No. It was sufficiently alike that, without going back to the originator to try to get them to declassify the information, the NORCOM intsum adequately described what was in the ASTJIC intelligence report of that morning.

CHAIR—That concludes questions. Thank you, Colonel Gallagher, for your attendance here today and your forthright way of answering questions. We appreciate the evidence you have given and you are now excused.

Col. Gallagher—Thank you very much.

[2.15 p.m.]

KEELTY, Commissioner Michael Joseph, Commissioner, Australian Federal Police

McDEVITT, Federal Agent Brendon Joseph, General Manager, National, Australian Federal Police

CHAIR—Good afternoon, Commissioner, and welcome to the inquiry. I understand that you have a statement that you wish to make at the beginning of proceedings.

Commissioner Keelty—Yes, please.

CHAIR—Just before you embark on it, do you happen to have a spare copy? If you do, we will have it provided to the committee more rapidly than would be the normal course through *Hansard*.

Commissioner Keelty—I am happy to provide it afterwards, if that is all right, Senator, because I have made some handwritten notes on it.

CHAIR—Let me say, anything that you have made by way of notes on it, you ought to remove before it is photocopied.

Commissioner Keelty—Thank you, Senator. At the outset, I respectfully make the point to the committee that, as a law enforcement agency charged with the administration of justice, the AFP has a much different role from those other agencies who have already appeared before you. The committee will be aware that the AFP is the Commonwealth government's primary law enforcement agency and is involved in investigation of those people who breach Commonwealth laws. The AFP, therefore, has an interest in enforcement of the criminal provisions of the Migration Act 1958. Our role is to investigate and prosecute under the criminal justice system, and we must be careful to preserve evidence and potential evidence. In particular, the AFP engages in targeting facilitators of people-smuggling ventures. These are the people who arrange for the marketing of opportunities for potential passengers, organise their travel to embarkation points, coordinate and provide vessels, and employ crews.

To a lesser extent, the AFP also investigates and attempts to bring before the courts the crews of the SIEVs arriving in Australian waters. We do not investigate the passengers on board these vessels who are variously described as unlawful noncitizens, refugees, asylum seekers or illegal immigrants. Upon arrival in the Australian migration zone, the responsibility for dealing with those people lies with the Department of Immigration and Multicultural and Indigenous Affairs, and the Australian Customs Service.

During the year 2000, as a result of increasing concerns about the number of potential unauthorised arrivals bound for Australia, a decision was made by the government to provide special funding for a number of initiatives to address the predicted increase in unauthorised arrivals. Among those initiatives was funding for the establishment of the joint AFP-DIMIA strike team, the expansion of the AFP and DIMIA overseas liaison officer networks, increased

law enforcement assistance to the Middle East and Asia Pacific countries, and additional targeted assistance to Indonesia. In July 2000, the AFP established a joint people-smuggling team in partnership with the department of immigration. It is staffed by 10 AFP officers and five employees from DIMIA. On 27 September 2000, the Minister for Justice and Customs issued a ministerial direction to the AFP under section 37(2) of the AFP Act, stating that the government expects the AFP to give special emphasis to countering and otherwise investigating organised people-smuggling.

The direction went on to state that the AFP should also ensure that it provides an effective contribution to the implementation of the government's whole of government approach to unauthorised arrivals. In addition to its investigative efforts against criminal groups behind people-smuggling and the crews of SIEVs, the AFP also has a responsibility for the provision of community policing services to Australia's external territories including Christmas Island. Prior to 28 September 2001, the AFP on Christmas Island were involved in the boarding of SIEVs, the issuing of immigration detention notices, escorting illegal immigrants from SIEVs to detention facilities and the initial processing of these passengers on behalf of Immigration. On 28 September 2001 the Australian Customs Service officers commenced working on Christmas Island and they took over the customs and immigration functions previously performed by the AFP. The AFP continued to assist ACS in carrying out these responsibilities, including the boarding of vessels and issuing of detention notices. At present the AFP has four sworn members on Christmas Island and draws upon five special members who are also part-time employees of the Customs Service. Those five form part of 12 local part-time ACS officers up there. Two permanent customs officers and one DIMIA officer since August 2001 complete the entire contingent.

Members of the committee might know that the AFP also maintains a very strong focus on trying to fight crime offshore, now commonly referred to as transnational crime. You will also be aware that the AFP has no criminal jurisdiction, that is police powers beyond Australia's borders. As such we do not have an operational role in other countries. We make up for this limitation by seeking the assistance of, and collaboration with, overseas law enforcement agencies. The AFP's international liaison officer network is critical to our transnational crime fighting strategy. Strategically placed liaison officers seek to build relationships of trust and confidence between Australia and our international counterparts to combat criminal activity that either directly or potentially impacts upon Australia's interests. In the case of organised people-smuggling, our focus has been on obtaining support from our counterparts in South-East Asia, particularly Indonesia. As the committee is aware, Indonesia has been the final departure point for the majority of SIEVs destined for Australia. We are therefore involved in fighting the crime at both ends of the people-smuggling pipeline. The AFP liaison office in Jakarta consisting of two AFP federal agents works cooperatively with the Indonesian National Police, the Indonesian defence force and immigration agencies. On 27 October 1995, the AFP entered into a memorandum of understanding with the Indonesian National Police to cooperate in the investigation of transnational crime. This MOU was later renewed on 5 August 1997 and on 15 September 2000 the AFP entered into a specific protocol under the MOU to target people smuggling syndicates operating out of Indonesia.

I would ask the committee to note that on 13 June 2002 I signed a new memorandum of understanding with my counterpart in the Indonesian National Police. In previous evidence before the Senate Legal and Constitutional Legislation Committee, I provided some insight into

the joint activities undertaken by the AFP officers and their Indonesian counterparts. While such matters are sensitive they include the management of human source relationships. I am sure the committee would understand my reticence in delving too deeply into any other relationships that may exist between the AFP, our partners overseas and human sources. On this point I ask the committee to recognise that to jeopardise this relationship is a valid point of objection that I may need to raise should the committee wish to pursue the relationship in any detail beyond the MOU. I can say that in August 2001 the AFP-DIMIA people-smuggling team commenced deploying a number of investigators to Indonesia to assist the whole of government approach to the issue of people smuggling. They work closely with the Australian Embassy in Jakarta.

The processes we have in place offshore combined with the investigative efforts in Australia have been successful in bringing people responsible for organised people-smuggling before overseas and Australian courts. In addition, since February 2000, the Indonesian authorities have diverted over 3,000 people suspected of intending to enter Australia illegally into legitimate migration processes under the auspices of the United Nations conventions.

It is estimated that there are approximately 2,100 people in Indonesia who may attempt to travel to Australia illegally. Again, while not wanting to delve too deeply into relationships that the AFP and our overseas partners may have for obtaining information to be used for the arrest and successful prosecution of criminals, it would be obvious to the committee that during our operations offshore the AFP generates an amount of collateral information relevant to the identification of vessels used by people smugglers.

Information we received about SIEVs often contained conflicting dates regarding their departure, deliberate misinformation regarding departure locations, and ambiguity into the transport and staging areas for passengers in Indonesia. Information was often second-hand and difficult to attribute to specific vessels. As a police organisation, we have extensive experience in addressing the value of information from human sources. We know that it is an imprecise science and it is dangerous to make decisions based on uncorroborated single source information in people-smuggling matters or indeed any criminal matters. We have learnt through experience that the reliability of information, which is sometimes provided anonymously, may be questionable and that the motivation for passing information is usually for self-gain. There are often other motives for passing on information such as deliberate misinformation to divert police attention or to harm a criminal competitor. The methods used by these sources to collect information may result in an incomplete picture and that these sources may not have access to first-hand information. As police, knowing these things instils in us a level of caution against making decisions based solely on such information. As a consequence, there is often a need to conduct additional inquiries to corroborate information from human sources.

The committee has already heard testimony that during the course of Operation Relex there were a number of SIEVs intercepted en route to Australia, sometimes in very quick succession. Between August and November 2001, the AFP received an amount of information pertaining to all vessels that were identified during this operation. Additionally, the AFP received numerous pieces of single source information about potential SIEVs. The AFP was not able to corroborate any of those alleged movements until after the vessels were intercepted. Each Commonwealth government agency with an interest in countering organised people-smuggling contributes to the whole of government approach by the provision of service based on their existing unique

capabilities. The AFP is not a maritime surveillance agency and it does not possess the expertise to plan or mount maritime operations.

As our contribution to the whole of government approach, the AFP focuses on the investigation and bringing before the courts those people responsible for organised people-smuggling to Australia. We also pass to other agencies collateral information gathered for our purposes that may be useful to them. The AFP passes collateral information pertaining to SIEVs via established protocols at the national and international level in written form and on occasions this is supplemented by oral advice if circumstances dictate. Information received by the AFP overseas and in Australia was passed to the AFP-DIMIA people-smuggling team who in turn assessed the relevance of this information to its investigation into organised people-smuggling. The people-smuggling team would then package the information relating to the SIEVs in written form and disseminate them to Defence, DFAT, DIMIA, Coastwatch, Customs and ONA. At this time the AFP would provide limited, if any, analytical comment. Most of this team would on occasions engage in face-to-face verbal exchanges of the information with employees of other agencies.

As a result of the AFP's concurrent responsibilities with regard to the investigation of SIEV crews and the provision of community police services on Christmas Island, we were also invited to attend other meetings such as the Prime Minister and Cabinet People Smuggling Task Force interdepartmental committee. The involvement of the AFP in these meetings and our written documentation was limited to the scope of AFP law enforcement responsibilities, as I have highlighted previously. It is not the role of the AFP to comment on policy or on strategies to locate and intercept SIEVs.

I turn now to specific matters before the committee. I refer the committee to my previous evidence given to the Senate Legal and Constitutional Legislation Committee concerning AFP activities at about the time of the children overboard incident. In particular, I refer you to my evidence to that committee on 19 February 2002 and my letters of 20 and 22 February to the chair of that committee. To me, it is important that this committee is aware that four crew members of SIEV4, including one juvenile, are charged with offences contrary to section 232A of the Migration Act 1958. These people are currently awaiting trial before West Australian courts. The juvenile is appealing against the concurrent trial with the co-accused.

As highlighted in my correspondence to both Senator Cook and the secretary of this committee, the pending trials will have an impact on some of the answers that I am able to give to the committee as I would not, and I am sure the committee would not, want my answers or the answers of any member of the AFP to prejudice a fair trial of those people.

The terms of reference of the committee may also require me to answer questions on a number of SIEVs, especially SIEVX. Again, from the outset, I need to make it known to the committee that there are a number of ongoing AFP investigations, as well as impending Australian and international prosecutions and other legal processes, in relation to people associated with those vessels. In particular, the AFP has obtained three first instance warrants for the arrest of the alleged organiser of SIEVX for offences against the Migration Act 1958. He is currently in custody in Indonesia. Seeking his extradition is a delicate matter as extradition requires dual criminality which does not exist at the moment in Indonesia because people smuggling is not an offence there.

In February 2002 a regional ministerial conference on people smuggling, trafficking in persons and related transnational crime was co-chaired by the Indonesian foreign minister and the Australian minister for foreign affairs and trade. An outcome of that summit was a non-binding resolution for Indonesia and other participating countries to enact people smuggling legislation that could eventually permit extraditions between our respective countries for people smuggling.

In addition to pursuing the alleged offender on people smuggling offences, I believe that, based on the evidence available to the AFP, we can establish that the alleged organiser of SIEVX, whose actions led to the deaths of 353 persons on board, could possibly be charged with offences associated with those deaths. The AFP is currently interviewing witnesses in Australia and is seeking the cooperation of Indonesian National Police to gather further evidence to support any potential future prosecution for those matters. In this circumstance it is important to note that the criminal prosecution may not be dictated by where the vessel sank but it may be determined by the vessel's intended point of arrival. We are currently seeking legal advice to clarify this question. If we can establish that Australian charges can be laid then we would seek further first instance warrants for the arrest of the alleged organiser. If we are able to proceed with such charges, dual criminality does exist with Indonesia and we would, therefore, be seeking extradition. If it is found that the AFP lacks legal jurisdiction in relation to the primary offence then we may seek first instance warrants for the arrest of the alleged organiser for offences of attempting to smuggle the people to Australia.

We are also seeking legal advice as to the scope of dual criminality with Indonesia on these inchoate crimes and the likelihood of a successful extradition. I repeat that the AFP does not wish to put any of these legal processes at risk by virtue of evidence provided to this committee. I am sure that the committee will agree that, given that the AFP is aware of the alleged perpetrator of this crime, then nothing that the AFP says or does before this committee should prejudice any future prosecutions.

I draw the committee's attention to the correspondence from the Clerk of the Senate to the Chair of the Senate Legal and Constitutional Legislation Committee of 28 May 2002 regarding the detrimental effect questions and answers in Senate committees may have on the conduct of legal proceedings. I quote from that advice:

The problem is that questions and answers in a Senate committee hearing, because they are protected by parliamentary privilege, are unexaminable in any legal proceedings. This could cause difficulties in those proceedings and could easily cause them to miscarry. For example, if police were to answer questions in a committee hearing, in a subsequent trial the defence could claim that the police answers provide evidence favourable to the defence and the defence's inability to adduce them in evidence before the court prevents the defence from properly presenting its case and therefore prevents a fair trial and that, on that basis, the prosecution should be dismissed. There is precedent in civil cases for proceedings being stayed on the basis that material protected by parliamentary privilege could not be examined and this prevented a proper trial of the matter in issue. The courts are more likely to dismiss a criminal case because of material which may be relevant in the case but which is unexaminable because of parliamentary privilege given the greater reluctance of courts in criminal matters to allow any unfairness to the defence.

Had I received this advice previously, it may have altered my evidence before the Senate Legal and Constitutional Legislation Committee in February 2002.

Based upon the advice from the Clerk of the Senate and with due consideration for matters currently or potentially before the courts and under investigation, I wrote to this committee on 17 June 2002, raising concerns I had about the detrimental impact of any evidence I may be

asked to provide to the committee on these matters. That letter was leaked to the press and, while I consider that a gross infringement of the proper conduct of this committee, I note the undertaking given to me by the chair of the committee, Senator Cook, to refer this matter to the Senate Privileges Committee and I thank Senator Cook for the seriousness he attached to my concerns. On 20 June 2002, the committee determined that it would not call me to give evidence, citing, 'The committee has concerns that to take evidence from the AFP at this stage may prejudice these proceedings.' I also acknowledge the letter from the chair of the committee dated 3 July 2002 in which I was again provided with an invitation to appear before this committee.

I assure the committee that the AFP is committed to fulfilling its responsibilities but only to an extent that does not prejudice current or future legal proceedings. I must, however, state that these sensitivities, which caused the committee to postpone my evidence on 20 June 2002, still exist today. In the letter of 3 July 2002, the chair of the committee stated that the committee would expect me to draw to its attention any concerns I might have in responding to some of the questions that may be put to me and that the committee would consider any request by me to respond to a question in a manner consistent with my assessment of sensitivity. I have already said that these sensitivities still exist and I believe it is important the committee recognise the potentially dire consequences to legal proceedings and investigations should an error in judgment be made by either of us.

The question of whether evidence before this committee will impact on a fair trial of defendants in both the SIEV4 and the SIEVX matters can only be answered later, in the course of those criminal trials. We cannot put ourselves in the shoes of a prosecutor or defence counsel. We cannot second-guess how they may intend to prosecute or defend matters, nor can we second-guess the evidence they may call to support their arguments. In these circumstances I must take a very conservative approach in commenting on matters which could be called into evidence in legal proceedings. I believe that the committee, in its acknowledgement of these circumstances, also accepts its share of the responsibility for any prejudicial outcomes from its line of questioning.

I want to reassure the committee, however, that I have caused a thorough examination to be conducted of the AFP's holdings in relation to the SIEVX matter. This examination has revealed that the AFP passed all relevant information to the appropriate authorities. All information that may have led to a conclusion that the passengers of SIEVX were in danger was obtained after the vessel had in fact sunk. Much of that information was actually obtained from interviews with survivors conducted by the Indonesian National Police. I would also like to point out that no-one in the AFP was or is aware of the precise location of the sinking of the vessel, despite evidence to the contrary provided to this committee and inferences drawn from that evidence by sections of the media. Indeed, we may need to now establish that fact in order to determine jurisdiction for any future prosecution.

Within the constraints I have identified and which the committee has acknowledged, I am pleased to assist the committee where I can. The AFP is accustomed to being held accountable for its actions before courts and other legal bodies, including the parliament. However, problems arise when attempts to satisfy the needs of one may jeopardise the functioning of the other. I have already outlined in my opening statement that this was one of those situations. I have agonised over how we can release information to this committee to address the specific

issues that you want answered, those being: what information the AFP held about the departure, seaworthiness and ultimate fate of SIEVX; the manner in which the AFP came into possession of that information; and the specific actions taken by the AFP with that information, including whom we told and when. While I want to answer those questions, I am unable to be specific about the content of communications between the AFP and other agencies, a burden not placed upon other departments that have appeared before you. I am aware that my inability to answer those questions goes to the very heart of my credibility as a witness as well as that of my organisation in your eyes and potentially those of the public but, on the advice provided to me, I simply cannot go further. Thank you.

CHAIR—Thank you, Commissioner. I believe, since it is consistent with what you have said, that you would also want us to take note of your letter to me of 8 July.

Commissioner Keelty—That is correct.

CHAIR—We will do that. If it is convenient, I will ask one of the secretariat staff to get a copy of your statement so that it can be circulated to the committee. I do not want to deprive you of it, however, in case you are to be asked a question on it. Are you comfortable to hand it up now?

Commissioner Keelty—I may be able to provide you with a copy, as one of my colleagues might have another copy of it. They are going to photocopy it, after making a small editorial adjustment.

CHAIR—All right, we will leave it in your hands and get it as soon as it can reasonably be available. For questions, I think the normal courtesy is extended to you, Senator Brandis, although you have not been keen to accept it thus far today.

Senator BRANDIS—I just thought I would let Senator Faulkner go first this morning. I will ask questions first now, if you like.

CHAIR—It is through courtesy that I offer it to you again.

Senator BRANDIS—Thank you. I have a couple of questions, Commissioner. Before I ask them, may I assure you that, to adopt the language that you just used, at least as far as the government senators are concerned, your inability to answer any questions, on the basis of the proper exceptions that you have foreshadowed, does not at all go to the heart of your credibility as a witness. The government senators entirely understand the reasons you have foreshadowed as to why it might not be proper for you to answer certain questions. We accept that entirely and that does not, in our view, even remotely reflect upon your credibility as a witness.

Commissioner Keelty—Thank you.

Senator BRANDIS—Having said that, and having regard to the proper objections or limitations that you have foreshadowed, I ask you this: do I understand you to be saying that, on the basis of the information, data and intelligence that you have reviewed, you have no reason to believe that there was any information, at least accessible or available to the Australian Federal Police, that SIEVX had foundered until some time after that event had happened?

Commissioner Keelty—That is correct. It was when the survivors were returned to Indonesia and advice was provided to us through the interview of those survivors by the Indonesian National Police.

Senator BRANDIS—Did you have any information, intelligence or advice that SIEVX was in distress at any earlier time than that?

Commissioner Keelty—We did not know about the departure of SIEVX until after the vessel had returned. We had no way of surveilling SIEVX as I pointed out earlier. We had no way of receiving any distress call.

Senator BRANDIS—Was there any step, in your judgment, that the AFP could have taken at any time earlier than any step was taken, either itself or by way of alert to other Australian agencies, to go to the rescue of SIEVX or the people who were travelling on SIEVX?

Commissioner Keelty—No.

CHAIR—I think you can assume, Commissioner, that the remarks that the government senators have made about your credibility as a witness are shared by the entire committee.

Commissioner Keelty—Thank you, Senator.

Senator FAULKNER—I have some questions, Mr Chairman. Commissioner, the meeting of the high-level group, the People Smuggling Task Force, on 12 October 2001, was attended by a number of people but in this case Mr Shane Castles was the AFP representative. I think it is fair to say that he was a fairly regular representative of the AFP at the People Smuggling Task Force meetings, wasn't he, from what I have read of the notes and minutes of the meetings?

Commissioner Keelty—That is correct, Senator.

Senator FAULKNER—In the notes or minutes of the high-level group of 12 October 2001, it is recorded that there was a discussion of disruption activity and scope for beefing up. I wondered whether you would mind outlining to the committee what you understand by disruption activity.

Commissioner Keelty—Disruption activity was taken—and still is today—in relation to a number of vessels. By disruption, we mean the use of the Indonesian national police to divert potential passengers to the International Organisation for Migration or the interception by the Indonesian national police of passengers prior to boarding vessels. What would happen—and I am not talking about specific cases but generally—is that potential passengers are gathered sometimes in a number of locations and at the last moment they are provided with details or transport to an embarkation point and they are placed on the vessels at the embarkation point. Often a disruption activity would be to prevent the passengers from getting to the point of embarkation or, if we knew who the people smuggler was, to have the Indonesian national police arrest the organiser, or in other ways to disrupt the gathering of the people prior to the vessel departing.

Senator FAULKNER—Specifically in relation to the 12 October 2001 meeting where this discussion of disruption activity and scope for beefing up took place, did you get a report back on that from Mr Castles?

Commissioner Keelty—I did not personally.

Senator FAULKNER—How did the link between the task force and the AFP actually work? I think we understand that some of this was done in a relatively informal way and it depended a bit on the agency. How did it tend to work with the AFP? How did you link in to the task force? How did the task force link in to you?

Commissioner Keelty—The task force was led, as you know, by Prime Minister and Cabinet. We would respond to a call to attend task force meetings. As you pointed out, Senator, those task force meetings were attended by Federal Agent Castles, who would go there and provide the latest information that the AFP had.

Senator FAULKNER—Did he report back to you or to one of the other senior officers?

Commissioner Keelty—He would report back to Mr McDevitt's position and a decision would be made about what to do with information that was gathered and whether any taskings were relayed to the people smuggling team or back to the AFP officer in Jakarta.

Senator FAULKNER—On 12 October 2001 was this a reference, do you know, to a specific boat, a specific group, to unauthorised arrivals in general or to people smugglers in general? Do you know what this particular reference related to?

Commissioner Keelty—As far as I am aware it was to continue the type of activity that we had undertaken in the past—to see what the Indonesian national police could do to prevent the passengers from arriving at the vessel.

Senator FAULKNER—But you said 'arrest people smugglers'. I heard what you said in your opening statement and I was aware of it, because obviously it is an issue and it is a problem, frankly, that people-smuggling is not an offence under Indonesian law. I am sure you would accept and acknowledge that. For what crime would the Indonesian police be able to arrest people smugglers? I want to understand how it works.

Commissioner Keelty—Most of the people smugglers are not Indonesian nationals, so the very nature of their arrival into Indonesia is often in breach of immigration laws, and they often make money out of organising the people to be smuggled out. So there are a number of breaches of Indonesian law that they could have been spoken to about by the INP.

Federal Agent McDevitt—A frequent MO is for people to be assembled and for documentation to be handed across to people-smuggling facilitators. An offence that may be disclosed would be, for example, if a people smuggler were caught in the act of holding expired or false documentation.

Senator FAULKNER—Mr McDevitt, I assume Federal Agent Castles reported back to you on the meeting of 12 October?

Federal Agent McDevitt—I only took up this position in about mid-March. At that point it reported to my predecessor, Federal Agent Andy Hughes.

Senator FAULKNER—Fair enough. Can either of you assist me with what the general tenor of the discussion of the task force at that meeting was?

Commissioner Keelty—The minutes of the meetings were kept by PM&C. Whilst Mr Castles may have, from time to time, made his own notes of what occurred there, judging by this it was just a discussion of disruption activity and scope for beefing up. That was not unusual. As information that the departure of vessels was more imminent, there was heightened activity to try to see what we could do to disrupt the process. This case would have been just another example of that.

Senator FAULKNER—What does ‘beefing up’ mean?

Commissioner Keelty—It may well have been in this case that the Indonesian National Police had not been able to locate the passengers or had not been able to locate the organisers. It would have been just a reference to making an extra effort to disrupt.

Senator FAULKNER—Do you know for what reason this would be suggested at this time?

Commissioner Keelty—Without going into SIEVX, if you look at the range of vessels that information was being passed about at the time, you may, for example, have information about a vessel some three months before it actually departs. The reason for that is the organiser cannot get the vessel, cannot get someone to sail the vessel or cannot get someone with the skills to sail the vessel who knows that they can get it to the country; sometimes the passengers question the ability of the organiser, after they have paid the money, to try to guarantee that the vessel will arrive safely. It is a very imprecise activity, like any criminal activity is. My judgment would be to not read anything into that other than that the departure of the vessel is imminent and that we had better beef up our activity.

Senator FAULKNER—I am not reading anything into it; I am just trying to understand it. Who would request a beefing up?

Commissioner Keelty—I am not saying you are reading into it, but if it were me I would not react to that notation other than to say: the intelligence obviously is that the vessel’s departure is imminent—

Senator FAULKNER—I am not drawing any conclusion by the way that it relates to a specific SIEV or vessel; in fact, I assumed it did not. But I thought that, if there were a suggestion of beefing up, there might be resource implications and the like so that this would be significant from the AFP’s point of view.

Commissioner Keelty—No, it is not. To me it is just an operational call along the lines of, ‘The departure of the vessel is imminent; we’d better be doing everything we can possibly do.’

Federal Agent McDevitt—That, of course, would be limited to any lawful means that could be employed to prevent or dissuade people who are potential passengers from getting onto vessels or going ahead with a particular venture—media campaigns, those sorts of tactics.

Senator FAULKNER—What about ‘disruption activity’? I have heard the terminology ‘dismantling activity’ used sometimes; is that the same thing?

Commissioner Keelty—Dismantling activity can be the same. Where we use dismantling is when we identify a syndicate involved, we try to look at the key players in the syndicate and we target our activities against those players to in fact dismantle the syndicate. That is how we would use the terminology.

Senator FAULKNER—So you do define the difference between ‘disruption’ and ‘dismantling’ in that sense. Is disruption a broader term and dismantling a subset of disruption?

Commissioner Keelty—From the AFP perspective, dismantling is a strategic approach to dismantling the syndicate; disruption is a tactical approach to stopping the activity as best we can around the time that it is occurring.

Senator FAULKNER—So is it fair to say, then, that dismantling is an element of disruption?

Federal Agent McDevitt—That is possibly one way you could describe it.

Senator FAULKNER—Or am I looking at it not as a Federal Police agent but as a senator?

Federal Agent McDevitt—Dismantling is more focused on targeting the critical players, the facilitators, within the syndicate. So you are actually taking away a fulcrum for activity, if you like; whereas disruption can extend far beyond the syndicate itself and, for example, target potential passengers on the vessel to disrupt their getting on board.

Senator FAULKNER—So it is fair to say that disruption is perhaps a broader term; would that be a better way of describing it?

Federal Agent McDevitt—Yes.

Senator FAULKNER—This is obviously a layman’s question, but is that the broader term?

Commissioner Keelty—Yes.

Senator FAULKNER—Fair enough. I think I said to you before that I am interested in the disruption activity in relation to people-smuggling that takes place in Indonesia. My questions basically go to that—I am sure there is other disruption activity in other countries, and probably in Indonesia, about other things—so that we can define it down. In other words, my questions are relevant to the terms of reference of this committee. Who determines the objectives for the disruption activities?

Federal Agent McDevitt—In broad terms it would be fair to say that the primary objective is to prevent the departure of the vessel in the first instance, to deter or dissuade passengers from actually boarding a vessel.

Senator FAULKNER—Who determines that objective?

Commissioner Keelty—Sometimes it will be us in isolation. If there was a team meeting, it could be the outcome of that team meeting. Clearly, on the matter cited, it was an outcome of that meeting. We were not in a sense acting at the direction of anybody. If we saw potential to disrupt activity before it gathered any momentum, we would do it.

Senator FAULKNER—Using Mr McDevitt's example, which is obviously a good one, preventing departure of a SIEV—although I suppose you cannot define such a vessel as a SIEV before—

Commissioner Keelty—Before it is a SIEV.

Senator FAULKNER—Yes, so 'vessel'; Mr McDevitt's terminology is probably better. So preventing a departure of a prospective SIEV is the objective. What are the methods used to fulfil that objective?

Commissioner Keelty—As I already outlined, from an AFP perspective the method is to, through our liaison officer in Jakarta, approach the Indonesian National Police, who are our main contact, to commence activities, whether by way of investigation, whether by way of arrest, whether by way of some other intervention that might, first of all, prevent the passengers from arriving at the point of embarkation. If they arrived at the point of embarkation, they might intervene at that point to stop the people from boarding the vessel and in fact to achieve the result that Mr McDevitt raised: to prevent the departure of the vessel.

Senator FAULKNER—Is there a whole series of methods that could be used?

Commissioner Keelty—That is right.

Senator FAULKNER—Under whose direction are these methods carried out?

Commissioner Keelty—They are carried out at the discretion of the liaison officer in Jakarta as to the best method to apply. But we cannot direct the Indonesian National Police. We can seek their cooperation. Like any criminal investigation, the police use their initiative and apply their discretion.

Senator FAULKNER—But as far as the AFP is concerned, your liaison officer in Jakarta is the officer who has the relevant authority in this. Is that right?

Commissioner Keelty—That is right. Whilst we might gather intelligence or gather information here in relation to the matter, we have to leave it to the officer in Jakarta because we have no authority over the Indonesian National Police either. He will advise us what is possible and what is not and where he is getting a response and where he is not. That happens

for every police officer. I cannot order a police officer, for example, to make an arrest. They have to form in their own mind that the circumstances exist in which it is possible for them to make a lawful arrest.

Senator FAULKNER—So if, for example, a decision were made to prevent the departure of a specific vessel—any specific vessel—that would be a decision that would be made out of Jakarta; it would not be made further down the line.

Commissioner Keelty—It could be made further down the line where we are we have assessed the relevant intelligence and we have become aware of a vessel that perhaps Jakarta does not even know about. Then we pass that down the line to Jakarta and seek their intervention.

Federal Agent McDevitt—There is very good communications between our Canberra office and Jakarta, and those sorts of decisions would be made in consultation. As the commissioner has said, it largely hinges on the level of cooperation and liaison with the Indonesian National Police, given that we do not have an operational role—obviously—in Indonesia.

Senator FAULKNER—Who does your liaison officer in Jakarta report to?

Federal Agent McDevitt—They report back to the Director of International Operations in Canberra.

Senator FAULKNER—Commissioner, you, I assume, have the final authority in this? If you do not, who does?

Commissioner Keelty—I have the final accountability. The authority, and thus the independence of the office of constable, lies with each individual police officer. But I am accountable for what they do.

Senator FAULKNER—Who carries out the actual disruption activities?

Commissioner Keelty—The Indonesian National Police.

Senator FAULKNER—Only the Indonesian National Police?

Commissioner Keelty—There may have been assistance from time to time from Indonesian immigration or Indonesian defence but, for the main part, it was with the Indonesian National Police that we had the law enforcement relationship.

Senator FAULKNER—So the Indonesian National Police, Indonesian immigration and the Indonesian defence force, possibly. Anyone else?

Commissioner Keelty—No.

Senator FAULKNER—No-one else?

Commissioner Keelty—No.

Senator FAULKNER—Just those three but mainly the Indonesian police?

Commissioner Keelty—That is right, in terms of the intervention for disruption.

Senator FAULKNER—In terms of?

Commissioner Keelty—Your question, as I understood it, was with whom do we engage to give effect to the disruption.

Senator FAULKNER—Engage? No, I asked who carried it out. Engaging is one thing; who carries it out is another thing, isn't it? We know with whom we engage but who carries it out?

Commissioner Keelty—The agencies I mentioned, with the emphasis being on the Indonesian National Police.

Senator FAULKNER—What sort of accountability is there? How do you know what they are up to?

Commissioner Keelty—We don't, but we know what we have requested of them and we know as a result of that request what the outcome of the request is.

Senator FAULKNER—Are they paid for this?

Commissioner Keelty—No, they are not.

Senator FAULKNER—Not at all?

Commissioner Keelty—No, they are not.

Senator FAULKNER—Is anyone paid for this?

Commissioner Keelty—Not for disruption activity.

Senator FAULKNER—What are they paid for?

Commissioner Keelty—I do not understand your question. Could you make it more precise, please.

Senator FAULKNER—You said that they are not paid for disruption activities. I assume this is a reasonably resource intensive function for the Indonesian police and the other agencies involved in it. Is there a quid pro quo?

Commissioner Keelty—We do not ask them to carry out a task and then pay for them to do the task. There is a level of cooperation that we have with them under the protocol that I mentioned in my opening statement.

Senator JACINTA COLLINS—The MOU?

Senator FAULKNER—The protocol hanging off the MOU.

Commissioner Keelty—You are right, it is the MOU, and it is the protocol under the MOU. Under that protocol, we did provide equipment and training to the Indonesian National Police, who set up a number of task forces specifically for the purposes of addressing the people-smuggling problem.

Senator FAULKNER—So the disruption activity is limited to Indonesian agencies?

Commissioner Keelty—The people who do the disruption are the Indonesian agencies; that is right.

Senator FAULKNER—Are decisions about this limited just to the AFP at an operational level, or is there any discussion about these sorts of activities at task forces or your joint operations with DIMIA and the like?

Commissioner Keelty—There could a range of ways of doing it: it could be discussed by the task force, it could be a recommendation of the task force, it could be by virtue of what the officers in Indonesia have gained knowledge about, so it is a variety of means.

Senator FAULKNER—I assume the AFP have informants—I think you would know that from some of the publicity that you have seen over a number of months.

Commissioner Keelty—That is correct.

Senator FAULKNER—This is what I do not quite understand. I am assuming that Indonesian agencies, of whatever description, are not necessarily the middlemen in that regard.

Commissioner Keelty—I do not understand your question.

Senator FAULKNER—The AFP has agents, informants and others on the ground in Indonesia, doesn't it? Everybody knows that.

Commissioner Keelty—That is correct.

Senator FAULKNER—I assume that those sorts of people are not tasked by and do not report to Indonesian agencies; they would tend to report to and be tasked directly by the AFP or Australian agencies. I am just trying to get the picture.

Commissioner Keelty—The picture is quite simple. You asked me who—

Senator FAULKNER—Maybe I am a simpleton and I do not quite understand it.

Commissioner Keelty—Maybe I can explain it again. The people who conduct the disruption—or the intervention—are the people with the power to conduct a disruption, that

being the Indonesian National Police, the Indonesian defence and sometimes the Indonesian immigration. We find we obtain information from informants, but informants do not disrupt. They have no power to disrupt.

Senator FAULKNER—What accountability, controls and constraints are on those Indonesian agencies that are conducting this activity? How are you satisfied that those activities are conducted in an appropriate way?

Commissioner Keelty—That is not for me to say. I do not have any power over the Indonesian authorities.

Senator FAULKNER—But you are asking them to do this. You are tasking them with this.

Commissioner Keelty—We are not tasking them to do it. I mentioned before that we can seek their cooperation. We do not have a line of command over the Indonesian authorities.

Senator FAULKNER—But they are cooperative, aren't they, in this regard?

Commissioner Keelty—They have cooperated, yes.

Senator FAULKNER—Would you describe them as cooperative?

Commissioner Keelty—Yes.

Senator FAULKNER—Is there feedback from them to you in relation to these activities?

Commissioner Keelty—Yes.

Senator FAULKNER—How does that work?

Commissioner Keelty—Feedback can come in a number of ways. Feedback can be through activities that are overt in terms of people being arrested or detained, or feedback can be by virtue of outcomes in terms of activity that we undertake here in Australia.

Senator FAULKNER—Have the Indonesian authorities, to your knowledge, expressed concern about these disruption activities?

Commissioner Keelty—The protocol under the MOU was set aside for a period last year.

Senator FAULKNER—What was that period, please?

Commissioner Keelty—I will find out for you, if you will bear with me for a moment.

Senator FAULKNER—Sure.

Commissioner Keelty—I am advised that it was around September last year, which is also my recollection. In terms of the formal MOU, as I mentioned to you in my opening statement,

the protocol really was not formally re-adopted by the Indonesian National Police until we resigned the MOU in June of this year.

Senator FAULKNER—For the benefit of the committee, could you explain what happened in September—or around September; I appreciate that you have used that qualification and I accept that—last year?

Commissioner Keelty—As I understand it, some concern was expressed in Indonesia by DEPLU, the equivalent of our Department of Foreign Affairs and Trade, that the activities of the Indonesian National Police which were being conducted under the protocol—or under the memorandum of understanding—had not been fully known to DEPLU, so they asked the police to set aside the protocol until such time as there was a more formal government-to-government agreement on what could be done.

Senator FAULKNER—Did the concern go to the disruption operation?

Commissioner Keelty—To a degree I think it did but, in spite of that, we still received some cooperation from the Indonesian National Police on a case by case basis.

Senator FAULKNER—What concerns did the Indonesians express in relation to the disruption operation?

Commissioner Keelty—I do not have a briefing on that and I do not know that anyone in the AFP does. In general terms, I understood that there was concern raised in DEPLU that there was perhaps a need for a more formal government-to-government arrangement, and that was one of the catalysts or levers leading to the ministerial summit in February.

Senator FAULKNER—I would be surprised—very surprised—if the AFP was not informed of what these concerns might have been.

Commissioner Keelty—It was a decision by the Indonesian government in their DEPLU, so I would not necessarily expect them to tell me why.

Senator FAULKNER—I understand that. But, given that you were operating under an MOU and a protocol and there was a breakdown in activity for a period of time, I would be amazed if the Australian Federal Police did not have an understanding about why that occurred—just amazed. So I ask you again: could you explain to the committee what occurred around September last year and what were the reasons for this breakdown?

Commissioner Keelty—I have explained that to the extent possible.

Senator FAULKNER—Did it go to resources?

Commissioner Keelty—Not that I am aware of.

Senator FAULKNER—Did it go to moneys being paid by Australian agencies to Indonesian agencies?

Commissioner Keelty—I do not think I can be in a position to answer this question. This question needs to be directed to the Department of Foreign Affairs and Trade or the Indonesian government.

Senator FAULKNER—This must have had operational implications for the Australian Federal Police.

Commissioner Keelty—It did.

Senator FAULKNER—What were they?

Commissioner Keelty—We asked the Indonesians whether we could still operate cooperatively having set aside the protocol and, as I say, we did achieve continued cooperation on a case by case basis.

Senator FAULKNER—But you are saying to me that you were operating under that protocol until this breakdown occurred around September last year. That is right, isn't it?

Commissioner Keelty—That is correct.

Senator FAULKNER—The protocol hangs off the MOU?

Commissioner Keelty—That is correct.

Senator FAULKNER—You are saying to me that the protocol was set aside, and you do not know why. I try to be reasonable about these things, but I find it a little extraordinary that you do not know why that protocol was set aside. It is the protocol between the Australian Federal Police and the Indonesian police, but you do not know why.

Commissioner Keelty—As far as I am concerned, I have given the answer: it was DEPLU that made the decision, not the Indonesian National Police. DEPLU do not have a relationship with the AFP, so they were not obliged to tell us why they set it aside.

Senator FAULKNER—So the Indonesian police did not tell you why it was set aside?

Commissioner Keelty—I mentioned before that the Indonesian police explained that it was set aside because DEPLU thought that there needed to be a higher level formal agreement—at the government to government level.

Senator FAULKNER—Were there concerns about the nature of the disruption activities?

Commissioner Keelty—What do you mean?

Senator FAULKNER—As I said to you before, the disruption activities I would be directing my questions to would be those of the people smugglers in Indonesia.

Commissioner Keelty—From whom?

Senator FAULKNER—Were concerns expressed to you by the Indonesian police or other Indonesian authorities about the nature of the disruption activities—in other words, what were the Indonesians being asked to do?

Commissioner Keelty—The concerns raised by the Indonesians were in respect of the MOU and of operating under the MOU and the protocol. There were the five teams of Indonesian National Police that had been established through the Law Enforcement Cooperation Program, which was involved in the disruption activity. Once DEPLU raised their concerns about needing a higher level of agreement at government to government level, we asked the Indonesian National Police whether they were still going to be in a position to cooperate with us, and we received that cooperation. In one sense it was setting aside the formal agreement, but in another sense the relationship and the cooperation remained largely the same.

Senator FAULKNER—What checks are put in place in relation to these disruption activities by the Australian Federal Police, if any?

Commissioner Keelty—We do not have governance over the Indonesian National Police—they are not accountable to us.

Senator FAULKNER—So anything goes?

Commissioner Keelty—I am not saying anything goes. If there were anything untoward, it would certainly be a concern that would be expressed by us and we might reconsider our position in terms of engaging them to assist us in our goals.

Senator FAULKNER—Do you know of anything untoward that has happened?

Commissioner Keelty—No, I do not.

Senator FAULKNER—Do you know what has happened, given there are no checks and accountability? You would not actually know if anything untoward had happened, would you?

Commissioner Keelty—That is not right. Oftentimes when we ask the Indonesian National Police to intervene in the gathering of potential passengers, for example, those passengers are identified, the INP goes in and the IOM takes over. If there were anything untoward, I am sure that we would become aware of it one way or the other either through difficulties being expressed by passengers or through persons who are later put through the IOM process.

Senator FAULKNER—You said before that the setting aside of the protocol had some significant ramifications for AFP activities. For the benefit of the committee, could you outline what those ramifications were?

Commissioner Keelty—It put a stay on the relationship in the sense that we were unsure as to whether we would be able to engage the Indonesians in continuing cooperation. In fact, I travelled to Jakarta to meet with my counterpart to see whether we would still be able to operate without the MOU. We did get agreement to continue to operate but on a case by case basis. So, in a sense, the impact was that we were operating without a formal MOU or a formal agreement for a period of time—until June this year.

Senator FAULKNER—To what extent do you know if there was any ministerial knowledge of the nature of disruption activities that took place at the time?

Commissioner Keelty—Do you mean ministerially in Indonesia or in Australia?

Senator FAULKNER—I mean Australian ministers.

Commissioner Keelty—I can find out whether we briefed our minister on it. In fact, some knowledge would have been conveyed to my minister's office because I would have had to explain to him why I needed to travel to Indonesia to speak to my counterpart, but I do not have the document in front of me.

Senator FAULKNER—During this period, did the Australian Federal Police, at any level, seek legal advice in relation to the disruption activities in Indonesia?

Commissioner Keelty—Not that I am aware of.

Senator FAULKNER—If that had happened you would have been aware of it, wouldn't you?

Commissioner Keelty—I would be aware of it by now, I am sure.

Senator FAULKNER—Not even internally? No internal advice has been sought about the nature of these activities?

Commissioner Keelty—No, there is no reason to. Nothing untoward came to our attention. As far as we are aware and can possibly be aware, the Indonesians were acting lawfully in Indonesia and we were acting lawfully in Australia.

Senator FAULKNER—Are you saying to me—and you may be—that the question of the legality of these disruption activities has never been raised with you?

Commissioner Keelty—That is correct.

Senator FAULKNER—Not by anyone?

Commissioner Keelty—That is correct.

Senator FAULKNER—You have never had any concerns about the question of the legality of the disruption activities?

Commissioner Keelty—No.

Senator FAULKNER—Is Mr Enniss still in your employ?

Commissioner Keelty—Mr Enniss was never an employee of the AFP.

Senator FAULKNER—How would you describe his contractual relationship with you? I want to use the correct terminology.

Commissioner Keelty—For a period of time Mr Enniss was paid for information that he provided to the AFP but that relationship ceased in September last year.

Senator FAULKNER—Has the AFP had any ongoing relationship with Mr Enniss since then?

Commissioner Keelty—Only as part of an investigation into allegations made by the *Sunday* program that Mr Enniss successfully smuggled people to Australia at the same time that he was providing information to us.

Senator FAULKNER—I am aware of the allegations. But when you say ‘only’ in that regard, I think there was some follow-up or reporting from the AFP, which is fair enough. Is that the sort of association you are talking about?

Commissioner Keelty—It was to do with that inquiry.

Senator FAULKNER—Sorry?

Commissioner Keelty—Our contact with him since September last year has been in respect of the issues to do with the *Sunday* program allegations—which I might add were largely retracted later on.

Senator FAULKNER—All the AFP intelligence sources in Indonesia—all AFP generated intelligence—does that get passed back through the DIMIA task force or strike team or whatever the correct terminology is—through DIMIA?

Commissioner Keelty—Only that which relates to people smuggling.

Senator FAULKNER—Fair enough. But all that relates to people smuggling gets passed back through DIMIA?

Commissioner Keelty—Through the joint people smuggling team.

Senator FAULKNER—Yes. How long has that process been in place?

Commissioner Keelty—Since the formation of the team, which I think I said in my opening statements was in 2000. Yes, it was July 2000.

Senator FAULKNER—Thank you. The protocol breaks down around September 2001. This is of course around the same time that at least 12 SIEVs head for Australia, isn’t it?

Commissioner Keelty—That is correct.

Senator FAULKNER—What impact did the breakdown of the protocol have in relation to that people smuggling activity, if any?

Commissioner Keelty—In general terms, it might have meant that we were less able to gather the support of the Indonesians than what we were before the protocol. The Indonesians did not disband the five teams that we had established under the Law Enforcement Cooperation Program. In fact, rather than have them singularly focus on people smuggling, they got them to also focus on transnational crime. It provided, I guess, different atmospherics in terms of being able to seek an immediate response.

Senator FAULKNER—So when the MOU was put aside was there no formal or informal advice provided to the AFP about what the Indonesian concerns were?

Commissioner Keelty—No.

Senator FAULKNER—Do you now know what the Indonesian concerns were?

Commissioner Keelty—Not specifically, no. Obviously those issues were worked through as part of the outcomes of the ministerial summit in February, and that has given us the capacity to renew the MOU.

Senator FAULKNER—When you say ‘not specifically’, is it that you do not know why the protocol was set aside, or that you do not know what the concerns were and how they were worked out, or what, if any, changes have been made?

Commissioner Keelty—When I say ‘not specifically’, I mean that I have not been briefed on it; it is not an issue for the AFP but for the Department of Foreign Affairs and Trade.

Senator FAULKNER—So, as far as you know, the reasons for the setting aside of the protocol do not go in any way to AFP operations?

Commissioner Keelty—No.

Senator FAULKNER—Do you know what they do go to?

Commissioner Keelty—No, because I was not briefed.

Senator FAULKNER—At the ministerial summit, was there any discussion that you are aware of in relation to disruption activities?

Commissioner Keelty—At the ministerial summit it was more of a regional approach rather than an individual country to country approach. Obviously there were outcomes from the summit that gave us the imprimatur to further develop. Working groups were established as a result of the summit, and one of the working groups was looking at again commencing the MOU, which is what we have done.

Senator FAULKNER—Has that changed in any way the disruption activities?

Commissioner Keelty—No, it has not.

Senator FAULKNER—There are no differences, as far as you are aware, in the operation of the disruption activities, comparing now to what occurred prior to the laying aside of the protocol?

Commissioner Keelty—No. I mentioned before that the difference was that we really had to approach it on a case by case basis without any formal agreement in place. The difference now is that we have the formal agreement in place and that DEPLU, their department of foreign affairs and trade, is aware of and has provided authorisation for the MOU to be put into place.

Senator FAULKNER—To your knowledge, Commissioner, have any moneys been paid by anyone in relation to disruption activities?

Commissioner Keelty—Not specifically. Under the Law Enforcement Cooperation Program, as I mentioned, we have funded equipment and training and we have brought some of the Indonesians out here to Australia. But it is not a funding for disruption in terms of, 'If you disrupt X number of people, we will pay you X amount of dollars.' It is that generally that funding has been spent on developing the cooperative arrangements with the Indonesians in providing equipment. There is now a commitment to provide five patrol boats to the Indonesian National Police and, further to that, cooperative arrangements to deal with people smuggling.

Senator FAULKNER—But no moneys have been paid to the Indonesian police for disruption activities?

Commissioner Keelty—Not from the AFP, and not that I am aware of.

Senator FAULKNER—That would have something to do with the protocol or other arrangements, so I assume that the AFP would be aware of it if it had occurred. But it might have occurred otherwise, might it?

Commissioner Keelty—I only make the point that I am answering on behalf of the AFP. I have no knowledge of what other departments might be doing in terms of how they do it or what they might be doing. I simply make that point.

Senator FAULKNER—No moneys have been paid by the AFP to anyone apart from for some equipment and training in relation to disruption activities. Is that right?

Commissioner Keelty—That is right. But, in fairness to me, I have made the point that we have paid informants for information about the location of passengers and the activities of organisers. But no money has been paid to anybody specifically empowered to intervene.

Senator FAULKNER—You have made the point that those people are not involved in disruption activities. I heard you make that point and I accept that. But now I am asking whether any moneys have been paid by the AFP for disruption activities.

Commissioner Keelty—That is not the same question you asked before, with respect. You used the words ‘to anyone’. I think that is what you said. What I am saying is that the AFP paid no moneys to any government agency in Indonesia to have them disrupt the activities of people-smuggling organisers. We have paid informants. The payments that we made to the Indonesian National Police as part of the Law Enforcement Cooperation Program extended to things such as travel, training, equipment and the like.

Senator FAULKNER—Let us look at the paid informants first. You said to me before that the paid informants are not involved in disruption activities. I just want to be clear on this.

Commissioner Keelty—The paid informants provide information and that is what they are paid for.

Senator FAULKNER—What controls or accountability are there on those moneys that are paid to the Indonesian police that you spoke of a moment ago? How do you know what they spend those moneys on? Or do you know?

Commissioner Keelty—We do not pay money in cash to the Indonesian National Police. If someone has undertaken travel, we might purchase the plane ticket or, if someone undertakes to travel, we might reimburse the travel on sighting of the receipts. But there is no direct cash payment to the Indonesian National Police. If we provide equipment, we purchase the equipment to provide it.

Senator FAULKNER—Is there any link that you are aware of between any funding and Indonesian authorities, mainly the Indonesian police, undertaking disruption activities?

Commissioner Keelty—No.

Senator FAULKNER—Are you aware of any others, outside informants and the Indonesian police, being paid moneys in relation to disruption activities?

Commissioner Keelty—No, I am not.

Senator FAULKNER—To your knowledge, have Indonesian authorities raised with any Australian agencies questions relating to the accountability and transparency of funds going from Australian agencies to Indonesian agencies?

Commissioner Keelty—No, I am not aware of that.

Senator FAULKNER—And you are not aware of any legal advice being generated in relation to those matters?

Commissioner Keelty—No, I am not.

Senator FAULKNER—To your knowledge, since the re-establishment of the MOU are the disruption activities in the same form as they were before?

Commissioner Keelty—Yes.

Senator FAULKNER—They are in the same form?

Commissioner Keelty—Yes, as far as I am aware.

Senator FAULKNER—Does the AFP receive DIMIA's intelligence notes? That is their description.

Commissioner Keelty—Yes, we do.

Senator FAULKNER—What part of the AFP do they go to?

Commissioner Keelty—They go to the people smuggling team.

Senator FAULKNER—That is the joint operation with DIMIA. In relation to intelligence reports you have about vessel departures and the like, how do you ensure that they are appropriately passed on to those who need to know about them, like Defence?

Commissioner Keelty—The AFP prepares intelligence reports and they are disseminated. Other than that, it is by direct reporting from the people smuggling team to Coastwatch if that is necessary.

Senator FAULKNER—Can you explain to me whether these reports that are coming in go first to the joint people smuggling team—the DIMIA/AFP outfit—or to Coastwatch? Can you explain to me how the process works?

Commissioner Keelty—The AFP information goes to the AFP/DIMIA people smuggling team, who in turn assess the relevance of the information to the investigation of people smuggling. The people smuggling team then package the information relating to SIEVs in written form and disseminate it to Defence, DFAT, DIMIA, Coastwatch, Customs and the Office of National Assessments.

Senator FAULKNER—From some of the evidence, particular Admiral Bonser's, it seems that Coastwatch is almost a go-between between the AFP and Defence. Do you think that is right?

Commissioner Keelty—As I said, the people smuggling team would package the information and disseminate it to Defence, DIMIA, DFAT, Coastwatch, Customs and ONA, so I beg to differ there and say that the information we had was disseminated more widely.

Senator FAULKNER—Has the AFP conducted any internal examination of its role in relation to the SIEVX issue? I have heard what you said about the possibility of legal action outstanding and the like; I understand that. But I am talking more about the effectiveness of the AFP's operational role.

Commissioner Keelty—As part of a general review of how we handle all of our intelligence, we have looked at that issue but of course for us the SIEVX matter is not yet complete. But we do have what we call a post-operational analysis of operations that we conduct, and we will be reviewing this operation as part of that. But as I mentioned, the operation is not yet complete.

Senator FAULKNER—So is there a review in progress, or is there the possibility of a review at some stage?

Commissioner Keelty—Yes.

Senator FAULKNER—Which of those would it be, or would it be both?

Commissioner Keelty—It is not a specific review but we continually review the effectiveness of the systems that we have in place. There would be a post-operational analysis of this matter.

Proceedings suspended from 3.52 p.m. to 4.03 p.m.

CHAIR—Order! We are in possession of a quorum and will resume. I have a few questions that I would like to pursue, if I may. Mostly they are general questions but, Commissioner, I will come back to this date in September last year when the MOU between the Australian Federal Police and the national police of Indonesia was set aside for a period of time. When I arrive back at that I will be asking if you can give us any more precision about the actual date in September that that may have occurred. But, for the moment, I put that question at large up front because I can see that you are well attended with what is obviously a resourceful group of people.

Can I come to the question of people-smuggling per se, in the knowledge that if I ask any inappropriate questions you will answer in the appropriate manner. Can you give us some idea of the size of the problem? For example, I have heard it said that the biggest cross-border crime in the world is drug smuggling, followed by people-smuggling, but people-smuggling is growing as an international crime. Can you give us some context about the nature of this crime and its international dimensions?

Commissioner Keelty—Yes. As I understand, in any given year there is something in the order of three million people trying to cross borders illegally. We have statistics for our own experience of boats coming to Australia in the financial years 1989 to the present. I will not bore you with the statistics for the entire decade and a bit, but in 1989-90, we had three boats with 224 people on board; in 2001-02, we had 22 boats with 3,648 people on board; and, of course, since the disruptive effects towards the end of last year—I suspect this is on the public record—we have not had a boat since November last year. But in 2000-01 there were 54 vessels with 4,137 passengers. In 1999-2000 there were 75 vessels with 4,174 passengers. In terms of trends, I think your observation is right—it is a growing trend. In the crime sense people-smuggling offers less risk. If you smuggle drugs to Australia you have to have an infrastructure that will distribute the drugs, obtain the cash and then send the cash back to the person who exported the drugs. With people-smuggling the risk is transferred the other way. The money is paid up-front and, regardless of the destiny or fate of the people who are sent on their way, the organiser gets their money. We have seen incidents where drug smugglers have also dabbled in people-smuggling and vice versa.

CHAIR—If I heard you correctly, in any one year there are about three million people worldwide who are being smuggled or who are open to the, I suppose, people-smuggling lords for transport. In the financial year immediately past, roughly about 4,000 of them came to Australia. Are we at the lower end of the scale in terms of the incidence of this crime? How do we put ourselves in context with the international situation?

Commissioner Keelty—That figure that I used before also includes people who illegally cross borders. The department of immigration would be in a better position to answer more specifically on this, but the main problems in Australia up until recently were overstayers and people arriving unlawfully by air. In terms of the specific question about where we sit in relation to the rest of the world, just from my general knowledge I suspect we are not, certainly now, in a position of being the biggest problem area. We have seen, for example, the tragedies of people being smuggled in containers over the border between the United States and Mexico and between parts of Europe. So in terms of other parts of the world, I would say that we are not the biggest player. But you could see the trend in what was happening here. I mentioned, in response to questions by Senator Faulkner, that I went to Jakarta in September. I also went to Malaysia. There was a trend of people coming down the Malay Peninsula to Indonesia and then seeking to be moved across to Australia. Whilst that was seen to be an open option to them, it appeared that it was gathering momentum.

I think I mentioned that, by IOM estimates, there are some 2,100 people still in Indonesia. The person who we suspect was responsible for SIEVX was responsible for some two per cent of the total number of people coming to Australia. I suspect, and I have discussed this with our analyst, that there was a displacement effect created once publicity was given to Operation Relex—those who would otherwise have accessed some of the more experienced people smugglers went to someone who I would describe as a less experienced people smuggler in terms of what we know here. I suspect that might be what created such a large number of people ending up on that SIEVX.

CHAIR—Do you actively trade information with the FBI, the European law enforcement agencies and Interpol on how to combat this menace?

Commissioner Keelty—Yes, we do. We hosted a working group meeting here in Australia about 18 months ago on people smuggling and we invited agencies from around the world to that. We have also attended similar types of meetings elsewhere in the world. The AFP is the Interpol agency in Australia and we do trade information regularly with Interpol.

CHAIR—How lucrative is it?

Commissioner Keelty—It is very lucrative. The latest figure we have is that it is worth about \$US2,000 to \$US3,000 for each person who can be smuggled here.

CHAIR—That is clear profit, is it?

Commissioner Keelty—It might not be clear profit. There would be some margins to be taken out of that but, as you can see by the nature of the vessels that arrive here, the infrastructure costs are not large.

CHAIR—I think I calculated it from DIMIA figures that roughly—and this is rough—each SIEV was worth about \$A1 million gross.

Commissioner Keelty—I would agree with that figure. That is talking about boats from Indonesia. You might recall that previously we did have some experience of boats from China and elsewhere.

CHAIR—Their overheads are, shall we say, light compared to that rake-off?

Commissioner Keelty—That is correct.

CHAIR—So this is a lucrative illegal activity?

Commissioner Keelty—That is right. What makes it more attractive, as I said to you before, is the transfer of the risk. The mere fact that an organiser sits in another country while the fate of the captain and passengers of the vessel is unknown is a very vivid example of the transfer of risk.

CHAIR—Indonesia is a developing country—I do not think that it would balk at that description. In some of the places where these boats emanate from, there are subsistence fishermen and people living on low incomes. Does this sort of lucrative return create problems for policing in terms of corruption and so forth?

Commissioner Keelty—Yes, it does.

CHAIR—Are you able to say—and if you are not, please say so—what is the number of operators and what is the type of operation they have? Is there a ‘Mr Big’ or are there several competing entities? Is there a two airline policy or is there a genuine competitive market here?

Commissioner Keelty—Mr McDevitt might be able to give you a more precise answer but, while he is trying to find the material that we prepared on this, I will say that it is like drugs in that there is a finite number of organisers. Even though the problem seems to be amorphous, there is a finite number of organisers. Largely, that has been the focus of our intelligence and operations. I will ask Mr McDevitt if he can be more precise.

Federal Agent McDevitt—As the commissioner said in his opening statement, we tend to try to focus our efforts on the major players—at the key facilitators of people-smuggling activities. These are the ones who actually market the opportunities. We have known them even to go to potential source countries to market opportunities for people to travel down to Indonesia and then across from there. We have been very successful in the last 12 to 18 months in taking out a number of these players. Here we are talking about people bringing significant numbers of people. We are seeking the extradition of one person to Australia at the moment in relation to 290 people on two vessels in 2001. We are currently seeking extradition of another key facilitator for the facilitation of two vessels carrying 396 unlawful non-citizens. A further person arrested by the people-smuggling team last year is charged with 34 people-smuggling offences relating to the arrival of approximately 1,700 people aboard 17 vessels. They are examples of major players who we have targeted successfully.

CHAIR—They do not have any difficulty, do they, in getting boat crews, given the amount of money that they can offer?

Federal Agent McDevitt—It is highly lucrative. It is about marketplace supply and demand. It does take a fair bit of organising, but a lot of these people do not place themselves at great risk of being caught. They will have a smaller fast vessel following them, and when the vessel is some hours or even days out from the destination point they will utilise people on board the vessel, give them some basic navigation training and basically say, ‘Point her in that direction,’ and off they go. They will get on the smaller boat and return. So the risk is fairly low in that respect.

CHAIR—In your opening statement, and as I reaffirmed a moment ago, you said that there were 2,100 people in Indonesia. Is that the total number in the pipeline or is the pipeline backed up beyond Indonesia?

Commissioner Keelty—The pipeline is backed up in the Malay peninsula. I suspect that it is a moveable feast, in a way. As trouble occurs or as the push factors in parts of the world are created, then obviously the number is increased.

CHAIR—Do you have any idea of the total number in the pipeline?

Commissioner Keelty—No, I do not.

CHAIR—Does the AFP have a broad knowledge of what tactics people smugglers will advise their passengers to pursue in the event of apprehension? I ask that question against evidence that was given to us that in Operation Relex it was obvious—I think this is not an unfair description of the evidence—that people smugglers were reacting to the Navy’s tactics in trying to apprehend them by introducing a series of tactics of their own. I am really asking you whether you are aware of that in advance.

Commissioner Keelty—Not so much in advance—we often interview the people who arrive in the country to obtain evidence against the organisers and incidental intelligence arises out of that. But in terms of specific tactics, in the absence of anything that Mr McDevitt might be able to say, I am not aware of any.

CHAIR—Perhaps I can ask a more specific question. Commander Banks indicated that, in the case of SIEV4, people were expected to be wearing life jackets. When they came into view, so they were. Would you have known that sort of information—not in that particular incident, but generally?

Commissioner Keelty—We are not generally aware of that. As I say, it is part of our job to interview these people for another reason. So we are perhaps not turning our mind to that sort of tactic.

CHAIR—Let me ask you a broad question. Are you aware of any concerted or organised information being given to the passengers in these vessels to throw children overboard if apprehended?

Commissioner Keelty—No, not specifically.

CHAIR—You are not aware of that?

Commissioner Keelty—No.

CHAIR—Would you be aware of it?

Commissioner Keelty—Only if it was provided to us in advance in relation to a specific vessel, but, obviously, we have seen incidents where the vessels that are obtained by the organisers are often vessels that are in a less seaworthy condition than a commercial vessel. If we can take it away from SIEV4 and SIEVX, our experience in Ashmore Reef has been that the passengers will basically be left for rescue. The trend was to get to Ashmore Reef and then put a hand up to be rescued and brought to Australia. Oftentimes those vessels were vessels that could not have got much further than Ashmore Reef, either in fuel or in the equipment that was on board. So we are generally aware of that tactic, but we have not received any specific information about throwing children overboard.

CHAIR—And you have not reported that alleged tactic to any agency, including the People Smuggling Task Force?

Commissioner Keelty—I would say no.

CHAIR—When you say that you would say no, that is because you are confident?

Commissioner Keelty—It is a ‘no’.

CHAIR—The SIEVs dried up shortly after SIEVX. Would you know whether knowledge of the fate of SIEVX got passed down the pipeline?

Commissioner Keelty—It did, because some passengers were, in fact, rescued. That was how we became aware of the ultimate fate of SIEVX. But, through our own sources, we are also aware that the stance that had been taken in Australia became widely known and that was having an impact. People were demanding guarantees, and some people who paid money actually withdrew from travelling. It created generally an atmosphere of concern by potential persons wanting to travel. Added to that, there was the arrest of a significant number of smugglers in Indonesia, Malaysia, Thailand, Cambodia and Sri Lanka. But the tightening of the visa regime and increased security vigilance at airports following September 11 also had an impact, because that fed back up the line.

CHAIR—Let me just take you through this one step at a time. Knowledge of the fate of SIEVX was known in the pipeline. Did I understand you to say that?

Commissioner Keelty—That is correct. There was wide media reporting in Indonesia of the fate of the people on board SIEVX.

CHAIR—That would be a pretty powerful deterrent.

Commissioner Keelty—Yes, I would assume so.

CHAIR—I note the other tightenings that you have referred to, as well. I go back to that date in September when the MOU and the protocol that hung from that—I think that is the accepted way of describing it—was cancelled or set aside or suspended. Can you tell us when that happened?

Commissioner Keelty—Unfortunately, I am going to have to take that on notice. However, I can indicate to you that I believe it was around September because I had made a special trip to Indonesia and Malaysia to try to regain the confidence of the INP and the Royal Malaysian Police in respect of what we were doing.

CHAIR—What I was really asking was whether you could give us the day in September that it was suspended. I am not questioning the month.

Commissioner Keelty—I might be able to get that easier than the closure date. If I cannot get the closure date while I am still giving evidence here, I undertake to give it on notice.

CHAIR—I listened carefully to the answers you gave to Senator Faulkner—and I do not intend to rehash them—about the relationship between the AFP and the Indonesian National Police at the time of the setting aside—I think that is the right phrase—of this MOU. In summary, I understood them to be, and correct me if I am wrong, that the relationship was good; it was a functioning relationship and, as I understood the evidence, the MOU was set aside not because of anything in that relationship, but because of the intervention by the Indonesian department of foreign affairs and trade.

Commissioner Keelty—That is correct.

CHAIR—As I understand it, that was your evidence.

Commissioner Keelty—That is correct.

CHAIR—Are you aware whether the Indonesian department of foreign affairs and trade informed the Indonesian National Police why they had chosen that time to move on this MOU?

Commissioner Keelty—No, other than, as I said to Senator Faulkner, that it seemed on the information and from my recall, and bearing in mind that I went up to visit my counterpart in Indonesia to discuss this very issue, that it was more to do with there not being a formal government-to-government head agreement to which the MOU could be linked. There appeared to be concern that there was a law enforcement agency memorandum of understanding that did not have a higher level government—not so much ‘approval’, that is not the right word, but a head agreement to which that could be related.

CHAIR—So putting it in my layman’s language, you had an agency-to-agency agreement and the Indonesian foreign affairs department thought that the MOU should be set aside pending a government-to-government heads of agreement within which the MOU could then be embraced.

Commissioner Keelty—That is correct.

CHAIR—You are aware that the Norwegian container ship MS *Tampa* picked up 438 refugees on 26 August?

Commissioner Keelty—Yes, Senator.

CHAIR—And that SAS troops boarded the *Tampa* on 29 August?

Commissioner Keelty—I was not specifically aware of the date, but I am generally aware of the incident.

CHAIR—You are aware that the Prime Minister announced the Pacific solution on 1 September?

Commissioner Keelty—That is correct, Senator.

CHAIR—Could the intervention of the Indonesian foreign service be related to the fact that President Megawati would not take our Prime Minister's phone call about those events?

Commissioner Keelty—That is totally outside my purview to be able to answer you. I can only say that I travelled to Indonesia—and I think the date of that travel was 17 September—and my recollection is that the protocol was set aside some time before that, because there were some negotiations before it was decided that it was necessary for me to travel to Jakarta to try to reinstate the cooperation that we had had in place. I certainly could not link it specifically to the announcement by the Prime Minister on 1 September. My inclination—and I will check it for you—is that this might have been set aside earlier than that, because it seems to me that I would have responded very quickly if I had gone up there 17 days later. My recollection is that it had been an issue for a bit longer than that.

CHAIR—It had been an issue before 26 August, when the MV *Tampa* picked up 438 refugees?

Commissioner Keelty—I am advised that the INP did not have a reaction to remove the protocol as a result of the *Tampa* matter, but I am concerned about making sure that my answers are correct. There may not have been a formal setting aside of this protocol; it might well have been that we were informed that DEPLU wanted it set aside—because the MOU was not set aside.

CHAIR—It was suspended. I think we agreed on that form of words.

Commissioner Keelty—I would be more comfortable if I could find out from our Jakarta office the date that they were advised by the INP.

CHAIR—The date is a matter of record, isn't it? It is a matter of fact; it is not a date that could be in dispute. It is just a matter of discovering what that date was.

Commissioner Keelty—Yes, that is correct. I will undertake to get that for you.

CHAIR—I should acknowledge that you are right in saying that it is not necessarily something that you as a witness can give evidence of, but it strikes me as exceedingly coincidental that there was this stand-off—temporary though it was—between Indonesia and Australia over the *Tampa* issue and the MOU got cancelled at about the same time.

Commissioner Keelty—All I can say—and I think I said this to Senator Faulkner—is that we are almost asking what acted on the minds of the Indonesians, and I certainly cannot answer that.

CHAIR—No. We might have to ask our ambassador if he is able to find out. Did you cause any question to be put through our post in Jakarta to the Indonesian foreign service as to why they had chosen to move in the manner in which they had in setting aside this agreement?

Commissioner Keelty—No, and there is a reason for that. We would not do that. If we had an issue such as that, we would go through our own Department of Foreign Affairs and Trade.

CHAIR—That is what I mean.

Commissioner Keelty—We did not. We left it to the police-to-police relationship.

CHAIR—It would have been an inconvenience though—given that, as I understand it, this was humming along nicely—for it to have been set aside, wouldn't it?

Commissioner Keelty—I guess we were taken by surprise a bit, because things were working so well. As I mentioned in my opening statement, we had originally established an MOU with the Indonesians in 1995, and the fact that my response was a trip to Jakarta indicates that we had to put it back on track.

CHAIR—Did the suspension of it in any way compromise any operations that you had on foot at that time?

Commissioner Keelty—I will need to take advice on that. As I understand it, the answer is no. Part of that is because of the relationship we had developed over the period of time that we had been working with the Indonesian National Police. To give you an indication of the extent of that relationship, we maintained that even during the period that we were in East Timor. The policing relationship is a very different one from, for example, the defence relationship. In law enforcement, it is largely considered that we are all working to the one goal, particularly in terms of transnational crime. We were able to operate on the goodwill of the existing relationship but, as I said to Senator Faulkner, it became a little more tense. It was on a case by case basis as to which operations were going to be successful.

There was some tension building within the Indonesian National Police itself about the funding that had been received by the INP task forces—these five teams that I mentioned to you—and how they were receiving training and equipment yet the other police who were tasked to do other work were not receiving this special treatment. That was a subject of discussions

between me and the head of the INP to ameliorate any differences or tensions that that that might have been creating within the INP itself.

CHAIR—If I can put it in the colloquial, inoffensively I hope: the coppers kept after the villains irrespective of what the foreign affairs department said about the agreement. Is that what we are talking about here?

Commissioner Keelty—In a nutshell, that is right.

CHAIR—There is something comforting about that, although I am not sure that over at Foreign Affairs they would feel immensely comforted by it.

Commissioner Keelty—I certainly would not want my colleagues in Foreign Affairs to be offended by that either.

CHAIR—So you did not have any current operations that were restricted by the suspension of the MOU?

Commissioner Keelty—No. I have to say that my visit to Jakarta was well received, and we continued to receive cooperation. Might I add, in relation to Senator Collins's question, that the protocol was signed in September 2000, and in October 2000 training of Indonesian National Police commenced.

Senator JACINTA COLLINS—What was that training?

Commissioner Keelty—It was investigation training of people-smuggling operations, so that we could update them on what we knew about those types of operations.

Senator JACINTA COLLINS—Was that conducted in Australia?

Commissioner Keelty—It was conducted in Bali. In November 2000, the arrangement for funding of equipment and funding to members of the strike team commenced.

Senator JACINTA COLLINS—What did that amount to?

Commissioner Keelty—Could I take that on notice, please? I do not have the amount here in front of me. I might be able to get it while we are here giving evidence.

Senator JACINTA COLLINS—Yes, and also the nature of the equipment.

Commissioner Keelty—Certainly.

CHAIR—I understood you to say that, with the Indonesian National Police, things were a little strained at this time. Did those strains reflect at all on operational matters?

Commissioner Keelty—Whilst we still received cooperation, we needed to be very specific and very cautious about what we were asking the Indonesians to do.

CHAIR—More specific and cautious than you would normally be?

Commissioner Keelty—Yes. We are checking with Jakarta now to see whether we can give a more specific answer, but I know from the briefings I was receiving that we had to be more particular about the types of operations we were getting involved in with the Indonesians.

CHAIR—They are at lunch in Jakarta at the moment, aren't they?

Commissioner Keelty—They might be, but we should be able to get our people anyway—if they are good coppers!

CHAIR—I do not doubt that they are.

Commissioner Keelty—And I do not either; it is just that communication might sometimes be hard.

CHAIR—I want to be clear about this: I heard you say earlier, and I may not have heard you accurately, that the MOU was not cancelled because of the *Tampa*. Did you mean to say that?

Commissioner Keelty—Yes, I did.

CHAIR—How do you know that?

Commissioner Keelty—The *Tampa* was on 26 August, wasn't it?

CHAIR—I am relying on the *Weekend Australian* report of 11 May this year, in which they have produced, kindly enough, a list of all the relevant dates and, interestingly, the Newspoll state of the parties on each of those dates as well. On 26 August 2001, they say:

Norwegian container ship MS *Tampa* picks up 438 refugees after answering a distress call 139 kilometres off Christmas Island.

Commissioner Keelty—If we are going off a newspaper report, I think we had both better be cautious.

CHAIR—That is why I am giving you my source. I do not doubt this report, I must say.

Commissioner Keelty—If that is the correct date, and the question is as you originally asked it, my answer is the same: I did not see a direct correlation between the *Tampa* and the setting aside. But that answer can come only from DEPLU. What I am trying to establish for you is the actual date we were informed, so that that might assist you in your conclusions about what happened.

CHAIR—I am looking at this juxtaposition: I understood you to say that it was in September, but on 17 September you went to Jakarta to try to restore the arrangement, which would have put it in the first half of September, which was the business end of the *Tampa* event and when President Megawati would not take our Prime Minister's phone call. So the actual date of cancellation is of some interest to the committee.

Commissioner Keelty—Yes, and I will attempt to get that for you. I have been advised—and this is supposition until I can confirm it for you; if I am wrong I will notify you as soon as I can—that the *Tampa* incident may have highlighted the fact that the Indonesian DEPLU was not aware of the extent of the operation of the MOU between us and the Indonesian National Police. Therefore, it may have had some impact in the sense that DEPLU then wanted the government arrangement to be at the higher level.

CHAIR—That supposition has plausibility going for it in the sense that these events, which spotlight relations between Indonesia and Australia, caused the Indonesians to look more closely at the detail of the relationship and say, ‘Hey, there’s a gap here.’ The option would be to set forth and write a heads of agreement rather than to suspend your MOU, but they did choose to suspend it.

Commissioner Keelty—The MOU remained in place; it was the protocol that was set aside.

CHAIR—I am sorry if I am using loose language. It was the protocol that gave authority for the joint operations between the Australian Federal Police and the Indonesian National Police that was cancelled.

Commissioner Keelty—Set aside.

CHAIR—To be restored in June this year.

Commissioner Keelty—That is correct.

CHAIR—That is a gap of nine months, in fact.

Commissioner Keelty—That is correct.

CHAIR—I ask you again: you confirmed that you believed that the MOU was not cancelled because of the *Tampa*, but the supposition, which you will confirm as soon as possible—and I accept your undertaking on that—suggests that this may have triggered the re-examination of the relationship, doesn’t it?

Commissioner Keelty—That is correct.

CHAIR—Would you stand by your earlier statement in the firm way it was put, or would you now want to modify it?

Commissioner Keelty—I would like to modify that on the advice that I was just provided with.

CHAIR—That sounds fair enough to me. I do not have any further questions at this point.

Senator JACINTA COLLINS—I would like to go back to one report we understand the AFP gave to Coastwatch at 0930K on 20 October. I understand your reservations about wanting

to talk about the contents of such reports. From my end, I will seek to contain it to what is understood on the public record at this stage, if you can bear with me.

Commissioner Keelty—I am happy to hear the question. But I point out that the reason why it might be difficult for me, even though these things are on the public record from other departments, is that we can be subpoenaed to give evidence in any prosecution that might occur in the future. That is why we might not be able to confirm or otherwise evidence given by other parties before the committee hearing.

Senator JACINTA COLLINS—In terms of what has been said?

Commissioner Keelty—Yes.

Senator JACINTA COLLINS—Let us see if there is a way we can work through your constraints and what, in a sense, are public concerns about the nature of information that is already on the record. One of those issues is that, from the advice we have from Defence and from Coastwatch, we now have indications that AFP rang Coastwatch at 0930K on 20th and that a vessel was reported to have departed from the west coast of Java the previous day, 19 October. From Coastwatch, we have an indication that, when the advice about the vessel's alleged departure was provided to Coastwatch, the AFP officer providing the advice also offered a personal opinion that the vessel may be subject to increased risk due to the numbers reportedly on board. The nub of the question—and then you can tell me how, if at all, you can deal with this—is that the knowledge that appears to have been provided in that telephone conversation implies first-hand knowledge of the departure. The question is: if there was first-hand knowledge of the departure, why wasn't that message conveyed sooner?

Commissioner Keelty—I can perhaps answer the question this way, and I do not think I need to take legal advice yet: no-one in the AFP knew of the departure of the vessel until after the survivors had arrived back in Indonesia.

Senator JACINTA COLLINS—But they arrived back in Indonesia—

Commissioner Keelty—In terms of confirming the departure of the vessel, if that helps.

Senator JACINTA COLLINS—Confirming occurs at different levels. For instance, there is multisource material coming into the People Smuggling Task Force, so, as we heard earlier today, the information centre at Australian Theatre believed that that AFP call was corroboration. That would not necessarily be known by the AFP, but it was part of the multisource data.

Commissioner Keelty—Let me step aside for one minute and talk to you in hypothetical terms. Hypothetically, what might occur is that the AFP receives information in Jakarta that a vessel was to depart on a particular day. As I said in my opening statement, we have lots of that sort of information and you would get stop start, stop start, yes no and no yes. Finally, a vessel might depart. But the only time you would confirm that a vessel had departed would be when it was intercepted.

Hypothetically, the other way you might get confirmation—certainly, from the way we might have been operating—is when first-hand information came back: if the vessel was not intercepted, and people who were passengers on board that vessel arrived back in Jakarta. The actual question you are asking me does fall within the ambit of the specifics I cannot give, and that really is only because of the nature of the AFP witnesses.

Senator JACINTA COLLINS—Are you saying, in part, that the information that was conveyed on 20 October, which was before the survivors got back to Indonesia, hypothetically, did not reach that standard of information?

Commissioner Keelty—Can I just get some legal advice?

Senator JACINTA COLLINS—Yes.

Commissioner Keelty—It goes to other evidence about the issues that are on the public record and about which we have been advised not to provide evidence today.

Senator JACINTA COLLINS—Some intelligence that was obviously available from the AFP—and some of it implies first-hand knowledge of the departure—took two days to be received by Coastwatch. Is there a more general way in which you can explain that delay?

Commissioner Keelty—I know what you are asking. If we go to when information was received by the AFP, and when that information was then conveyed to other agencies specifically, then that falls within the area that may be used in future prosecutions. What I can say generally is that, often, the departure points were unknown and not confirmed until persons were intercepted. They then advised, when they were interviewed, what their departure point was. I still do not think I am answering your question and I am not sure I can. I know what you are asking, but to answer that question we would have to go to the specifics of what we were told, when we were told and whom we told.

Senator FAULKNER—Is there a logical inconsistency here? If the AFP and the AFP informant can say something about the condition of a boat and the possible numbers who are embarking and so forth then surely, with that level of information, the issue of departure dates and times must be something that is possibly available?

Commissioner Keelty—I do not think you were in the room when Senator Collins originally asked the question. It is not so much a general question; it relates to a specific date—20 October. That is the difficulty I have.

Senator FAULKNER—But my point goes to what occurs on 20 October. What we have available to us on 20 October is the information from Rear Admiral Bonser. He is clarifying evidence given to this committee on 17 June. Are you aware of that? The evidence stated that when the advice about the vessel's alleged departure was provided to Coastwatch by phone, the AFP officer providing the advice also offered a personal opinion that the vessel may be subject to increased risk due to the numbers reportedly on board.

Commissioner Keelty—The answer that I am giving is that the AFP cannot answer that question because of the reasons I outlined in my opening statement. It is something that pertains

uniquely to the AFP because of the role we have within the criminal justice system. It is not something that is being put up as a barrier. I hoped that you might have gleaned from the opening statement that there is nothing that the AFP knew, at any time, that it could have provided to any agency that would have resulted in the saving of the lives of the people on board that vessel. Similarly no-one the AFP knows—

Senator FAULKNER—I am not saying there is.

Commissioner Keelty—I am trying to help and there is nothing that the AFP knew then, or knows now, that would specifically tell us where the vessel sank.

Senator FAULKNER—Do we know who the AFP officer who provided those details was?

Commissioner Keelty—Yes, I do.

Senator FAULKNER—Could you share that with us?

Commissioner Keelty—It was an analyst attached to the people-smuggling team—Federal Agent Kylie Pratt.

Senator FAULKNER—The reason I ask—because normally I would not—is that the officer providing the advice also offered a personal opinion. In this particular instance, according to the evidence we have from Admiral Bonser, a personal opinion was offered too. I think I understand what that qualification means. What do you understand that to mean?

Commissioner Keelty—Exactly what it says: in his evidence—not the AFP's evidence, in his evidence—Admiral Bonser pointed to the fact that the analyst made an observation.

Senator FAULKNER—Did the AFP consider there might be a possible safety of life at sea situation?

Commissioner Keelty—I will just get some advice on that. I am advised that the answer to that question falls into the category of concerns identified by me in my opening statement. Therefore, I am unable to provide an answer.

Senator JACINTA COLLINS—I want to make sure I understand properly what you are saying. You said that the AFP was not aware—perhaps you can take me through it again—until after the people had been returned to Indonesia. Can I have the precise wording?

Commissioner Keelty—What I said earlier in the opening statement—in fairness to you, I do not think this was in the original answer that I gave to your question—was that all information that may have led to a conclusion that the passengers of SIEVX were in danger was obtained after the vessel had in fact sunk.

Senator JACINTA COLLINS—So all of the information that may have led to the conclusion that SIEVX was in danger was not obtained until after SIEVX had sunk?

Commissioner Keelty—That is correct.

Senator JACINTA COLLINS—Some of that is just a matter of logic. If some of that information was gathered from survivors, it simply follows that the concern is that some of that information was available earlier.

Commissioner Keelty—There may have been conjecture. If I can just go back to hypotheticals.

Senator JACINTA COLLINS—Yes.

Commissioner Keelty—If the situation was that the first we actually had confirmation of a vessel departing was in fact when it was intercepted then it follows that if a vessel was not intercepted by the due date, or by the due time, someone might express concern about what happened to that vessel. If we had 12 vessels over a period of time and we were getting information about the possible departure dates and therefore possible arrival dates, if you knew that vessel A left on the first of the month and should have arrived by the third and it does not, you might conclude that there is either a problem with the vessel or that it did not depart. What often happened in these events was that information was gathered that a vessel would depart on a particular date and in fact they never departed at all. But it is possible that you might provide conjecture, ‘Well, there’s a missing vessel here; it has either not arrived because it didn’t depart, or it has not arrived because it sank.’

Senator JACINTA COLLINS—Did the AFP know of the departure of this vessel from intelligence from its departure, at the time of its departure?

Commissioner Keelty—I will leave it to you, but do you mind me not talking about this vessel but talking about vessels generally?

Senator JACINTA COLLINS—Yes.

Commissioner Keelty—We had a series of information about a series of vessels. Because of the imprecise nature of the information that we were getting, many of them had planned departure dates that never eventuated. So the only real way we ever knew that they had in fact departed was when someone announced their arrival, whether that be through interception by the Navy, arrival at Christmas Island or Ashmore Reef.

Senator JACINTA COLLINS—Yes, but in your comments earlier you went a bit further than that. You said that if they do not arrive then you may find out information with respect to concern about them not arriving.

Commissioner Keelty—Yes, that is right. It might run out of fuel; it might be just floating. But, if passengers were then returned from whence they came and the information came back that the other passengers drowned or whatever, because we do not have any surveillance technology, the only real way we were dealing with anything was through human sources; it was by word of mouth. Any confirmation that we had of any event was really by word of mouth from somebody at either end.

Senator FAULKNER—Could you explain why you felt you were unable to answer my question about whether the AFP considered there may be a possible safety of life at sea situation? I have just had a chance to look again at the opening statement that you made and I really do not understand how my question could compromise any of the principles that you outlined in that particular opening statement.

Commissioner Keelty—In the absence of the chairman—

Senator JACINTA COLLINS—We have the deputy chairman at the moment.

Commissioner Keelty—Deputy Chair, I am in a difficult position now because Senator Faulkner is in fact going to the heart of the legal advice that I just received. I take objection to that and I think we might need to receive advice on that from the Clerk.

ACTING CHAIR (Senator Brandis)—Can I hear your question again, Senator Faulkner, please?

Senator FAULKNER—My question relates to a response from the commissioner to an earlier question I asked in relation to a follow-through on some issues that were raised about the AFP and, if you like, intelligence reporting on the 20th. We will see if the commissioner agrees with this summation. I had asked who made a phone call to Coastwatch which contains, as we know from the information available to us, a personal opinion, if you like, given about the increased risk as a result of the numbers on board. Do you think that is a fair summary, Commissioner? And then I asked—

ACTING CHAIR—Before you go on: Commissioner, did you hear what Senator Faulkner said to you?

Senator FAULKNER—I am just trying to summarise it. Then I asked if the commissioner thinks that is a fair summary of the context where the AFP considers that there might be a possible safety of life at sea situation. Going back and having a quick look at Commissioner Keelty's opening statement, I am a little at a loss to understand how that impinges on those principles, that is all.

ACTING CHAIR—What was the question? Can we hear the question again, please?

Senator FAULKNER—I cannot repeat my question precisely.

ACTING CHAIR—No, but the substance of it.

Senator FAULKNER—It was to the effect that I failed to understand how the principles that the commissioner outlined in his opening statement could be affected by my question about whether the AFP considered there might be a possible safety of life at sea situation. That may be governed to some extent, I suppose, by my thought that the commissioner, who has answered carefully questions asked of him, could venture into areas that might concern him. I am a little surprised at that, looking at those principles outlined in the opening statement. My question went to how the commissioner might feel that those principles would be impinged upon by him answering the question I asked.

ACTING CHAIR—Commissioner, what did you want to say?

Commissioner Keelty—The question rather than the statement made by Senator Faulkner goes to the heart of the legal advice that I am receiving about the questions that I can answer. I am objecting to the question because it is asking me to provide basically the legal advice I have just received as to why I cannot answer the question. Let me make this clear: I understand absolutely—or I think I do—where Senator Faulkner is coming from, and I am frustrated by this, but the issue is that once I go into answering any of these questions about the specific details of the matter, it opens up the evidence that will possibly be provided later on.

ACTING CHAIR—Do I understand your concern to be that, by opening up those areas, the limitations on your capacity to provide information to the committee might be impinged on?

Commissioner Keelty—That is right.

ACTING CHAIR—I understood Senator Cook, at the outset, to say on behalf of the opposition senators that he adopted what I had said on behalf of the government senators in relation to respecting the limitations which Commissioner Keelty had foreshadowed. He, knowing what none of us know, has advertised to us that he considers that those limitations could be overstepped if he responded. In those circumstances—and we respect the integrity of the officer—we have to respect his judgment as to how those limitations would apply to the line of inquiry you are now proposing to pursue.

Senator FAULKNER—No-one is reflecting on the integrity of the officer at the table.

Senator BRANDIS—I am not suggesting that you are.

Senator FAULKNER—No-one is, and that is fair enough. It is true that the commissioner sought some advice on this and received some lengthy advice, it is fair to say, in relation to this—I would acknowledge that—and indicated in his answer that he was advised that this might be affected by those matters raised in his opening statement. I have asked a lot of questions today; this is the only one that I think the commissioner has been concerned about in terms of the constraints that he outlined he was operating under in his opening statement. This is the only question I have asked that has caused concern for those reasons.

Senator BRANDIS—I think that we have to accept what the commissioner says at face value. If you want to pursue the matter and the commissioner persists with his objection then it is a matter for you to, I suppose, seek to convene the committee in private session to seek to compel an answer.

Senator FAULKNER—Not at all.

Senator BRANDIS—Or you might, in the exercise of your discretion or judgment, decide to leave it alone.

Senator FAULKNER—It is because I am exercising discretion and judgment that I asked a question that went to trying to understand precisely how the limitations applied to the question I asked, because I did not see the limitations so applying.

Senator BRANDIS—I am just not sure whether it is appropriate to, as it were, collaterally attack the way in which a witness declares that there are limitations, which we all accept are proper, that would be overstepped by the question. The witness has said that. We, I think, accept at face value what he says, and that is really the end of the matter, Senator Faulkner, unless you want to—and this could only be done in a private session—press or propose to the committee that—

Senator FAULKNER—No, I do not, because we all understand at these committees that answers to questions often beget further questions. That is why I have asked the question I did as a follow-up, of how the limitations may have applied to the questions that I asked, because I frankly do not understand how they could.

Senator BRANDIS—Well, the witness does—

CHAIR—My understanding of the situation—I do not know what the question was and I would not mind knowing what the question was, and I apologise for being out of the room at the time—is, (a), we have been reluctant to go in camera because we believe that this ought to be a public inquiry and, (b), even if we did, then the same limitations apply.

Senator FAULKNER—I am not suggesting we go in camera.

CHAIR—I know, but a suggestion has been made and I am just dealing with that suggestion in those terms. Can someone tell me what the question was?

Senator FAULKNER—Let me ask the question in another way and see if this can elicit a response. I will move off that question, Commissioner, and try again. It is true that the AFP rang through to Coastwatch at 9.30 a.m., from memory, on the 20th.

Senator JACINTA COLLINS—He does not want to confirm that.

Senator FAULKNER—You do not want to confirm that?

Senator JACINTA COLLINS—But he will not argue with you, so frame your questions in such a way that it does not seek such confirmation.

Senator FAULKNER—That information has already been given in evidence before the committee.

Senator JACINTA COLLINS—Yes, but not by AFP.

Senator FAULKNER—No. I will, nevertheless, ask the question, because I hear what Senator Collins says to me. Are you able to confirm that the AFP rang through to Coastwatch at 9.30 a.m. on 20 October in relation to some information about SIEVX?

Commissioner Keelty—The answer to that is no, Senator, because it falls within the area of objection that I have already made.

Senator FAULKNER—Are you able to confirm to the committee that there was intelligence reporting that some asylum seekers did not get on the vessel and that around 400 were on the grossly overloaded vessel? Are you able to confirm that?

Commissioner Keelty—I am not able to answer the question, because it falls within the category of questions under objection.

Senator JACINTA COLLINS—Mr Keelty, I will take you back to what is on the record. From answers to questions on notice from Rear Admiral Bonser, we are told that the primary source of information about possible departures of SIEVX from 19 October was the Australian Federal Police. Did the Australian Federal Police provide intelligence regarding SIEVX prior to the phone conversation reported by Coastwatch on 20 October?

Commissioner Keelty—The evidence given by Coastwatch is evidence by that body. I cannot give evidence about SIEVX, because it falls within the area of objection.

Senator JACINTA COLLINS—But this is not a question about evidence regarding SIEVX; this is a question about whether the AFP provided intelligence—not the detail of it, but simply whether you provided any—prior to that phone conversation on the 20th.

Commissioner Keelty—The phone conversation on the 20th does relate to SIEVX and, if I understand your reference to the evidence from Admiral Bonser, you are asking me to confirm what the AFP was doing in relation to the provision of intelligence regarding SIEVX. I cannot answer that. In answer to questions Senator Faulkner asked earlier I outlined the general procedure, which was this: we would provide, through the people-smuggling team, information that was in our possession to a range of agencies, including Coastwatch.

Senator FAULKNER—You could then answer the process question of whether you believe it was correct procedure to ring Coastwatch and give them the advice regardless of what the advice was. I am not going to the nature of the advice here; I am going to the process.

Commissioner Keelty—That is right, Senator.

Senator FAULKNER—Who do your most senior AFP officers in Jakarta report to?

Commissioner Keelty—Mr McDevitt answered that earlier, Senator. They answer to the Director of International Operations.

Senator FAULKNER—How did that get fed to Federal Agent Castles or whoever may have been representing the AFP on the task force?

Commissioner Keelty—He was at the time Director of International Operations, as I recall, but I do not want to mislead you. If Jakarta had information specifically about a people-smuggling issue they would send that directly to the People Smuggling Task Force and the Director of International Operations would receive their briefings from the task force. So it would not actually go via Mr Castles to the task force; it would go straight to the people-smuggling team and Mr Castles would be briefed on a raft of things that the people-smuggling team was doing before he would go to the IDC meetings.

Senator FAULKNER—Have you been able to establish the precise times that the protocol was frozen for?

Commissioner Keelty—Yes, I have. Senator Cook asked that question. We have checked with Jakarta. It was on 12 September 2001. A senior officer of the INP advised our senior liaison officer in Jakarta that the protocol attached to the MOU no longer had effect. There was no formal notification provided in writing by the INP or, for that matter, any other Indonesian authority.

Senator FAULKNER—How long was the protocol in operation before it was frozen?

Commissioner Keelty—I have answered that question before. It was September 2001.

Senator FAULKNER—Did the status of the MOU change at all during 2001?

Commissioner Keelty—No.

Senator FAULKNER—That remained in place?

Commissioner Keelty—That is correct.

Senator FAULKNER—What was the date when the revamped protocol was back in operation?

Commissioner Keelty—It was 13 June 2002. It is incorporated in the new MOU.

Senator FAULKNER—Effectively there has never been a new protocol?

Commissioner Keelty—That is correct.

CHAIR—Are you aware that 12 September is the day after Justice Tony North ruled, in the Federal Court, that *Tampa* asylum seekers were detained illegally?

Commissioner Keelty—I was not but I am not questioning your advice.

CHAIR—When the protocol was suspended, was there any specific condition in the suspension that any current ongoing operation was to continue? Was there any provision in the suspension that allowed a criminal detection to not be suspended if there was a current operation?

Commissioner Keelty—If I am wrong, I will correct my evidence, but from what I am being advised here—which has come from Jakarta in the time that we have been sitting here—it appears that it was a telephone call from a member of the Indonesian National Police to the senior liaison officer, saying that the protocol had been set aside and no longer had effect. I suspect that there was not much more than that—saying that it had been taken out of play.

Senator FAULKNER—Were no reasons given?

Commissioner Keelty—No, not to my knowledge. It was—I think I do recall this—an edict that had come from DEPLU to the INP.

CHAIR—We established earlier, Senator Faulkner, that it occurred in and around the time of the *Tampa* incident, when President Megawati would not take a phone call from the Prime Minister.

Senator FAULKNER—Yes. I was aware of the timing. I am interested in understanding whether any reasons were given at the time of the verbal exchange between the officer of the INP and the senior liaison officer of the AFP. I imagine, if I were an AFP officer—I can only dream—and someone rang me and said that—

CHAIR—You would probably pass the height test!

Commissioner Keelty—We do not discriminate on the basis of height.

CHAIR—Then I can dream as well!

Senator FAULKNER—In that situation, I would probably ask why.

Commissioner Keelty—I understand what you are saying, but you are now putting me in the position of the person who received the information.

Senator FAULKNER—Let me not ask you that unfair question. If I were the Commissioner of the AFP, and the senior liaison officer in Jakarta told me that an INP officer had just rung to say that this thing had been, effectively, laid aside or cancelled, I would probably ask why.

Commissioner Keelty—I am just trying to recall my earlier evidence to the chair when you were out of the room, Senator Faulkner. I think I conceded that it was around the time of a number of events here in Australia, those being the *Tampa*, the decision by Mr Justice North and other events.

Senator FAULKNER—I heard that on the monitor. But can you say why? So we are clear: can you say why the protocol was laid aside?

Commissioner Keelty—I cannot but I will acknowledge that it coincided with a number of events here. Whether that was the reason, as I have said to you in answers earlier this afternoon, the only people who can really give that answer are DEPLU.

Senator FAULKNER—Can I ask you specifically whether, at any stage, you heard that Indonesian immigration authorities had objections to the nature of the work being undertaken between the AFP and the INP. Did you ever hear that?

Commissioner Keelty—I have not, but I will take some advice on that. No, we are not aware of that.

Senator FAULKNER—Let me be clear on this. Has anyone, at any stage, raised with you that a possible reason for this was aspects of the disruption program?

Commissioner Keelty—I mentioned to Senator Cook earlier that there was some disquiet within the Indonesian National Police about the way the disruption teams—or the strike teams, as we called them—were being funded, equipped and trained by the AFP. That was causing a tension within the INP because of the disparity in what other people in the INP were getting in terms of equipment and other resources. I am aware of that tension, but I was not aware of the immigration issue that you raised.

Senator FAULKNER—On the second issue, which is the one that you briefly canvassed a little earlier with my colleague, something that I was asking about earlier on this afternoon was whether there was any concern with aspects of the disruption program. Could you just detail for the committee more of those concerns about the financing issue that you have just raised so that we have a better understanding of it?

Commissioner Keelty—There are two questions there. I will answer the last question first. As I understand it, there was disquiet emerging from within the Indonesian National Police in places, particularly around the Kupang area where the police do not consider themselves well resourced. They could not understand why their colleagues in the same organisation were being better resourced than them. The better resources included equipment and training and, no doubt now, extends to the fact that they will be receiving vessels. The subject of the conversation that I had with the head of the Indonesian National Police was that it was not intended to create that tension within his own organisation.

Senator FAULKNER—Are these better resources only limited to equipment and training?

Commissioner Keelty—No. I think it extended to travel, because we obviously needed the teams to travel. I need to take advice. I think I said that I would undertake to provide a comprehensive answer on how much was paid under that Law Enforcement Cooperation Program and what it was paid for. If I can provide that to you, I would rather do that than guess any further than I have already done. The writing gets smaller.

In October 2000 we provided three items. That was the month after the commencement of the protocol. It was a one-week investigation training that took place in Bali. It was conducted by the AFP. The cost of that was \$18,500. Minor equipment for the teams cost approximately \$5,000. Communications and IT equipment for the INP teams—these were the five teams—cost \$12,000. From my own recollection I think it extended beyond that. This obviously does not refer to travel, unless the travel is part of the training.

Senator FAULKNER—Some of that travel was to Australia?

Commissioner Keelty—I think it was. Can I take that on notice? I will undertake to give you a full and comprehensive run-down of what that money was spent on and how much was spent.

Senator FAULKNER—Can you tell me when travel took place to Australia?

Commissioner Keelty—If I can do it as part of that response, yes certainly.

Senator FAULKNER—Would any of it have taken place around the time of the Olympic Games in Sydney?

Commissioner Keelty—That was September 2000. Under the protocol, which was not signed until September 2000, I do not recall any visits from Indonesia. In fact we stopped visits because of the commitment we had to the Olympics. If I am wrong, I will let you know.

Senator FAULKNER—You will provide us with a complete breakdown of AFP expenditure in relation to the disruption program?

Commissioner Keelty—Yes.

Senator FAULKNER—I am keen to see it disaggregated as much as it can be so I can try and understand what some of these concerns that caused the cancelling of the protocol were.

Commissioner Keelty—I am not saying that the protocol was cancelled because of the funding arrangement but I am happy to provide—

Senator FAULKNER—I am not saying that you are either. You said that there was disquiet in the INP about it. Those were your words.

Commissioner Keelty—Yes, but you just linked it to the cancelling of the protocol. I have not linked it.

Senator FAULKNER—I am trying to find out from you why the protocol was cancelled. Earlier on today when I was asking you I was—

Commissioner Keelty—I thought you were asking about the extent of expenditure by the AFP on the INP. If you are linking it to the cancellation or the setting aside of the protocol, I am telling you that the two are not linked.

Senator FAULKNER—So disquiet in the INP about that did not lead to the cancelling of the protocol?

Commissioner Keelty—In my belief that is correct.

Senator FAULKNER—Are you able to say what did lead to the cancelling of the protocol?

Commissioner Keelty—No, I am not. I am saying that it was not that.

Senator FAULKNER—Did anyone raise Mr Enniss's role when the protocol was cancelled?

Commissioner Keelty—Not to my knowledge. I would have thought that if that was the case then I would have been told previously.

Senator FAULKNER—Did anyone in the AFP seek to establish through either direct channels with the INP or indirectly through Australian agencies, such as the Department of Foreign Affairs and Trade, why the protocol was cancelled or what the concerns were?

Commissioner Keelty—The answer to that is no. It is up to another agency as to whether they provide you with support or not. If the INP were told by their department of foreign affairs equivalent that they were to set aside the protocol then that is what they did. It was not for us to search for a detailed response, because things like this rely on cooperation and goodwill. We cannot then start to point the finger at them and say, ‘The cooperation and goodwill have gone out the door. Why have you done that?’

Senator FAULKNER—I am not suggesting you would point the finger. I am suggesting, however, that it would not be unreasonable for you to ask why. I think a reasonable person would say, if a protocol had been cancelled at such a sensitive time between the AFP and the INP, that the senior officers of the AFP might say, ‘Why?’—if not to the INP, if that was not deemed appropriate because you had heard that this had occurred as a result of a decision of other agencies in Indonesia, then certainly to the foreign affairs bureaucracy in Australia. I find it incredible that no-one would ask why. A protocol between Australia’s police force and the Indonesian police force that has been in place for quite a long time is cancelled, laid aside, we are told it is no longer operative—and nobody asks why.

Commissioner Keelty—That is a statement not a question. I have not said that nobody asked why.

Senator FAULKNER—Did you ask why?

Commissioner Keelty—If I did, it would seem to me that the answer to the question lies with DEPLU and not with us. If the INP tell us that the protocol has been set aside, we then recognise that we are operating under a different environment and we get on with it.

Senator FAULKNER—Commissioner, did you ask why the protocol was cancelled?

Commissioner Keelty—I do not specifically recall.

Senator FAULKNER—You do not know if you asked why?

Commissioner Keelty—I answered you. I do not specifically recall.

Senator FAULKNER—Do you know why the protocol was cancelled?

Commissioner Keelty—I have said no. If there is anything in any of the documentation that exists anywhere in the AFP, I undertake that I will come back and tell you why. I answered Senator Cook and I acknowledge that there were events occurring at the time that might or might not be linked, but they are not for me to answer about.

Senator FAULKNER—You can assure me that at no stage did the Australian Federal Police, at any level, seek legal advice over any aspect of the dismantling operation?

Commissioner Keelty—No.

Senator FAULKNER—You can give me that assurance?

Commissioner Keelty—I said no.

Senator FAULKNER—You cannot give me that assurance? You did before—or I thought you did. Why can't you give me that assurance?

Commissioner Keelty—Perhaps if you asked the question again. It might help if you don't ask ambiguous questions. I am trying as best I can to assist this committee. I find, quite frankly, that this conversation is taking neither of us anywhere. The protocol was set aside. If there was a reason recorded in the AFP as to why the protocol was set aside, I will undertake to give that reason to the committee.

Senator FAULKNER—I appreciate that. I do not think my questions are ambiguous; I think they are very clear. But if you find them ambiguous I am more than happy to try and assist you and the committee to make them even clearer. I was seeking to find out whether you are able to give the committee an assurance that at no stage, at any level of the AFP, was legal advice sought about the nature of disruption activities.

Commissioner Keelty—The answer to that is no. I gave that answer earlier this afternoon.

Senator JACINTA COLLINS—Is that: 'No, no legal advice was sought' or 'No, you could not give the assurance'?

Commissioner Keelty—That is the problem with the question. The question has been—

Senator FAULKNER—I am asking you to give me an assurance—anyway, I think my question was clear. Let me ask it again. Was any legal advice sought at any level of the AFP on any aspect of the dismantling operation?

Commissioner Keelty—No.

Senator FAULKNER—Thank you.

Senator JACINTA COLLINS—Perhaps I will move on to a different issue. You may or may not be able to answer this. In the minutes from the People Smuggling Task Force—Jane Halton's IDC—on 21 October, one of the dot points under a subheading relating to SIEV6 says:

Commander NorCom to talk to Bill Taylor AFP and HMAS Arunta—Defence has attached AFP paper.

Do you know what that paper would have been?

Commissioner Keelty—Can I have the date again, please?

Senator JACINTA COLLINS—It was 21 October. Mr Castles was in attendance for the AFP, if that helps.

Commissioner Keelty—I now have some notes for the meeting. What was your question about the meeting?

Senator JACINTA COLLINS—Under the heading of SIEV6, the fourth dot point down refers to an AFP paper. Are you able to tell the committee what that paper was in regard to?

Commissioner Keelty—I am just checking, but it seems that it could be a people-smuggling team intelligence report.

Senator JACINTA COLLINS—This is the AFP-DIMIA people-smuggling team?

Commissioner Keelty—That is correct.

Senator JACINTA COLLINS—What is the report on?

Commissioner Keelty—The people-smuggling team put out a series of intelligence reports. I am sorry—it appears that it is possibly a paper relating to logistical issues on Christmas Island.

Senator JACINTA COLLINS—I want to try another issue in a way that we have sought to do in the past—that is, hypothetically. Were the AFP to become aware of intelligence that a 20-odd metre vessel had departed and was heading toward the Sunda Strait in order to travel through the strait with 400 people crammed into a vessel of this size rather than the normal 200-odd people—and with some people having refused to board this grossly overloaded vessel—would the AFP regard that as a likely SOLAS situation, hypothetically speaking?

Commissioner Keelty—Hypothetically, yes—we would report through any concerns we had that were within our knowledge.

Senator JACINTA COLLINS—But would you be reporting it as a concern regarding safety of life at sea?

Commissioner Keelty—Hypothetically, if we became aware that there was an issue about safety of life at sea, the answer is yes.

Senator JACINTA COLLINS—I am asking you whether, hypothetically, the AFP would regard the case of a 20-odd metre length vessel with some 400 people on board—rather than the standard 200-odd that, historically, we know had been put on such a vessel—as a safety of life at sea situation.

Commissioner Keelty—If we knew those things, the answer is yes.

Senator JACINTA COLLINS—Going back to my earlier question about whether the AFP was reporting intelligence regarding SIEVs from around 19 October, was there some reason that

intelligence would have come from DIMIA earlier and then, as of 19 October, started coming from the AFP?

Commissioner Keelty—No. If it was coming from the AFP it was coming via the people-smuggling team. DIMIA often processed some of the intelligence that was coming from us and other agencies and reproduced a composite of that intelligence. There is no real reason why it would necessarily have been changed from DIMIA to the AFP. It might well be that there was a reason like the AFP being the only source of the information at a given period, but I do not think there is anything in that that I can specifically pick up.

Senator JACINTA COLLINS—So the report, if it were true, that a phone call directly between AFP and Coastwatch occurred on the 20th would be extraordinary rather than ordinary?

Commissioner Keelty—As I understand it, the people-smuggling team regularly contacted Coastwatch, so it might not be that extraordinary.

Senator JACINTA COLLINS—Ordinarily the people-smuggling team contacted Coastwatch rather than the AFP directly?

Commissioner Keelty—That is correct. The AFP contact with Coastwatch was via the people-smuggling team.

Senator JACINTA COLLINS—Ordinarily, or on that occasion as well?

Commissioner Keelty—Ordinarily.

Senator JACINTA COLLINS—I did not think you wanted to talk about that occasion specifically.

Commissioner Keelty—Sorry. I do not know what occasion you are talking about, but—

Senator JACINTA COLLINS—Ordinarily?

Commissioner Keelty—Ordinarily.

CHAIR—Let us go back to the suspension of the protocol hanging off the MOU, which now has a heads of agreement to hang from in its entirety. This was the one set aside on 12 September. As I understand it, the practical on-ground effect of that set-aside was zero. The operations continued unimpeded—that is, coppers chasing villains continued unimpeded. Is that right?

Commissioner Keelty—That is right, except that we were very specific about what we were asking to be done and why.

CHAIR—You were more precise and more specific about what you asked the Indonesian National Police to help you with?

Commissioner Keelty—That is right. I think I mentioned before that we were careful to ensure, in terms of the wider relationship with the INP, that we were dealing with transnational crime issues, not focusing solely on people-smuggling.

CHAIR—Australians at home, in their beds at night, would not toss and turn thinking that maybe there was any diminution by the AFP in the effort it was putting out to curb people-smuggling. They could be assured from what you are saying that there was none?

Commissioner Keelty—That is right. To shore that up I then travelled to Jakarta, it would seem now within—

CHAIR—To revive the agreement. I think it was.

Commissioner Keelty—To revive the agreement, and to strengthen the relationship and confirm what could be done, or not done, between us.

CHAIR—Am I right to assume therefore that the set-aside—for want of a better description—was an argument between diplomats rather than an argument between policemen?

Commissioner Keelty—Yes, that is correct. The subsequent advice that I have been given from Jakarta is that there needed to be a government-to-government head agreement put in place before it was allowed to continue.

CHAIR—That being the case though what I am coming to is that, for all intents and purposes, apart from you being more specific and more definitive, which I take to be the same thing really, about your requests to the Indonesian National Police, operations continued normally.

Commissioner Keelty—That is correct.

CHAIR—Senator Faulkner was asking you earlier about disruption activities—I think that was what he called it; I think they were your words and he used them to describe this class of activity. They continued unabated?

Commissioner Keelty—They continued and they were constrained by the arrangement. Both sides were conscious that the protocol had been set aside. To say that it continued unabated might be giving it too positive a description; in fact we relied more heavily upon processing information as opposed to getting the teams on the ground until we could satisfy the concerns of the DEPLU.

CHAIR—So then it is not right to say that there was no impediment to your operations. The disruption activities, for example, the issue that we are focusing on now, were not of the same quality or character after the cancellation as they were before it?

Commissioner Keelty—I am trying to think of specific operations. I will take some advice on that. Just so that I have it clear, I understand that after the protocol was set aside there was an initial period of less contact with the INP, and that obviously led to my visit to Jakarta. After

that, it was on a case-by-case basis, but it appears to have reverted to—so my earlier evidence may have been wrong and I apologise for that—more of an information gathering exercise and less of an arrest type of disruption until the relationship built back. They had been making arrests while the protocol was set aside. The answer to your question is that it did have an effect, but the effect was overcome over time.

CHAIR—So the picture I have is: bang, the set aside; there is an interregnum in which the same level of cooperation or activity—whichever is the right word; I think ‘activity’ is probably the right one—does not continue; there is a degradation of sorts in that level of activity; and over time it builds back up before the protocol is fully restored to where it was before.

Commissioner Keelty—That is correct.

CHAIR—That is the picture. When would it have built up to where it was before? What date would you put on that?

Commissioner Keelty—I do not know that we can put a date on it, because the operational activity has, because of the departure points to Australia, dropped off, as we know, since late last year—

CHAIR—But did it build up back to normal in days or weeks?

Commissioner Keelty—It was not days. I would say it took weeks and months to bring it back to what it was.

CHAIR—And did any disruption activities occur during this time?

Commissioner Keelty—There is nothing specific that we recall, but we will check to see if there are any operations we can point to.

CHAIR—Could disruption activities have occurred without your knowledge?

Commissioner Keelty—Yes, I imagine they could have.

CHAIR—The Indonesian side could have engaged in such activities autonomously?

Commissioner Keelty—Yes, I am certainly not in a position to say that it did not, but I cannot say that it did either.

CHAIR—You do not know of them doing it?

Commissioner Keelty—That is right.

CHAIR—But there would be a reasonable chance that if they did, you would know of it?

Commissioner Keelty—I would have thought so.

CHAIR—Can we assume that it is unlikely that they would have autonomously engaged in disruption activities?

Commissioner Keelty—On our behalf, that is right.

CHAIR—Can I just ask this question again so I am absolutely precise about it: you are saying that after 12 September until the operations came back to normal—if I can put it that way—no disruption activities occurred that you are aware of?

Commissioner Keelty—Not that I am aware of, but we will check to see whether there were other operations, bearing in mind we are obviously talking about post-September 11, and a lot of activity dropped off in many parts of the world.

CHAIR—That is right. That is the other thing about that date. It is the day after September 11—how could we overlook that? That is when the Indonesians cancelled the agreement. Would you say that you were back to normal relations by early October?

Commissioner Keelty—I think that after my visit there—

CHAIR—Your visit did the trick?

Commissioner Keelty—There was certainly an agreement about how we could proceed.

CHAIR—And that was 17 September.

Commissioner Keelty—That is correct.

CHAIR—So the picture I have is that you went over and had a chat with your Indonesian counterpart and you worked out a way how to keep after the villains irrespective of what the diplomats were saying.

Commissioner Keelty—That is right. I would say that, the disruption operations being the way they were, it was probably less overt. It was more about getting the information and providing the information to us.

CHAIR—Can you just remind me what a disruption operation is? What sort of class of activities are we talking about?

Commissioner Keelty—Mr McDevitt coined the phrase earlier—that in this context it is to prevent the departure of a vessel. It can take many forms: either by the arrest or detention of individuals or by ensuring that the individuals do not reach the point of embarkation, if that was known.

CHAIR—Would it take the form of encouraging people who might own or have access to a vessel not to make it available to people smugglers?

Commissioner Keelty—Not that we are aware of.

CHAIR—Would it involve talking to the pilot or the harbour master at ports and saying, ‘Don’t give it a clearance’—that sort of thing?

Commissioner Keelty—The point has been made to me that in terms of harbour control, pilots et cetera these vessels generally disembark from remote locations. So I cannot specifically say no, but it was not part of their *modus operandi*.

Senator FAULKNER—The Indonesian police—or other Indonesian authorities: defence or immigration—would, I suppose, employ people to do this work on their behalf. Would that be how it would work?

Commissioner Keelty—We are not privy to what network the INP necessarily used, so I cannot say whether it was through other agencies or what it was. We obviously knew when they arrested people or detained people, but we are not aware of how they did the other things they did.

Senator FAULKNER—Fair enough. If they did, you are not privy to it, you are saying to me. That leaves me with two options. It means they might have done it, I suppose. But if they did it, who would pay for it?

Commissioner Keelty—If they did what?

Senator FAULKNER—Let us say the INP got some people working for them on these sorts of activities. Who would pay for it, given it was being done, effectively, on Australia’s behalf?

Commissioner Keelty—We do not know of any specifics of them doing that. It is possible, but we do not know of any specifics. But we, the Australians, did not fund it.

Senator FAULKNER—So if that was done, it was funded by the Indonesians?

Commissioner Keelty—If funding was used. But you are carrying on from the questions asked by Senator Cook, which were about the disruption operations of the INP. Just so that I have it right, because I do have difficulty understanding some of your questions, in doing that the INP does not necessarily pay people, but if they did it is not paid by the Australians and we have no specific knowledge of it.

Senator FAULKNER—I suppose we are equal, because I have had some difficulty understanding some of your answers. In your view, are these disruption activities covert or overt?

Commissioner Keelty—I am having trouble with your question again, because it is not specific. If you are talking about the arrests that they made, that is obviously overt. If you are talking about who they might have contacted to do the things that Senator Cook was talking about, then I suspect that they were covert.

Senator FAULKNER—I appreciate that you qualified your response to me by saying that there was some ongoing interplay between the AFP and Ennis about responses to a media

report, which sounded fair enough. Putting that aside—and I understand the qualification that you make in relation to that—what was the date of Enniss terminating any formal arrangement with the AFP? You may have said this; I am not sure. I do not have it in my mind, if you did.

Commissioner Keelty—I think it was around the end of September last year.

Senator FAULKNER—Are you able to be any more precise?

Commissioner Keelty—I have given evidence about the precise date before another committee.

Senator FAULKNER—Fair enough.

Commissioner Keelty—I would need to go back and check the evidence I gave before that committee so that I am not conflicting with that earlier evidence.

Senator FAULKNER—So apart from what you have said about the response to the media report—I think it was on the *Sunday* program—AFP officers in Indonesian would have had no contact with Enniss?

Commissioner Keelty—I have answered this question earlier today. The formal relationship with Mr Enniss, which commenced in August 2000, concluded in September 2001. I did not provide the Senate Legal and Constitutional Legislation Committee with the actual date.

Senator FAULKNER—I do appreciate the point that you make about an ongoing contact because of the need to respond to, report on or deal with the issue that was raised in the *Sunday* program. I have heard that, I accept that and I am putting that aside. Apart from that and given that you have said there was a formal conclusion to this in September of last year, was there any ongoing informal association with Enniss on any other matters?

Commissioner Keelty—He telephoned our people on one or two occasions, as I understand it, but the only relationship the AFP has initiated with Enniss was to resolve the issues that were raised by the *Sunday* program.

Senator FAULKNER—So he would not have been on location—I do not know whether I am using the right terminology here but I will just use the ordinary dictionary definition of ‘on location’—with AFP officers anywhere in Indonesia after September 2001?

Commissioner Keelty—I am just reminded that he moved to East Timor, so he probably was not even in Indonesia at the time that we dissociated from him. I do not want to disclose Mr Enniss’s current location.

Senator FAULKNER—I am not asking you for it.

Commissioner Keelty—I do not think he has been back in Indonesia. So in answer to your question, I do not think our people have been in Indonesia with him.

Senator FAULKNER—Thank you.

CHAIR—I was just asking about the disruption activities—whether you had asked the pilot or the harbour master not to give them a clearance—and you have made the point that the departure points for these vessels are usually remote and the questions of clearing in and clearing out that might normally be the preserve of lawful departure may not in their case be true. Perhaps that way of disrupting them would be ineffective. I think that is the gist of what you were saying. Would it be a disruption technique to encourage fuel suppliers not to supply fuel to these vessels?

Commissioner Keelty—It would be a disruptive technique but, whether it was one that was applied by us or the INP, I have no knowledge.

CHAIR—What about not providing food for the vessels to sail? That would be disruptive technique—mess them around a bit.

Commissioner Keelty—It would be, but again it would go into the same category as the fuel. It is not something that we would do or have done. I have no knowledge whether the INP would have done that. Your assertion is that that would be disruptive. I guess that it would be disruptive but I have no knowledge and I do not think anybody here has any knowledge of that occurring.

CHAIR—No-one is coming forward—I imagine someone is coming forward.

Commissioner Keelty—There is no need to alter my answer, Senator.

Senator FAULKNER—But is there a concern here, Commissioner? I accept what you say. You say, ‘These are matters for the INP; they might also be matters for Indonesian immigration officials or perhaps even the Indonesian defence force,’ because you qualified your answer earlier that those other agencies may have been involved, but mainly the INP, obviously. Given that you are unable to be definitive about the INP activities, which is fair enough—that is at arms length, isn’t it; it is an indirect involvement, not a direct involvement—is there a concern here about accountability, transparency, the AFP being able to assure itself that such activities were proper and legal? Has that been an issue for you? Is it properly a matter of concern?

Commissioner Keelty—You have asked me two questions again, Senator. I will answer the last question first: yes. The first question: no.

Senator FAULKNER—How do you satisfy yourself that those activities are legal? I accept the assurance that you give but how are you able to give it?

Commissioner Keelty—I am having difficulty answering Senator Cook’s questions, which are largely hypothetical, when you are cutting across and trying to change those questions from a hypothetical sense to a real sense. The AFP, in tasking the INP to do anything that would disrupt the movement of people smugglers, has never asked—nor would it ask—them to do anything illegal. If we became aware that they were doing something illegal or something that was inhumane, it would be brought to our notice and we would ask that they not do it that way. The difficulty is that, once we ask them to do it, we have to largely leave it in their hands as to

how they best do it, but it has not come to our attention that they were doing anything unlawful or inhumane. I simply do not have any advice on that at all. If we did know that, we would change the method of operation.

Senator FAULKNER—You say that it would be brought to your notice. Who would bring it to your notice?

Commissioner Keelty—When I say ‘brought to our notice’, it would be brought the organisation’s notice. It would not necessarily come to me. I would expect any of the managers in the line management to realise that that is an inappropriate way to conduct operations, and we would make a decision about that.

Senator FAULKNER—That is fair enough. How would you—not you personally but the AFP—find out about it?

Commissioner Keelty—We might find out about it from the debriefing of passengers when they do arrive here in Australia. We might find out about it through interviews with crew that have come to Australia. We might find out about it through intelligence picked up in Indonesia or elsewhere, from other areas of the Indonesian police or from other areas of the agencies.

Senator FAULKNER—But, if they were successfully disrupting activities, the asylum seekers, the smugglers and the boat’s crew would not get to Australia, would they?

Commissioner Keelty—It is a hypothetical question. The fact is that we have no knowledge of it occurring.

CHAIR—If, on a dark night, someone slipped down and put some sugar in the fuel tank or some sand in the engine and all that sort of stuff, that would be illegal?

Commissioner Keelty—You are asking me to make a judgment about Indonesian law.

CHAIR—I imagine it would be illegal to do that in Indonesia, as it is in Australia.

Commissioner Keelty—I do not have the precise knowledge. I agree with you; I would imagine that that would be illegal.

CHAIR—But that would be out of bounds, as far as you were concerned?

Commissioner Keelty—Yes, and I have no knowledge of it occurring.

CHAIR—If I understand it correctly, you cannot categorically say that these things did not happen.

Commissioner Keelty—I have no knowledge at all of these things occurring, but it is like anything else I have no knowledge about: I cannot deny that it exists.

CHAIR—All I am asking is that you cannot categorically say they did not.

Commissioner Keelty—That is right.

CHAIR—But they may have done.

Commissioner Keelty—If they did, I had no knowledge of it.

CHAIR—I understand what you are saying. I have no further questions.

Senator JACINTA COLLINS—I want to go back to Senator Brandis's question earlier today. He asked you whether the AFP was aware of any distress calls, and your response was that you had no way of receiving distress calls. Let me follow through a bit further on that question. Were you aware of, or did you have any knowledge of, radio calls from the SIEVX to the mainland?

Commissioner Keelty—The answer is no.

Senator JACINTA COLLINS—No knowledge at all?

Commissioner Keelty—No knowledge at all.

Senator JACINTA COLLINS—Ex post facto knowledge from talking to survivors?

Commissioner Keelty—We do not have specific ex post facto knowledge that we can put our hands on tonight, but I undertake to you that if we do I will come back to Senator Cook and advise him.

Senator JACINTA COLLINS—It also obviously fits into the caveat of your earlier statement, which is that there is some material that might be relevant to legal proceedings, so you may not be able to provide it to me.

Commissioner Keelty—What is in my mind is that there might have been communication in relation to the survivors somehow.

Senator JACINTA COLLINS—We understand from survivor reports that there was communication between SIEVX and the mainland.

Commissioner Keelty—I am not aware of that. Thank you for taking into consideration what might preclude us from replying, but if that is the case I will advise you of that as well.

Senator JACINTA COLLINS—I am also assuming that, if there is action potentially afoot in relation to charging people smugglers over the deaths of these people and any information that was conveyed about the situation whilst the vessel was out at sea, it may well be relevant. Please take that on notice.

Commissioner Keelty—The first question was about radio communications, and now you are talking about the content of the communication. You are exactly right.

Senator JACINTA COLLINS—The issue may well be that a distress call had been made but was not conveyed further than a certain point.

Commissioner Keelty—Yes, and I will undertake to give a reply to Senator Cook on what our knowledge is, ex post facto or otherwise.

Senator FAULKNER—Two contemporary reports occurred after the sinking of SIEVX: one on the ABC radio program *PM* on Wednesday, 24 October and another in the *Australian* newspaper on 25 October last year. Both go to claims about people being forced onto this vessel at gunpoint by Indonesian security forces, including police. Have any of those reports been drawn to the attention of the AFP?

Commissioner Keelty—Do you mean the newspaper reports?

Senator FAULKNER—I only know it as a result of the newspaper reportage. Obviously, you would have a capacity for official information as opposed to the very unofficial information that I am limited to. If it would assist you, I am happy to quote a couple of sentences that were in the material in the public arena. That is all I know.

Commissioner Keelty—Thank you for the offer to read the passages. I do have a more primary source of information on that. I need to take legal advice as to whether I can provide it here. Could I take that on notice please?

Senator FAULKNER—That is fair enough. I have deliberately indicated to you the source of—‘information’ might be putting it at too high a level—these stories, which is from media reports. I have pointed out the time. I will read one sentence from the ABC’s *PM* story into the record. This is from a reporter, Ginny Stein:

There were about 30 police there and they said that they did not want to go on either. At that stage, police it’s claimed, beat them and forced them at gunpoint to get on the boats ...

The *Australian* story of the next day, 25 October, was headed ‘Forced onto death boat’. It begins:

Indonesian security personnel forced asylum seekers at gunpoint to remain on board a dilapidated fishing vessel that later sank, taking 353 people to their deaths ...

These were quite substantive stories at the time. I appreciate your taking it on notice. I assume that you would also appreciate that it is only this level of information that is available to at least some members of the committee, such as me.

Commissioner Keelty—Yes, I do. I simply point out that it might well fall into the class of material that Senator Collins was just talking about.

Senator FAULKNER—I appreciate that. Hence I think it is useful if you could take it on notice. I am happy to provide copies of that to the AFP if it is of any help, but I appreciate you

have your own primary sources and the like. If the basis of my question assists you in understanding that, I can give you copies of it.

CHAIR—Allowing for your late start, Commissioner, your appearance here has taken the full measure of time allocated initially. Thank you for your appearance. That concludes your evidence. We have no further questions.

Proceedings suspended from 6.36 p.m. to 8.03 p.m.

KILLESTEYN, Mr Edward Victor, Deputy Secretary, Department of Immigration and Multicultural and Indigenous Affairs

McMAHON, Mr Vincent, Acting Deputy Secretary, Department of Immigration and Multicultural and Indigenous Affairs

SIEGMUND, Ms Nelly, Assistant Secretary, Department of Immigration and Multicultural and Indigenous Affairs

CHAIR—Order! I call the witnesses from the Department of Immigration and Multicultural and Indigenous Affairs. I think this is the second time the department has appeared before us. As I recall, on the first occasion you were not in a position, or chose not, to make a statement. Do you wish to make a statement to begin the proceedings on this occasion?

Mr Killesteyn—No.

CHAIR—You are quite happy for us to go directly to questions?

Mr Killesteyn—Indeed. We understand the committee is interested in intelligence issues, and Ms Siegmund is the head of the branch that deals with those sorts of matters. Hopefully we can answer your questions as best we can.

CHAIR—I have a few questions not on the intelligence subject but on another matter which I would like to briefly cover, if I may. Back in May, I think, the committee was of the view that we wanted to take evidence from people on Manus Island, and we never went ahead because those people we sought to interview declined to make themselves available. At the time, I asked through the secretariat for an indication from the department as to whether the department would extend to people on Manus Island who may choose to come forward and give evidence the privilege that they would normally extend to or that would normally cover people giving evidence to a hearing in Australia, where we have jurisdiction. Clearly, on Manus Island, we do not have jurisdiction. It seemed a reasonable request to make.

My understanding is that the answer to that question was that the department's view was that they were perfectly happy to respect the evidence anyone gave but that, if people said or did things in the giving of that evidence which the department felt were useful, they would use that material in making any assessments about those individuals' rights. As a consequence, we were not able to guarantee to those people that they would have the same protections of privilege that they might have were we to conduct our proceedings in Australia. That is my understanding of the situation. Perhaps I should ask: do I understand that correctly, in your view?

Mr Killesteyn—We attempted to facilitate the request to speak to the particular people on Manus Island.

CHAIR—Yes, you did.

Mr Killesteyn—We took legal advice on this matter, and we were guided by that legal advice. Essentially, the issue was around whether any information that the person might provide, if it went to their claims in relation to asylum, would be in a sense useable by the refugee status determination officers in the context of assessing their claims. The advice that we received was that, if the matter went to the veracity of their claims for asylum, there would be every right for the department to use that information in making a final assessment as to whether or not the claims were valid. We could not therefore give any sort of guarantee to the individuals that that information would not be used.

CHAIR—However, if the hearing were conducted in Australia with people resident in Australia, you would not be in a position to use any material adduced in proceedings such as these in that manner, would you?

Mr Killesteyn—The issue concerned the way in which the process was being set up; there was an attempt to try to find a way in which a teleconference could be set up between the committee and the individuals in PNG. It was against that background that we were making that assessment about the use of any information that the person might provide.

CHAIR—I understand that. Any evidence given in Australia is privileged and cannot be used for assessment purposes. That is understood, isn't it?

Mr Killesteyn—That is understood but, as I say, the issue that we were tackling at the time was in the context not of a person appearing here in Australia but rather of a person providing advice from Papua New Guinea.

CHAIR—That is, someone appearing outside of our immediate jurisdiction where we can enforce our privilege protection. It is not legally necessary for you to take the view that you took, is it?

Mr Killesteyn—The view is about determining whether the person's claims for asylum are valid and I think it behoves us to take all information into account to determine the veracity of those claims. If a matter goes to those claims as a consequence of the person providing evidence then it would be irresponsible if we did not look at whether the person's claims were accurate or fair or honest.

CHAIR—Yes, but I return to my point. If they were resident in Australia, that situation would not obtain, would it?

Mr Killesteyn—I would have to take some further advice on that. Perhaps Mr McMahon can offer some views there.

Mr McMahon—One of the issues that did arise in respect of this is that evidence could be used in a variety of ways. For example, if an asylum seeker gave evidence before the committee remotely, overseas, then it is quite possible that we would have had people coming to us in any case through the back door simply trying to dissociate themselves from that evidence. That is entirely possible in a domestic context as well. In Australia where the laws of procedural fairness apply, an officer making a decision on a case is actually required, through the procedural fairness laws, to take into account all relevant considerations and to not take into

account irrelevant considerations. So even in Australia, although the evidence given could not be directly used, if there were consequential actions which arose in respect of that evidence then we are actually duty-bound by the law to respond to the information.

The situation was—with regard to the overseas context as well—that we were really quite conscious of that issue arising. We thought it was highly unlikely, in the overseas context, that the general nature of the evidence that would be given would adversely affect the claims of any individual. But part of our concern was simply that we could not give an absolute undertaking that the evidence, directly or indirectly, might not affect the claim. Our view is probably similar to that of others—that the risk was relatively low. In the end, there was more than one reason why the evidence did not proceed. I think there was that generalised concern but the process itself was also found to be slightly intimidating for some of the asylum seekers. As I understand it, there was more than one reason why they did not proceed with the evidence.

CHAIR—It may very well be the case that there was more than one reason why they did not proceed, but I am not concerned about that at the moment. I am concerned about the actions the department took to decline to extend the privilege that this committee would expect for witnesses appearing before it in Australia to witnesses appearing before it on Manus Island. My question at this point is simply this: it was a decision the department made but it was not a decision the department was compelled to make, was it?

Mr McMahan—I believe that we are under an obligation to consider all relevant material.

CHAIR—So if someone gave evidence under privilege to this committee, would you consider that in terms of their application for asylum?

Mr McMahan—No, we would not. But if, as a result of giving evidence, for example, someone came to us dissociating themselves from that evidence or elaborating on it—in other words, it is an indirect consequence in Australia—then we would need to consider it.

CHAIR—And the same proposition would apply on Manus Island if you chose to respect the privileges of this committee taking evidence on Manus Island.

Mr McMahan—The situation was that, just as in Australia, where we could not rule out that there may be circumstances which might apply which would actually be consequential to the evidence, we could not rule that out on Manus, as well. Having said that, we made it fairly clear that we thought the potential for that to be relatively slim. The other issue that I think is quite relevant is that the International Organisation for Migration had a duty of care, which it made clear. It was concerned about the possibility and consequences—

CHAIR—I am concerned about the department, though. All that you are saying is that the concerns that you had—and you were putting it in this context, might I say—were concerns for the people involved. But here in Australia they have the protection of privilege. Offshore, they do not. Your department chose not to extend it to them for the purposes of this inquiry when it was not a decision that you were forced to make. It was a decision that you chose to make. Am I stating it correctly? Is there something wrong with what I am putting as the factual situation?

Mr McMahan—I would put it another way.

CHAIR—How would you put it?

Mr McMahon—I would put it that we fulfilled our obligations in respect of information.

CHAIR—To the letter of the law?

Mr McMahon—I think in respect of what we would consider to be natural justice and procedural fairness.

CHAIR—You chose not to recognise privilege for this committee in hearings offshore. That is what you chose to do.

Mr Killesteyn—I think the interpretation and the explanation that Mr McMahon has provided go to the question of whether an absolute guarantee could be given about the information.

CHAIR—Can an absolute guarantee be given in Australia?

Mr Killesteyn—We are not talking about the direct information or evidence that might be provided by an individual; we are talking about issues that arise as a consequence of that evidence. That was the finer point about providing the absolute guarantee that the committee was looking for.

CHAIR—Why would someone not come to the conclusion that, because you were not prepared to extend privilege to witnesses who may come forward offshore, witnesses did not come forward and that suited your purpose? Why would that conclusion not be open?

Mr Killesteyn—It was not a matter of the department not extending the privilege. The issue is that on the advice we received about this matter of privilege, it was open and required, in terms of making a decision on the person's claims, that there may be information arising as a consequence of that evidence which should be taken into account in determining whether the person's refugee claims provided a basis for refugee status.

CHAIR—What I am now coming down to is a question of accountability and responsibility. As a department, you are accountable and responsible to the government and, beyond the government, which is the executive wing, to the parliament. Indeed, just two weeks ago we voted as a Senate on your appropriations. In order for us to vote on your appropriations, you went through an estimates process in which we quizzed you on your conduct. We are a committee inquiring into a certain maritime incident, and the people on Manus Island were directly involved in that incident. We asked if you would extend the courtesy of privilege to them so that they could give evidence knowing that there would be no repercussions in the assessment of their asylum applications, and you chose not to give that privilege. That is a free choice that you made. How do you explain that to us—to whom, ultimately, you are accountable—when that can, at least on one reading, interfere with the process of this inquiry?

Mr Killesteyn—We also have the responsibility for making decisions which go to a person's refugee claims.

CHAIR—Were you guided by the minister in this, or did you make this decision off your own bat?

Mr Killesteyn—This was on the basis of the legal advice that we had in relation to a request from the committee for an absolute guarantee in relation to this matter of privilege. The advice, as Mr McMahon has explained, is that, in relation to direct evidence, that privilege existed, but in relation to consequential matters that arose as a consequence of that evidence it was valid and proper, in terms of making a decision about the refugee status of the person, that that information could be taken into account. There is probably some debate about whether that was the overriding factor that ultimately led to the people not providing evidence.

CHAIR—The department could have saved itself a lot of time and effort by simply asking the Clerk of the Senate what the privileges rules were and obtaining an honest and direct reading from him as to what the obligations are. The privileges rules are relatively straightforward. People will not injure another party that gives evidence to us under privilege and if they do they risk contempt of the Senate and consequences may then follow. All we asked you to do was to put the cloak of that protection over people on Manus Island so this inquiry could fulfil its mandate from the Senate and ask those who were involved in the certain maritime incident what happened. The fact that you declined to do so may be a factor in those people not coming forward to give their story and it may be a factor for this committee to consider when it writes its report—that the actions of your department in part may have caused that to be the case. You understand that point, don't you?

Mr Killesteyn—Indeed. I think there will always be some debate about whether or not the department acted properly and indeed whether this was an issue that ultimately led to the people not offering any evidence. I do not think there is any direct causal relationship in this matter.

CHAIR—On reflection, would you have done it another way?

Mr Killesteyn—We went to great lengths to facilitate the request of the committee.

CHAIR—Except that you did not go and do what we asked you to do and tell the people on Manus Island that you would respect privilege if they gave evidence to us.

Mr Killesteyn—Because the committee was seeking an absolute guarantee which we could not give.

CHAIR—I do not understand why you could not. All we were asking you to do was to give us your word as a department that, in making assessments about these people's applications for refugee status, anything they said to us—which if they had said it in Australia would have been protected—would also have been protected if they said it from Manus Island. That is fairly straightforward and that is all we were asking you to do.

Mr McMahon—I believe that is what we said to them.

CHAIR—I beg your pardon?

Mr McMahon—I believe that is exactly what we said to them. They essentially respect—

CHAIR—It is not what you said to us, Mr McMahon. It is not what you have just said either.

Mr McMahon—It is exactly—

CHAIR—With respect, it is not what you have just said. You have just said that you obtained legal advice that you did not have to give that extension of privilege and you did not.

Mr McMahon—Essentially we were not going to participate in the direct evidence. We simply made the point that if people came to us subsequently, trying to dissociate themselves from evidence or providing further evidence, as a result of that extension, we would be duty-bound to use it. We also indicated that we thought that to be an extremely unlikely situation. We did everything we could to facilitate it; we encouraged IOM to facilitate the phone hook-up. It goes back to the question of the nature of the request that basically sought in absolute terms that there could be in no way any consequence at all. That was simply going beyond what we were capable of giving.

CHAIR—With the greatest respect, Mr McMahon, you have driven the question to the point where it loses its point. Clearly, we are not going to ask the department to give a guarantee it cannot give. The guarantee that nothing at all would ever happen to anyone as a consequence is not a guarantee that you could give because who knows what will happen. People giving evidence to our inquiry under privilege in Australia may have actions taken against them. Our cloak of privilege does not protect them from that. All that we can say is, in those circumstances, if it occurs, we can take action under the contempt rules of the Senate to punish the people who might try to break our privilege. That is all it says. We cannot ask you to say that no-one will ever do anything, but we can ask you to give us a guarantee that evidence given to us offshore will be respected as privileged for the purposes of the assessment of the applications these people might want to make. You declined to do that.

Mr McMahon—We indicated to them that we would not seek to use any evidence that was directly given to the committee. We made that very clear to IOM. In the end, my advice from IOM—I could go back and tease this out a bit more—was that that issue was not the main issue that resulted in their deciding not to proceed.

CHAIR—That is an observation that I have not even gone to at this point. What I am concerned about is the conduct of the department towards this committee and this inquiry. It may be that you would like us to record in our report for consideration when estimates come around next and your appropriations are before us that you declined to extend privilege offshore and, thus, in a way, blocked part of this inquiry. We have an obligation to the Senate to fulfil a mandate given to us. You may have contributed significantly to us not being able to fulfil that. That is not a matter of light moment.

Mr McMahon—I know it is not. I also believe that the evidence does not support it.

CHAIR—I am not sure what evidence there is. Would you care to provide us with a copy of the legal opinion on which you based your decision?

Mr McMahon—The evidence that I am talking about was the feedback from IOM as to why it did not proceed.

CHAIR—There is no such evidence before us.

Mr McMahon—Nor did I expect to have to give it tonight, as we were given a clear undertaking that this hearing was about intelligence gathering. Had I known that this was going to be on, I would have sought to provide the committee with more information.

CHAIR—Yes, of course it is about that. This is a threshold question that I raise and I will certainly shortly turn to the main purpose of this hearing. But you could not give evidence, I put it to you, as to what was in those people's minds when they declined to come forward. That would be hearsay, wouldn't it?

Mr McMahon—Indeed.

CHAIR—What evidence are you referring to then?

Mr McMahon—I am referring to the feedback from IOM as to why it did not proceed. It may not meet the standards of evidence in a court but I would have thought that it was quite relevant in respect of an inquiry such as this.

CHAIR—You are referring to what the agency told you.

Mr McMahon—Indeed.

CHAIR—And only that, which does not go to the point of what those people necessarily thought.

Mr McMahon—It was the feedback from IOM as to why it did not proceed.

CHAIR—In any case, I just do not accept that. I had better be square and frank with you: I do not accept that that would be evidence in the normal course.

Senator BRANDIS—Mr Chairman, given that this inquiry is not governed by the rules of evidence, I am struggling to see the relevance of your line of interrogation of these witnesses.

CHAIR—The line of inquiry is quite simple: we asked the department to extend privilege to people on Manus Island to give evidence to this inquiry, and the department declined. It is an option for the department.

Senator BRANDIS—The department is not at liberty to extend parliamentary privilege.

CHAIR—The department is at liberty, I put it to you firmly, to say that it will not use any evidence obtained in a hearing conducted offshore against people who are applicants for asylum.

Senator MASON—It will not take it into account in terms of their applications.

CHAIR—Yes.

Senator MASON—I understand.

CHAIR—And it declined to do so.

Mr Killesteyn—I think there is a finer distinction here which, at least from my reading, it seems is being interpreted, in the way that you are putting it, that we are not respecting privilege.

CHAIR—No, I am not saying that you are not respecting privilege.

Mr Killesteyn—Or that we declined to respect privilege.

CHAIR—In fact, I can say to you that what you have done is legally possible. All I was saying to you was that, as a department accountable to the government and through the government to the parliament, in a parliamentary inquiry, we asked you whether you would mind letting those people on Manus Island know that they could give evidence to us and that the evidence they give to us would not be used against them in assessing their asylum applications, and you declined to do so.

Mr Killesteyn—That is not correct, Senator.

CHAIR—Whether that was the reason they did not give evidence to us or not is another matter, but it could be thought to be at least one of the considerations, if not the major one. That is what I am putting to you.

Mr Killesteyn—And we are saying that that is not correct. We did advise the people on Manus that the evidence that they could give to the committee would not be used in the refugee status determination matter. It was matters that arise as a consequence of that, and later, that we could not give a guarantee would not be used. So the privilege was still there; and we were guaranteeing the privilege, and respecting the privilege.

CHAIR—What was the manner in which you give this advice, Mr Killesteyn?

Mr McMahon—We advised IOM.

CHAIR—Did you advise them in writing or orally?

Mr McMahon—I believe orally.

CHAIR—Is there a notation recording what you said?

Mr McMahon—There may well be.

CHAIR—Do you know what IOM told those people?

Mr Killesteyn—They would have told them what we told them. We can take that on notice.

CHAIR—Do you know that for a fact?

Mr McMahon—Yes I do, as a matter of fact. I cannot vouch for this, but we had a liaison officer on the island at the time. I seem to recall that we passed the information to her as well, and that she spoke to IOM and possibly to the asylum seekers themselves. But I would have to verify that.

CHAIR—Then please do.

Senator BRANDIS—Mr Chairman, I wonder if, before the point is lost, I could pursue Mr Killesteyn's answer from about four questions ago in which he sought to explain the reason for the decision. May I do that?

CHAIR—You may, if you wish.

Senator BRANDIS—Thanks, Mr Chairman. Mr Killesteyn, what I understand you to be saying—correct me if I am wrong—is that, although the department may have told possible witnesses on Manus Island that it would not have regard to their testimony before this committee in assessing any application for refugee status that they might subsequently bring, the department was not in a position to, and therefore was not able to, assure such people that it would, under no circumstances, have regard to any other facts that might subsequently be revealed, which might perhaps be prejudicial to their applications for refugee status in consequence of their testimony to this committee. Is that the substance of it?

Mr Killesteyn—That is exactly right. It is a distinction between the direct evidence and any consequential matters that arise.

Senator BRANDIS—Or, in legal parlance, the distinction between what is called direct and derivative immunity. Your legal advice was essentially to that effect?

Mr Killesteyn—I cannot recall precisely what the legal advice was, but it was certainly to that effect—the distinction between direct and derivative, as you say.

Senator BRANDIS—And, of course, any determinations in relation to refugee status are reviewable by the Refugee Review Tribunal?

Mr Killesteyn—Not in the context of the decisions being made in respect of people in Manus or in Nauru. They are reviewable, but it is an administrative review as distinct from one that is run by—

Senator BRANDIS—As opposed to a merits review.

Mr Killesteyn—That is right.

Senator BRANDIS—Quite. I am sorry, I put that badly, but that is really the point that I am getting at. One of the bases upon which a decision is reviewable in an administrative review—and this is, I think, the point Mr McMahon was at pains to make—is having regard to irrelevant

considerations, or failing to have regard to relevant considerations. I think we know that. If, for instance, a fact were to be revealed by a refugee applicant in evidence before this committee which produced a conclusion as to his or her application for status, and there was subsequently an application for administrative review, I put it to you that the fact that a piece of evidence given before this committee was disregarded within the view of the review tribunal that ought to have been had regard to might result in a determination being overturned—potentially to the prejudice of that applicant.

CHAIR—That is a very long bow.

Senator BRANDIS—It is not a long bow. Senator Cook, if you were a lawyer, you would understand it is elementary.

CHAIR—I am not a lawyer, but I do regard it as a long bow. I would think that there would be some weight given to what processes the department agreed to accept for a parliamentary inquiry.

Senator BRANDIS—No, there would not be—not by an Administrative Review Tribunal. If the Administrative Review Tribunal were of the view, as a matter of law, that that piece of evidence, if it was direct evidence, irrespective of any immunity offered by the department, or if it was indirect evidence, regardless of whether the immunity was upheld or not, ought to have been had regard to and was not, then that would be a very proper and commonplace basis for a determination to be set aside. I apprehend it was that kind of prejudice against which you were seeking to protect potential applicants when you made the decision on the undoubtedly correct legal advice you received.

CHAIR—I accept that as your opinion. We are going to have a copy of the legal opinion?

Mr Killesteyn—We will provide that to the committee.

CHAIR—Can you provide us with copies of any written information given to the people on Manus Island by IOM as a result of the verbal communication of the position?

Mr McMahon—I cannot say that there was written advice given by IOM.

CHAIR—Was it all by word of mouth?

Mr McMahon—It may have been. I am just saying I cannot say that there was written advice. The fact of the matter is that when you are dealing—

CHAIR—If there was any, you can provide it?

Mr McMahon—We will certainly have a look at it. If it was given, I will certainly provide it.

CHAIR—Thank you.

Mr McMahon—The bottom line is that it is often difficult dealing in written material with groups of people who speak a lot of languages. A considerable amount of the communication that takes place within those centres is oral because they ask a lot of questions and they go over the material so that they can get an understanding of it. It is quite common for us to provide messages orally.

CHAIR—Thank you for that information, but you will obtain any written advice that was given and provide it to us?

Mr McMahon—Correct. I give you that undertaking.

CHAIR—Thank you. That is enough for the time being. Are there any other questions from the committee?

Senator FAULKNER—I certainly have some. I realise the government senators get first call if they have any.

Senator BRANDIS—I do not have any more questions for the moment.

Senator MASON—I will defer to Senator Faulkner for the moment.

Senator FAULKNER—Thank you both for that qualified deferral. Mr Killesteyn or Mr McMahon, both of you were present at the task force meeting on 12 October 2001 when the task force minutes or notes talk about ‘discussion of disruption activity and scope for beefing up’. You were both there so I wondered if you could share with us what that means.

Mr Killesteyn—Generally, disruption activity refers to those activities on the ground in Indonesia which would frustrate any impending departure of a vessel. We were looking at around that time, in October, where there was clear evidence that there was a build-up potentially of quite a considerable number of vessels. It was thought prudent to see what we could do to extend disruption activities to prevent those vessels from leaving in the first place. That disruption activity was not a matter that we were directly involved with in Indonesia. It goes to things such as information campaigns.

Senator FAULKNER—Who is ‘we’ in this instance who were not directly involved? Is it DIMIA?

Mr Killesteyn—That is correct.

Senator FAULKNER—Can you help me with this, Mr McMahon?

Mr McMahon—That is my understanding of it as well, but I believe it also went to informing the Indonesian authorities about activities that were taking place.

Senator FAULKNER—It seems to me from what I have heard at this committee and from a whole range of witnesses that DIMIA’s intelligence operation or coordination role is the lynchpin role. Quite a number of witnesses have said that. I think that is a reasonable thing for

me to say, but perhaps one of you as witnesses would care to comment on that or acknowledge or confirm if that is the case.

Mr Killesteyn—It goes to the question of the description of ‘lynchpin’ or ‘coordination.’ Perhaps I can give you a general description of essentially what happens—

Senator FAULKNER—Please.

Mr Killesteyn—and perhaps Ms Siegmund can amplify that at some point. Within the Border Protection Branch we have a group of people known as the Intelligence Analysis Section. I provide that information early because it goes to our essential role of analysis of intelligence. In a sense, the role is played out by the IAS receiving intelligence from a range of sources and then making an analysis of the veracity of that intelligence to give us and other agencies a basis for planning action and responses to the impending departure of any vessel. We initially started the Intelligence Analysis Section two years ago. It was essentially an internal section where the product of intelligence analysis was being provided internally to the department and to the minister. Ultimately that proved to be a valuable product and other agencies started to request copies of the various intelligence notices we put out. Over time, that grew into a recognition that there was value in having one central agency collect the intelligence, analyse it, make sure it has more than one source, determine its veracity and so forth. We then filled a role where we were very actively and quickly collecting that intelligence, putting it into the form of notices and bulletins and distributing it to the relevant agencies outside DIMIA.

Senator FAULKNER—In terms of the government’s objective to counter people-smuggling operations, the Intelligence Analysis Section of DIMIA becomes the key point for the receipt of primary intelligence reports and you obviously analyse that and distribute it more broadly in the bureaucracy. Is that a fair description?

Mr Killesteyn—That is a fair comment.

Senator FAULKNER—Understanding that, what is coming into the Intelligence Analysis Section? It is primary intelligence. I do not want to go too far into this. However, I would like to know what agencies are inputting to you. For example, you have the AFP intelligence. Just give me a list of what agencies, organisations or groups are inputting in terms of your sources, in the broad, of primary intelligence.

Ms Siegmund—Perhaps I can answer that. We have an all-source analysis capability. It includes a very broad range from open source material and, as you have alluded to, to agencies that provide us with support from a very broad range of the Australian intelligence community and also the law enforcement community. It includes agencies within defence such as Defence, AFP and state police. We also have a network overseas of what are called compliance officers who work offshore. There are 26 of those officers located in embassies around the world. Their function is to look at people-smuggling trends and illegal people movements within their region and provide that information back to IAS and other areas. It also includes nine airline interdiction officers who work at airports.

Senator JACINTA COLLINS—What are they called?

Ms Siegmund—Airline liaison officers—ALOs—is the correct title. They are based at seven airports, mostly within the region—hub airports—and their role is to work with airlines and assist them with document examination skills and provide advice about who can and cannot be uploaded to Australia. That is also a very prime source of intelligence for us from people working at airports.

Senator FAULKNER—So you have this material coming in—these primary reports—and then you have the strike team. Can you explain the role of the strike team?

Ms Siegmund—Certainly, Senator. The joint agency AFP-DIMIA people-smuggling strike team is physically located within the AFP. It was created as a result of a cabinet decision to look at organised criminality behind people-smuggling, so its role is to undertake investigations which will hopefully lead to the prosecution of people involved in organising people-smuggling. The joint agency team comprises 15 people—five from DIMIA and 10 from the AFP. It is a combination of analysts plus certified investigators, and they undertake a series of operations where they have targeted people whom we believe are involved in the organisation behind people-smuggling. Their role is also then to provide information that they may come across in the course of their investigations to IAS as well, or vice versa—that we are able to provide them with the result of our collation analysis and the product that comes out. There is a close relationship in terms of the information sharing that goes on between the two but the strike team takes the role a step further in that its role is really to look at investigation and prosecution.

Senator FAULKNER—So that is called the joint strike team?

Ms Siegmund—It has a very long title: the Joint Agency People-Smuggling Strike Team; that is, DIMIA and AFP.

Senator FAULKNER—The DIMIA involvement in that comes from, effectively, your border control branch too?

Ms Siegmund—Yes. It comes in several ways. One is that we provide five team members, as I mentioned. There is also a board of management that I think I mentioned to you previously, Senator.

Senator FAULKNER—Yes, indeed.

Ms Siegmund—That comprises myself and my equivalent in the AFP. The role of that board is to look at how the strike team is conducting its operations, what operations it takes on, what are its priorities and how it is running. That is the other involvement in that strike team from DIMIA's perspective.

Senator FAULKNER—You have the strike team and the intelligence analysis section. Are any other bureaucratic structures in the Border Protection Branch playing a role in relation to countering people-smuggling?

Ms Siegmund—Yes, Senator. There are currently five sections within the branch. One of those other sections is the offshore compliance and liaison area which manages the offshore

compliance liaison network that I described to you and the ALOs—the airline liaison officers network. They have a very strong role to play in terms of how our offshore compliance network operates and how it feeds information back to us. There is also a separate investigations policy and liaison area. We currently have four investigation sections throughout Australia. It is the role of the central office section to coordinate the activities of those investigations units as well. In the course of those investigations, if they come across people-smuggling issues, they feed them in either to IAS or the PST—the people-smuggling strike team—depending on what it was and what level it was at.

There is also the identity fraud and document integrity section. We have become increasingly concerned about identity fraud as a global and national issue and the impact that it may have on transnational crime issues such as people-smuggling. Whilst the section looks more broadly at the composite issue of identity fraud and how it impacts on the portfolio of immigration, there is also a component in terms of people who are involved in people-smuggling who may seek to change their identity because they feel it will help them to have a different outcome in terms of being smuggled or being involved in smuggling. That is another area that obviously has a direct impact too.

Senator FAULKNER—Thanks for that helpful background. Let us come back to the task force and the decision in relation to what is termed in the task force minutes:

Discussion of disruption activity, and scope for beefing up.

What role did DIMIA or any of these parts of DIMIA have in that activity?

Mr Killesteyn—Can I seek some clarification? When you ask what role we had in that activity, do you mean activity in Indonesia?

Senator FAULKNER—No, I am talking about it from a task force perspective at this stage. Did your strike teams, the Border Protection Branch or anyone actually suggest that this might be a way forward, given the crucial role that you were playing?

Ms Siegmund—I do not think this is the whole answer, but it might go part of the way to answering your question. As I think Mr Killesteyn mentioned, IAS does the collection analysis and then produces reports coming out of that. Those reports have a distribution list that includes agencies that are represented on the People Smuggling Task Force. So all of the intelligence reports that we were putting out during that period of time were certainly made available to members of that task force, or they had access to them.

Senator FAULKNER—I do not know if you heard any of the evidence the AFP gave earlier today.

Ms Siegmund—Some of it, but not all of it.

Senator FAULKNER—We heard of a protocol between the AFP and the INP being laid aside. Did DIMIA have any knowledge or understanding of the background to that protocol being terminated?

Mr Killesteyn—No.

Senator FAULKNER—None at all?

Mr Killesteyn—None at all.

Senator FAULKNER—What are you able to tell us about the disruption activities on the ground in Indonesia?

Mr Killesteyn—Only generalities in terms of the things I explained before about information campaigns and providing an opportunity for people to be delivered to the IOM processing areas. You are probably aware—I think it has been referred previously—that there has been a regional cooperation model running whereby IOM seeks to care for these people pending an assessment of their refugee claims and resettlement to other countries. That facility was established a couple of years ago and it works well with the Indonesians.

Senator FAULKNER—Let us start with the information campaigns. They are part of the disruption activities, are they?

Ms Siegmund—Yes. Several campaigns have been conducted in Indonesia. For example, I am advised that one of the campaigns was aimed specifically at Indonesian nationals who had been lured in to be crew members for some of the vessels. As you may have been advised in other evidence, many of the crew members of illegal vessels that have attempted to travel to Australia have been fisherman from small villages who have been offered amounts of money, probably amounting to a year's salary for many of them, as enticement to get involved. One of the campaigns was aimed at trying to let them know what would happen if they were caught trying to enter Australia illegally—what the consequences of that might be—and to alert them to the fact that they were becoming involved with organisers who in effect were criminals.

Another campaign was also aimed at trying to point out some of the dangers in travel to passengers and the fact that they were involving themselves with organised criminals—people who were working in the people-smuggling industry, which is an illegal industry—and that they should not allow themselves to be enticed into that kind of activity.

Senator FAULKNER—Yes.

Ms Siegmund—The former was certainly done very much with the cooperation of Indonesian authorities, particularly because it was aimed at Indonesian nationals in terms of the fishermen. It was done very much with Indonesian authorities at the time, I believe.

Senator FAULKNER—So how did you run such an information campaign? I think we know about the T-shirts. I do not know if the T-shirts were relevant to that campaign. I heard evidence previously from a DFAT officer about T-shirts. You may not even know about that so let us not get bogged down in it.

Ms Siegmund—I am sorry, I do not. I have seen pamphlets and leaflets that were produced and I am also aware that officers from the embassy in Jakarta have visited certain places to have face-to-face discussions with people rather than expecting them just to read pamphlets—which

were obviously translated. It was a combination of many different sorts of tactics. The T-shirts is one I had not heard of but that is obviously part of it. Leaflets and direct discussions were the ones that I was aware of.

Senator FAULKNER—Do you have a budget for this activity?

Mr Killesteyn—It is within the appropriation provided to DIMIA.

Senator FAULKNER—Yes, but these are moneys being spent in Indonesia, isn't it? I know it is within your appropriation. Give me a fair go.

Mr Killesteyn—Yes, but if we produce a pamphlet then we will produce it here. It is not a matter of paying anybody in Indonesia. To the extent that we are—

Senator FAULKNER—So all the pamphlets that are printed for distribution in Indonesia are printed in Australia?

Mr Killesteyn—Even if they are printed in Indonesia—which I do not know—it is still paid for by DIMIA.

Senator FAULKNER—Yes, I know. I guess what my question was: do you have a budget for this sort of information campaign?

Mr Killesteyn—A fixed budget?

Senator FAULKNER—There must be some accountability.

Ms Siegmund—Again, I am not sure I can answer all of your question. It is a little bit out of my area. But we were provided with funding as a result of the Prime Minister's Coastal Surveillance Task Force to look at issues such as capacity building and others. What I would prefer to do, I guess, is to come back to you to say whether any of those funds in that task force or subsequent budgets were allocated specifically to issues such as information campaigns. I am sorry; I do not have that—

Senator FAULKNER—So you could take that on notice for me?

Ms Siegmund—If you would not mind. I will get back to you.

Senator FAULKNER—That is fine. If you could disaggregate it, I would appreciate it. I could then get some sort of understanding on how the moneys are being spent—

Ms Siegmund—Sure.

Senator FAULKNER—and where they are being spent, if that were possible.

Ms Siegmund—To clarify, just on the information campaign or, from the task force, how other funding was spent as well?

Senator FAULKNER—Yes. What about other disruption activities that you are aware of?

Ms Siegmund—We certainly are aware that the AFP have been working quite extensively in developing their relationship with the Indonesian National Police. The level of detail, though, in terms of what that actually means on the ground or how that is actually conducted, I would only be relaying second hand to you.

CHAIR—That does not stop Mr McMahon doing the same.

Ms Siegmund—I cannot comment on that, I am sorry.

CHAIR—All I am saying is that Mr McMahon was free to do that but apparently you have drawn the line at doing that.

Ms Siegmund—I would hesitate to try and give you something second hand on something quite as serious and detailed.

CHAIR—That is precisely the point I made to him.

Senator FAULKNER—There would be ministerial briefs going up to your minister on disruption activities, I suppose,?

Mr Killesteyn—Yes. We keep him briefed on all such matters.

Senator FAULKNER—What part of the department would prepare those briefs?

Mr Killesteyn—That would be within the Border Protection Branch.

Ms Siegmund—To clarify, we provide him with regular briefing on the people-smuggling situation generally—you know: what is happening in terms of Indonesia, numbers coming in, boats et cetera.

Senator FAULKNER—I would expect that, but my question went to disruption activities and whether the minister is briefed about that.

Ms Siegmund—Yes. It perhaps expands the question that I felt I could not answer more clearly. It has occurred to me too that we have had reports from our colleagues at the AFP about Indonesian involvement in being able to stop certain vessels from departing—vessels that they felt were leaving their harbours illegally. It then transpired that they had passengers on board who were attempting to come into Australia illegally. We have certainly reported that to our minister, yes.

Senator FAULKNER—Did the minister raise, at any meetings in his ministerial visit to Indonesia in June, the issue of disruption activities?

Ms Siegmund—I did not accompany him during that journey. I have visited Indonesia myself to have discussions with the Indonesians, but I did not accompany him on that June visit so I cannot answer that question. I do not know whether there is any record of meetings.

Senator FAULKNER—Has any part of the Border Protection Branch of DIMIA or—to your knowledge, Mr Killesteyn—any part of DIMIA more broadly sought legal advice in relation to the appropriateness or otherwise of disruption activities?

Ms Siegmund—No. I can speak for my branch. I am not aware of any other area of the department that has done what you have outlined.

Senator FAULKNER—Are you aware of whether the strike team has sought legal advice in relation to disruption activities?

Ms Siegmund—No, I am not aware of that.

Senator FAULKNER—Who would be able to assist me with that?

Mr Killesteyn—We can take that on notice. It is a fairly broad description of ‘disruption activity’. If you start to break it down in terms of the various types of activities that are being undertaken under that broad heading, then in many cases the issue of the legality does not arise. The information campaign, at least on my assessment, would not invite a question of legality, but if you started looking at other—

Senator FAULKNER—No, I would assume that you are absolutely right. An information campaign would not, but I am wondering about other elements of the disruption campaign that might.

Mr Killesteyn—And all I am saying is that, until you get down to a specific suggestion of a specific activity which might, on first principles, raise suspicions about the legality, then we really cannot—

Senator FAULKNER—Well, call me suspicious—

Mr Killesteyn—I am not calling you suspicious.

Senator FAULKNER—but I want to know now whether you, Mr Killesteyn, have ever had raised with you any concerns about the nature or legality of any of the disruption activities.

Mr Killesteyn—None at all. DIMIA is not an agency that has a role or a function or a mandate to be involved in disruption activities that might invite some sort of question as to its legality. That is not our role. We are not a law enforcement agency.

Senator FAULKNER—No, I appreciate that, but you do have officers in the strike team.

Ms Siegmund—As I mentioned, the role of the strike team is investigations leading to, hopefully, prosecutions. Their aim is to investigate the persons behind the organised criminality,

then bring that to a prosecutions brief with DPP, hopefully leading to a successful outcome of that prosecution. With that role in mind, I do not think that that is really what I would call disruption activities, other than that they are attempting to arrest or prosecute some of the main organisers. I suppose in that sense you could call that disrupting a criminal network of some kind.

Senator FAULKNER—But you also have your offshore compliance and liaison officers in Jakarta working very closely with the AFP there, haven't you?

Ms Siegmund—Yes. As I mentioned, the role of our compliance officers in Jakarta—we now have three there—is to look at the whole issue of people-smuggling in their region, which is Indonesia, and to report back to us on what is happening. For example, have they picked up information from their Indonesian host government—and from other embassies there, the Dutch, the German, the Canadian and New Zealand—on what is happening? Are people moving through the area and out again? Are there more people trying to attempt to leave illegally through the airports? Have they noticed movements of varying nationalities into Indonesia or not? What kind of work is the host government doing? What are their attitudes to people-smuggling? What are the visa regimes and so on? So we have tasked them very strongly with doing that kind of level of reporting back to us so that we know what is going on up there.

Mr Killesteyn—Can I add to that that we pay very careful attention to the role that our overseas compliance officers undertake. It is very clearly laid out to them that they are not law enforcement officers; they do not involve themselves in any clandestine activity. They are simply there collecting information that is generally and openly available.

Senator FAULKNER—Are clandestine activities taking place there?

Mr Killesteyn—I am making a point about my officers; I am not making a point about anybody else, nor am I reflecting on what might be going on. All I am suggesting is that that is the very clear role of DIMIA compliance officers. They are collection points that feed into our intelligence analysis. There are clear limits.

Senator JACINTA COLLINS—Mr Killesteyn, did I mishear earlier? I thought Ms Siegmund said that the compliance officers were involved in the information campaigns.

Mr Killesteyn—Yes; in distributing—

Senator JACINTA COLLINS—That is not an information collection activity. That was part of your disruption campaign activity.

Ms Siegmund—I think I mentioned officers at the post across the board and certainly the extent to which our officers were involved in the actual distribution of leaflets and so on. I would have to check and get back to you on that but I think what I said to you was all of the officers at the post.

Mr Killesteyn—An information campaign is—

Senator JACINTA COLLINS—I accept that is an open and transparent activity but—

Mr Killesteyn—Exactly.

Senator JACINTA COLLINS—the earlier point was that you were saying that they were only involved in the reception of information. This is a different role to that.

Mr Killesteyn—I acknowledge that there are broader roles that they provide, but I was simply making the point that in terms of their collection activity it is about dealing with open source information. They are not trained to do anything else.

Ms Siegmund—Just to clarify it and to give you a complete answer, the other strong role they have at the post is to look at any case load fraud. For example, in terms of the applications that are presented at the embassy they have a role at looking at the question of whether we are being targeted by certain organised efforts to defraud us in some way. That is another very clear role they all have across the board.

Senator FAULKNER—Have you been aware at any stage from any source of any concerns about the nature or legality of disruption activity?

Ms Siegmund—No. I have not been aware of anything that you are describing.

Senator FAULKNER—To what extent does your branch receive reports from the strike team? What is the interface like between the strike team and the Border Protection Branch?

Ms Siegmund—It occurs in several different ways. First, there can often be daily contact, for example, between the analysts that work as part of the strike team and the analysts that work within my branch. There can often be that daily interchange between them. It occurs in our formal monthly board of management meetings. It also occurs at another level through written reporting. We provide them with copies of our departmental intelligence notices, and any reports that they might be producing would come to us. So it is a combination of verbal interchange between the staff of the two areas, and from our distribution list they would receive intelligence notices or product that we put out.

Senator FAULKNER—But you are not aware of any legal advice that has been sought about disruption activity that may have caused concern or that may have been questionable in some way?

Ms Siegmund—From us or from the strike team? No.

Senator FAULKNER—I am just asking generally whether you aware of any.

Ms Siegmund—No, I am not aware of any.

Senator FAULKNER—You have mentioned that, in relation to DIMIA's responsibility with the disruption activities, one involvement is the information campaigns. Can we go to the next step of what other disruption activity you might be involved in?

Ms Siegmund—The only other involvement we have is with a whole of government committee. I am not sure if you have been made aware previously that ONA chair a committee—again, a whole of government committee—called the Intelligence Oversight Committee. Again, that came out of the Coastal Surveillance Task Force recommendation that there should be better coordination of information flows between agencies. A subgroup of that committee, a much smaller group, looks at the intelligence in more detail to see how that could go to informing us for things like information campaigns and other such activities. DIMIA are involved in that committee as well as the oversight committee.

Senator FAULKNER—Are there any written objectives that you could point me to for the disruption activities that DIMIA itself is involved in?

Ms Siegmund—I am not aware of any, but I would certainly like to make sure of that and have the capacity to come back to you if there are any. It would be along the lines of information campaigns that we have been involved in and what they were aiming to do. But if there is anything in writing, I would certainly like to take that on notice and come back to you, if that is possible.

Senator FAULKNER—From DIMIA's perspective, who is responsible for this and who carries it out?

Ms Siegmund—The information campaigns?

Senator FAULKNER—The disruption activities that you are involved in.

Ms Siegmund—The campaigns in the past have been a combination of some involvement from our public affairs area, from my area and also from our international cooperation branch, which looks at issues to do with engaging countries in international cooperation efforts.

Mr Killesteyn—But that is in terms of putting the material together. Once it gets to Indonesia, I guess there would be a broad range of people who might assist in distributing the pamphlets, making sure they are getting to areas where potential illegal immigrants are known to congregate and making sure that IOM are cooperating, because they also have communication links throughout areas of Indonesia where potential illegal immigrants are located. When you get to the dissemination of information, I do not think that it falls to any one group. AFP are probably involved as well.

Ms Siegmund—I am sorry, I did misunderstand that. AusAID are another good example too, I think. They have actually done considerable work in a lot of the areas where these fishermen come from.

Senator FAULKNER—Are you aware of concerns that the Indonesian authorities have expressed about disruption activities?

Mr Killesteyn—No.

Ms Siegmund—No.

Senator FAULKNER—That has not come to the attention of Department of Immigration and Multicultural and Indigenous Affairs?

Mr Killesteyn—No.

Ms Siegmund—No. In fact, as I mentioned, we have done one component—the information campaigns—very much in conjunction with the Indonesians.

Mr Killesteyn—I think it is fair to say that our relations with our counterparts, at least, in Indonesia—immigration in Indonesia—are very good.

Senator FAULKNER—Wasn't it the immigration authorities in Indonesia who drove the AFP-INP protocol being laid aside?

Mr Killesteyn—I have no knowledge of that.

Senator FAULKNER—That has never been raised with the department of immigration?

Mr Killesteyn—Not to my knowledge.

Senator FAULKNER—Indonesian immigration authorities never raised such concerns with the immigration department in Australia?

Mr Killesteyn—Concerns about disruption?

Ms Siegmund—Or the MOU?

Senator FAULKNER—The concerns that led to the protocol between the AFP and the INP being abandoned.

Ms Siegmund—No.

Mr Killesteyn—Not to my knowledge, no.

Ms Siegmund—Indonesian immigration have never raised that with us, to my knowledge.

Senator FAULKNER—Have they ever raised concerns with you about Enniss, who has some notoriety? With his work for the AFP, there was some publicity about him. You would be aware of the individual, I am sure.

Mr Killesteyn—We are aware of the individual, but we have no knowledge of the person's activities, and nothing has ever been raised with the immigration department.

Senator FAULKNER—I do not expect you to have knowledge of the person's activities.

Mr Killesteyn—The answer is no.

Senator FAULKNER—My question merely goes to whether concerns about his role or activities have ever been raised with DIMIA by Indonesian authorities.

Mr Killesteyn—Not to my knowledge.

Senator FAULKNER—Would you know if that were the case? I am assuming that the answers you are providing me—which I accept absolutely that you are providing in good faith—are provided on behalf of the department. You are not giving personal answers in that sense?

Mr Killesteyn—No, that is true. We get a range of information coming in, such as cables from the embassy, and I certainly cannot recall receiving any information that goes to immigration Indonesia raising concerns about the activities of Enniss.

Ms Siegmund—If I can clarify, Senator. I am not sure that Mr Killesteyn is aware that Indonesian immigration, at one time, in the course of another meeting with us that was not to do with Enniss—it was to do with other discussions they were having—raised concerns about a particular person who they thought might have some visa irregularities. It was just in that very general context. It was not raised again. I would prefer, because I do not have the dates in front of me, to get back to you on that. I did not bring that material.

Senator FAULKNER—That is fair enough. I appreciate that. I would ask you, Mr Killesteyn, in relation to these questions, to check that the answers, which I do accept are being provided by you and Ms Siegmund in good faith on behalf of the department, are in fact able to be represented as being on behalf of the department. If there is some knowledge at a departmental level that you might not necessarily have, I hope that you would so inform the committee.

Mr Killesteyn—Indeed.

Senator FAULKNER—That is probably a given, but let me just say that.

Ms Siegmund—My apologies too, Senator. That is why I interjected: because I knew Mr Killesteyn was not aware of that.

Senator FAULKNER—I appreciate that. This is a question to Mr Killesteyn or Mr McMahon: in this instance, in your own role on the People Smuggling Task Force, were the disruption activities a regular topic of conversation or just for beefing things up, as it was described on 12 October? Was this something that was discussed on a more regular basis? I know that both of you were at least irregular attendees of the task force, if not regular attendees.

Mr Killesteyn—I think that the minutes are probably reasonably accurate in that it would have been a fairly short conversation. Obviously, as I said before, the People Smuggling Task Force was concerned about the evidence of a surge and was, in a sense, giving a direction to the responsible areas to look for further opportunities for disruption. Beyond that, in terms of discussions on particular activities, I certainly cannot recall in my time and in the number of meetings I went to that we got down to chapter and verse of what disruption might be possible.

As you have seen from Ms Siegmund's evidence, there were plenty of bureaucratic structures that could take that particular direction forward.

Senator FAULKNER—But the notation that I am referring to about 'being beefed up' was occurring at a time when the protocol was laid aside.

Mr Killesteyn—That may be correct, but—at least in my recollection—it was not a matter that was linked during the discussions in the People Smuggling Task Force.

Senator FAULKNER—Mr McMahon, are you aware of whether this was a once-only discussion at the task force or whether it cropped up from time to time?

Mr McMahon—I think it may have come up more than once. But I have to say that, in many respects, the task force was trying to lay down some principles about what the broad activities of the Commonwealth should be, so it was not a discussion in detail about the nature of the activity. For example, there was the principle that the ships were to provide—or continue to provide—some sort of naval barrier and there was the principle that we should be doing as much as possible with Indonesia to stop or to disrupt the activities. It was a question not of detail but of principle, I believe.

Mr Killesteyn—That is essentially the way that the People Smuggling Task Force operated. There was another group—in a sense, a subgroup—which dealt with logistics issues of establishing the processing centres. The People Smuggling Task Force would set clear directions and then others would carry those out.

Senator FAULKNER—All I am asking is whether these disruption activities were discussed on one occasion or on more than one occasion. I think you and Mr McMahon have given answers to that, and that is fair enough and appreciated. At any stage were any concerns raised at the task force about the nature of that activity?

Mr McMahon—Not ever, to my knowledge.

Senator FAULKNER—Ms Siegmund, could you say how many DIMIA officials are now in Indonesia? I have heard about the three who are newly engaged.

Ms Siegmund—We have had a compliance officer in Indonesia for the past six or seven years. We provided a second compliance person about two years ago and then a third one about a year ago. I can give you more precise dates if you would like. In terms of the operational side of Immigration persons at the embassy, I am not too sure how many are there, but I can find out.

Mr McMahon—There are eight DIMIA officers stationed in Jakarta. One of them is a regional director, and there are another seven. Some are related, as Ms Siegmund said, to compliance type activities and some have no contact with those; they are there to supervise applications for permanent residency et cetera.

Senator FAULKNER—What proportion would you say were working on countering people-smuggling activities, for example?

Ms Siegmund—For the three compliance officers, that is their major priority.

Mr McMahon—I would add that that is not their only activity, because they do things like assisting with the integrity of processing.

Senator FAULKNER—Would all of the AFP raw intelligence that has been discussed a little at this committee today in relation to the SIEVX vessel have been received at the intelligence analysis section?

Ms Siegmund—Certainly the AFP is one of the agencies that provide us with information and intelligence. Whether or not it was all of it, I do not know. We certainly rely on agencies to provide us with that so that we can then do our job, which is to do the analysis and provide the best picture.

Senator FAULKNER—Given that it has been an issue of some public notoriety—that is, the sinking of SIEVX—has there been any internal assessment at all done within DIMIA of how that intelligence was handled and dealt with in relation to the SIEVX issue specifically?

Mr Killesteyn—Not specifically reviewed. We have a fairly good process for collecting information. We have a range of relationships and meetings with those agencies. We feel pretty confident that the bulletins and notices that we provide are done in a timely way, that they are done with all of the intelligence that is given to us and that they are providing a good service to other agencies. In relation to SIEVX, all of the intelligence that we were getting at the time was produced and moulded into the intelligence bulletins that were being distributed around the other agencies.

Senator FAULKNER—Have you seen the attachments to the material that Senator Hill has had tabled at the committee in relation to some of the inputs, particularly the DIMIA intelligence notes?

Ms Siegmund—Yes, I have. I saw a copy today, which was in fact a time line. That was the heading. It listed by date.

Senator FAULKNER—Have you been able to check its accuracy as far as it goes particularly for the DIMIA intelligence notes and any other DIMIA inputs?

Ms Siegmund—Yes. They go by dates. From memory I think there were two errors. It was simply an error in the date that we had released something. Rather than it being on the first of the month, it had actually come out on the second of the month. Other than that, the departmental intelligence notices that they are referring to I have crosschecked with ours.

Senator FAULKNER—Are you able to identify the two wrong dates?

Ms Siegmund—I do not have them here in front of me. I would rather get back to you. One of them, I think, was 1 or 2 September and another one was 1 or 2 October. It was the change of the month. It was the first of the month that they had inaccurately drawn.

Senator FAULKNER—The committee would certainly appreciate if you could take that on notice.

Ms Siegmund—Certainly.

Senator FAULKNER—But you have been able to check all the other dates?

Ms Siegmund—Yes, certainly.

Senator FAULKNER—And they are accurate?

Ms Siegmund—Yes, they are accurate.

Senator FAULKNER—Thank you. Is there anything that is missing from that time line? There are two issues about accuracy: what is there and whether there is any material not there that should be.

Ms Siegmund—No, I have not found anything that is missing. Given that I saw it this morning and went through it, I basically compared it to our records of the DINs, the intelligence notices that we produced at the time. I have not found anything that was missing.

Senator JACINTA COLLINS—Before Senator Faulkner goes on, are these intelligence reports classified at the moment?

Ms Siegmund—Yes, they are.

Senator JACINTA COLLINS—Can they be declassified?

Mr Killesteyn—We can take that on notice, Senator. We previously provided the committee with one of the intelligence notices. As long as we go through the appropriate processes and check with our minister, we will certainly do that.

Senator JACINTA COLLINS—At this stage of the process, we are obviously interested in any of those that pertain to SIEVX and the reports of its departure. I could spend the time now identifying the precise dates but, since you need to take this on notice, you can probably do it without them.

Mr Killesteyn—There would be quite a few that relate to SIEVX. The issue with intelligence has been explained to you before—that there is a good deal of intelligence about the Abu Qussey boat.

Senator JACINTA COLLINS—No, but what we can do—with retrospective knowledge—is deal with those that deal with what we now know to be the actual departure and detail associated with SIEVX after its departure. I am looking at any reports that relate to that period from about 14 October to probably about 24 October.

Ms Siegmund—I was just going to ask for that clarification, Senator. Did you say the 18th?

Senator JACINTA COLLINS—No, I am actually asking about the 14th. Certainly, in terms of this document, we still have not had explained to us what one of the footnotes refers to. I said the 14th to be on the safe side but, for instance, on this occasion it says:

CDF/Secretary Task Force believe this to be a typographical error and should instead refer to 16 October 01.

But if I look at this table, there was intelligence starting at about the 11th and an opsum on the 14th about the ship being delayed. It looks as if the critical date is probably the 17th, where the report says the vessel is reported moving from one port to another.

Ms Siegmund—Yes, we did.

Mr Killesteyn—We can start with the 17th. I guess there was a notice on the 18th as well.

Ms Siegmund—And the 16th, 18th and 19th.

Senator JACINTA COLLINS—The 16th may be the relevant notice if we are talking about, as I said, some lack of clarity at this stage about what the task force is referring to as the 16th. If you go forward to the notation on 18 October, there is a footnote there. That is why I am trying to err on the safer side in following through some of these issues. I would say that we need to start on the 16th.

Ms Siegmund—Certainly, Senator, yes.

Senator FAULKNER—But specifically in relation to 20 October, we know that Coastwatch received information from the AFP about the Abu Qussey vessel—the SIEVX. I will read what Rear Admiral Bonser said, just to give this some context, so we are all clear. At page 1631 of *Hansard* he said:

The next indicator about the Abu Qussey vessel was on Saturday 20 October 2001, when Coastwatch received telephone advice from the Australian Federal Police that a vessel was reported to have departed from the west coast of Java the previous day. The information included advice that the vessel was reportedly small and overcrowded. The full detail of the advice is classified.

That is what Admiral Bonser told this committee. I wondered, in relation to that, whether that same advice from the AFP was received in your intelligence analysis section.

Ms Siegmund—No, it was not. I have reports for the 19th, which was the Friday, and the 22nd, which was the Monday. In fact, the advice on the 22nd later proved to be incorrect. We were not aware of that advice that you are referring to that came from the AFP to Coastwatch and that Rear Admiral Bonser was reporting on. We did not have that.

Senator JACINTA COLLINS—What was incorrect on the 22nd?

Ms Siegmund—Some of the information we relayed in the DIN later proved to be not incorrect but it did not have any of that information that you are referring to in it. That was on the Monday. Rather than incorrect, sorry, it was incomplete.

Senator JACINTA COLLINS—When you say ‘we’, does that encompass the strike team?

Ms Siegmund—No, ‘we’ is water protection branch, IAS, DIMIA.

Senator FAULKNER—You certainly do not have any of that information on the 20th from the AFP. Is that usual? Is that standard operating procedure?

Ms Siegmund—As I mentioned, we rely very heavily on our partner agencies to provide information to us, obviously. But I also accept the fact that, in these circumstances—particularly where an agency might feel that it has operational information that has to be passed quickly—the first instinct might be to ring an agency such as Coastwatch or Defence, rather than us, because it is something they are expecting action to be taken on or it is needed more urgently. We might be advised at a later time. In this instance we were not part of that intelligence loop. It was not provided to us.

Senator FAULKNER—What is your normal turnaround time in reporting this sort of material? This was a Saturday, I think.

Ms Siegmund—Yes. The normal procedure for me would have been to provide that advice via telephone, unless it was something that I could not do over the phone. But if it is of an urgent nature where my executive needs to be briefed or my intelligence analysts need to be briefed, I would normally do that over the telephone, particularly in the instances that you are describing: if it is at night, on weekends or whatever. If it is something that allows us to do some analysis and pull it together with the rest of what we know, we pump it out in a daily report that comes out. They are the DINs that we were referring to.

Senator FAULKNER—Yes, there is your daily report but information of this nature that went, in this case, from the AFP to Coastwatch but did not go from the AFP to your intelligence analysis section.

Ms Siegmund—Yes.

Senator FAULKNER—I suppose what I am really asking is: what were the consequences of it not going? Were there any consequences of it not going there? Are we able to make that assessment?

Ms Siegmund—Not adequately. Certainly, the consequence for us was that we were not aware of the full picture until much later. I am sorry, I am stating the obvious but, in terms of our intelligence picture of what was happening, we certainly were not in the full loop at the time and we did not become aware of the full picture until later.

Senator JACINTA COLLINS—When did you become aware of the full picture?

Ms Siegmund—Really, events were unfolding from the Monday onwards. I have looked at the DINs that we have produced for that period of time and, certainly, in terms of what we provide for you, I think you will probably see the same. I do not have to state that intelligence is not evidence, but one of the issues in this case and in others is that we started hearing about this particular organiser with this particular boat—which we initially thought was two boats—back in July. From that period on, the number of passengers varied, not dramatically, in terms of what we had. At one stage we thought there were two boats coming, not one, and the departure points

varied. So it is not unusual for information to come that is different from what you had previously, which is often hard to explain to members of your executive or, often, to a minister. But it is the facts of the situation that we are in. Events will unfold, we learn more as we go along or we learn something differently. In the case that I am referring to, from the Monday onwards, yes, we gleaned more information through the media, through IOM and through other agencies, and learned then of the gaps that had been missing previously. But certainly we were not aware of it on Saturday, 20 October.

Senator FAULKNER—So the group that we established a little earlier in tonight's hearing was the key intelligence analysis outfit in relation to countering people-smuggling, which I think was the qualification we spoke of, actually does not know about this key piece of information. This key piece of information was not passed to your Intelligence Analysis Section. Did you know that this boat had sailed, before it sunk?

Ms Siegmund—We had varying reports that the boat had left and from where it left, which were then rescinded. We later found out that it had not sailed. That unfortunate pattern basically started occurring from about September onwards, where there were stop-starts in terms of reporting that the boat was leaving and then not.

Senator JACINTA COLLINS—This is not unique to SIEVX though, is it?

Mr Killesteyn—No, it is not, Senator.

Ms Siegmund—Did you say it is not unique?

Senator JACINTA COLLINS—That pattern is not unique to SIEVX.

Ms Siegmund—No, it is certainly not. The other issue is, at that time, we had up to six boats that we thought were all leaving at the same time. We had reports of them all leaving around the same time.

Senator JACINTA COLLINS—They are the ones that the people-smuggling task force regard on 18 October as being multisource reports of a high level of confidence.

Mr Killesteyn—That is correct, but there is never any definitive advice about the departure of a vessel. We have seen time and time again that information that says the vessel has departed turns out to be incorrect. The other point that I would perhaps make—

Senator FAULKNER—But you were at that meeting on the 18th, weren't you, Mr Killesteyn?

Mr Killesteyn—Yes, I was.

Senator FAULKNER—So are you able to say whether any of that multisource information is provided via your Intelligence Analysis Section?

Mr Killesteyn—The actual information that was provided to the people-smuggling task force on the 18th would have come from the DIMA intelligence notice issued on that day.

Senator FAULKNER—Let's go through that. On 18 October, we know that part of the task force minutes says:

Further Prospective Arrivals

- Intelligence re 2 boats with total 600 PUAs expected at Christmas, with one possibly arriving today, a further 3 boats with total 600 expected at Ashmore, with earliest arriving Monday. Some risk of vessels in poor conditions and rescue at sea.
- No confirmed sightings by Coastwatch, but multisource information with high confidence level.

Are you able to say whether that information contained within the people-smuggling task force minutes actually comes from your Intelligence Analysis Section?

Mr Killesteyn—The answer is yes. There is a good deal of symmetry between the minutes that you have just referred to and the DIMA intelligence notice that was issued on the 18th. But I make the point that, specifically in relation to SIEVX, the DIMA intelligence note does not make any assessment about the seaworthiness of the vessel. That particular reference is made in relation to another vessel associated with another smuggler.

Senator FAULKNER—Doesn't the first dot point refer to SIEVX?

Mr Killesteyn—Are you referring to the minutes of the meeting?

Senator FAULKNER—Yes.

Mr Killesteyn—All I can say is that it is a summary—the minutes are a cryptic summary if you like—of the information that was provided and again I did not write the minutes.

Senator FAULKNER—No; sure.

Mr Killesteyn—All I can suggest to you is that in the actual intelligence notice from 18 October the reference to the seaworthiness of a vessel is made in relation to another one, not the SIEVX vessel.

Senator JACINTA COLLINS—This refers to vessels. Are you saying that is not accurate? It says: 'some risk of vessels'—plural—'in poor condition and rescue at sea.'

Ms Siegmund—The intel note on 17 and 18 October both refer to—as I mentioned, there were at least six or seven boats that we were concerned about at that time, including the SIEVX boat as it transpired.

Senator JACINTA COLLINS—As one boat or as two at that point in time?

Ms Siegmund—We had conflicting advice. By 18 October I believe we had it down to one. The other commentary was to do with another organiser who had previously used boats that had

been in a very poor condition. I was not at the meeting. I am not sure whether that is an amalgamation of those points taken out of the DINs or not.

Senator FAULKNER—Mr Killesteyn was there. Fair enough if you were not there but what it says is:

Intelligence re 2 boats with total 600 PUAs expected at Christmas ...

Many have jumped to the conclusion—I, of course, do not jump to any conclusions necessarily—that the two boats are SIEV6 with 200 aboard and SIEVX with approximately 400 aboard. Are you able to shed any light on that, Mr Killesteyn?

Mr Killesteyn—No. However the minutes were crafted I cannot comment on but all I am suggesting is that the DIMA intelligence notice at the time, issued on 18 October, referred to both the Qussey vessel and vessels associated with another organiser. The specific reference in the intelligence notice to a vessel in poor condition is in relation to the second organiser. There is no other reference.

Senator FAULKNER—So what happened to the second Abu Qussey vessel?

Ms Siegmund—It never eventuated. It turned out to be just one.

Senator FAULKNER—It turned out to be one.

Ms Siegmund—Yes. That was early reporting where we thought he was sending two boats. Sorry, not early—it was off and on.

Senator FAULKNER—Let us go back because I think it is absolutely crucial. I understand that Mr Killesteyn qualifies what is written in the People Smuggling Task Force minutes. I understand that point that you have made about the nature of them. I would have made that point too given what we know about them at this stage. That is fair enough. I am not critical of that. I understand the point that you make. I want to focus on that first phrase:

Further Prospective Arrivals

- Intelligence re 2 boats with total 600 PUAs expected at Christmas ...

Is it possible for us to conclude from the primary intelligence reports that you have and your original assessments from your intelligence analysis section whether that does refer to two vessels—one, SIEV6 with around 200 people on board and, the other, SIEVX with 400 on board—both expected to go to Christmas Island? Can we draw that conclusion? Many have and on the surface it seems to be a reasonable enough conclusion to draw. I do not draw it myself necessarily but can you shed any light on that?

Ms Siegmund—I do not think we can. I think possibly that conclusion is drawn from the knowledge we had after the event of the 400 figure. I am looking at the DIN at the moment. The numbers we had reported to us in relation to Qussey's boat ranged from 150 to 250 at varying times. The figure of 400 came to our attention after the event of the tragic sinking. On the day

that you are referring to, in terms of the task force, there were at least three organisers that we were concerned about who potentially were going to send boats through to Christmas Island. The numbers certainly would have added up to 600-plus, spread across those organisers. But, in terms of the Qussey vessel at that time, our estimate was still that it would be possibly carrying up to 250 passengers.

Senator FAULKNER—But, you see, the task force minutes break this up into, effectively, five boats:

... 2 boats with total 600 PUAs expected at Christmas ... a further 3 boats with total 600 expected at Ashmore ...

Ms Siegmund—Yes.

Senator FAULKNER—Then it says:

Some risk of the vessels in poor condition and rescue at sea.

So that is five vessels anyway.

Ms Siegmund—Yes. The other problem too was that the two vessels—

Senator FAULKNER—But we know that SIEVX was going to Christmas Island too, don't we, Mr Killesteyn?

Mr Killesteyn—We do, but—

Senator FAULKNER—And we know that SIEV6 was going to Christmas Island.

Mr Killesteyn—All I am suggesting is that—and it is probably a broken record now—the reference to the condition of the vessels was a general reference, and there is nothing in the DIN which suggests that it was a specific reference to any specific boat.

Senator JACINTA COLLINS—Let's put that reference aside for a moment and go back to the numbers, though.

Mr Killesteyn—Sorry, if I can retract that, it was a specific reference in relation to only one of the boats. I think we have already made the point of how the minutes were constructed of the end of the day.

Senator JACINTA COLLINS—But, leaving that issue aside, it is difficult to understand how these numbers were constructed to two boats.

Ms Siegmund—I will try again to clarify it. It is one of the frustrations we had at the time too, trying to keep track of numbers of boats where and when. It is a complex issue. As I mentioned to you, this is the report of the 18th. Our best reporting was that we thought the Abu Qussey vessel, at that time, was going to be carrying up to 250 passengers—so that is one going to Christmas Island. Another vessel that we also felt was going to Christmas Island within that same time period—in fact, a week—was from a different organiser, and we had had reports of

between 400 to 500 PAX. We did not know exactly how many we were going to get onboard the vessel; we never do. We can only go on the reports that get given to us. Sometimes they are roughly accurate; sometimes they are way off, because you never quite know, at the time that they are boarding the vessel, how many will get on and how many will not.

I have to say that I am trying to guess something that I was not privy to, but I am assuming there are two boats from our intel reports—yes, we have two boats heading to Christmas Island. There is a third organiser, as I mentioned to you, who also uses Christmas Island, but we had no firm timeline on that person. Between the two, one with 250 and one with 430 to 500 is possibly where they got the 600-plus from. But, again, I am trying to look at what I have got in front of me and make an assumption of what might have been in their mind. I can only assume from what I have got written here.

Senator JACINTA COLLINS—What was the size of that second boat? Is that SIEV6 that you are talking about there?

Ms Siegmund—I do not know. I would have to take that on notice, and I do not have anything here about the size of the vessel.

Senator JACINTA COLLINS—But you would be able to trace back through intelligence and ascertain that.

Ms Siegmund—Yes, certainly.

Senator JACINTA COLLINS—The next point is:

- No confirmed sightings by Coastwatch.

Why would Coastwatch be surveying that area? We understand that that zone had been vacated by Coastwatch and that it was now Defence.

Mr Killesteyn—I cannot offer any comment on that.

Ms Siegmund—No, I am not sure of the zones. Certainly Coastwatch was still undertaking surveillance operations, but I think we would have to try and take advice on where the Defence and Coastwatch zones intersected.

Senator JACINTA COLLINS—Coastwatch has clearly told us that Christmas Island was not their zone at this period in time. This is one of the reasons why as part of the Defence document there are Orion PC3 surveillance maps. They are not Coastwatch maps

Ms Siegmund—Yes.

Mr Killesteyn—That may go to the construction of the minutes.

Ms Siegmund—Perhaps it means full stop, as opposed to near Christmas Island. I do not know. They certainly were still doing surveillance, as you have stated. Perhaps it meant—

Senator JACINTA COLLINS—Yes, but I think that they had moved over to the Torres Strait. I stand to be corrected on this but I do not think they were even doing Ashmore.

Ms Siegmund—I do not know. Without referencing or going back to them, I do not know what their flight patterns were on that date—or for that period, I should say.

Senator JACINTA COLLINS—Let us move on to the 19th, then—any of the information that you had available on the 19th. We still have a report in this Defence document that the SIEVX is a possible arrival, as it was reported to have departed. Was that based on any new intelligence or is that still the same information available from the 18th or 17th—or indeed the 16th if you read the footnote on this document?

Ms Siegmund—On the 19th, in terms of the Qussey vessel, we again report that we felt it was up to 250 passengers. There had been reports that it had possibly departed from a particular area in Indonesia which made it, I think, the sixth or the seventh locality we had mapped out where—

Senator JACINTA COLLINS—So it was not the same locality as the earlier report that you were relying on on the 18th?

Ms Siegmund—On the 18th I do not think we had it departing from a particular locality. But this location in Indonesia has been mentioned before. It is an area that we know boats have left from in the past. I am trying to be careful about how much detail I go into and obviously we will look at the issue of trying to provide you with this separately. To try and answer your comment as best I can now, certainly on the 19th we were still working on that 250 figure in terms of numbers of passengers and a possible probable departure from a place in Indonesia. We can certainly provides you with a map as well later, if you like.

Senator JACINTA COLLINS—A possible probable?

Ms Siegmund—It is the terminology we have to use because it is not an exact science.

Senator JACINTA COLLINS—I understand that but for some reason or another you have a level of intelligence which—

Ms Siegmund—Let me read out the exact words.

Senator JACINTA COLLINS—leans you more to the probable rather than a possible. Is that it? I understand there are levels of certainty in this but I am just trying to understand what yours was.

Ms Siegmund—I am sorry?

Senator JACINTA COLLINS—I am saying I understand that there are levels of certainty in this but I am trying to understand what the assessment was at that point in time.

Ms Siegmund—The terminology used was, ‘Abu Qussey’s boat carrying up to 250 passengers that reportedly departed from probably’—and then it gives the town; the location—‘on Tuesday night has not yet been sighted.’

Senator JACINTA COLLINS—Not yet been sighted by who?

Ms Siegmund—Anyone, full stop. Well, either that somebody has reported it within the Indonesian archipelago—or Defence or Coastwatch; anybody.

Senator JACINTA COLLINS—Okay.

Ms Siegmund—Often if vessels were reportedly departing and then suddenly you did not hear from them, sometimes it was because they—depending on the weather, sometimes the Indonesian authorities got reports from Indonesian nationals who had sighted them within the archipelago because they had taken into an island to take cover.

Senator JACINTA COLLINS—That reported departure from that location, was the source of that data separate to the source of the data the day before?

Ms Siegmund—I would have to come back to you on that, I think.

Senator JACINTA COLLINS—I am trying to understand what the level of corroboration of the departure was.

Ms Siegmund—It was the same source.

Senator JACINTA COLLINS—The only new thing—and correct me if I am wrong—is that it is actually nominating a probable departure location?

Ms Siegmund—No. That was also listed on the 18th—the same place.

Senator JACINTA COLLINS—When did you receive that source of data?

Ms Siegmund—Not on the 17th, but on the 18th and 19th as being a likely departure point.

Senator JACINTA COLLINS—You received this intelligence on the 18th and you resighted it again on the 19th?

Ms Siegmund—Yes. But just to clarify, that particular location within Indonesia had been mentioned before, as had others.

Senator JACINTA COLLINS—As a possible departure place?

Ms Siegmund—Yes.

Senator JACINTA COLLINS—Did you have any other sources in relation to SIEVX at this stage?

Ms Siegmund—With relation to where it had departed from?

Senator JACINTA COLLINS—Yes, in relation to the fact that it had departed and where it might have departed from. Did you have any other sources on the 18th or 19th to that effect?

Ms Siegmund—Just to clarify, are you asking if it is single sourced or multiple sourced information?

Senator JACINTA COLLINS—Yes. In fact, go back to the 17th in relation to that question.

Mr Killesteyn—I do not know whether it helps, but each DIN is not necessarily issued with absolutely brand new information. It essentially builds up over time, so we could be repeating ourselves.

Senator JACINTA COLLINS—I understand that. That is why I am asking whether it was the same source that was referred to on the 18th and 19th.

Ms Siegmund—Yes, it was.

Senator JACINTA COLLINS—We have had that answered. What I am trying to ask is: from the 17th onwards, how many sources of information did you have?

Ms Siegmund—I would have to take that on notice.

Senator JACINTA COLLINS—If you take that on notice, we also need to know what the consistency between those sources was. If you come back to me and say, ‘Yes, we had multisource data,’ the next obvious question is: how consistent was it? Was it corroborating the other sources, or was it contradictory?

Ms Siegmund—In general terms, you either get single or you get multisource—obviously. But we would expect multisource information to corroborate. If there was a difference, we would probably report it as such—that one source said this and another source said that—because that is also part of our assessment process that we need to go through with the intelligence.

Senator JACINTA COLLINS—If that is the case, it surprises me that in relation to SIEVX you are not now able to say to me that before it sank you only had single source information or multisource information, because the critical issue there is the level of corroboration before it sank.

Ms Siegmund—Certainly. You are quite right. There are two issues. One is that I would need to go back and double-check the sources on here to definitively say to you that the source I have in front of me is either single or multisource. Secondly, we have been very careful about the language we have used in these reports, as you will probably see when you get them—probably; I am using the terminology—because we were not convinced that we had a definitive number of passengers and/or point of departure. We were very careful about how we worded that, because we did not want to give the impression that what we were putting out in these intelligence notices was fact—that it was a definite. It was very important, given that these notices went out

to a very wide range of agencies. So we were very careful about how we worded it. But what you then get is something that says ‘probably’ and ‘possibly’. We have to use that kind of terminology.

Senator JACINTA COLLINS—Let us move on to the next day—the day when you did not receive the AFP intelligence. Did you receive any additional intelligence that day?

Ms Siegmund—No. The order of the DINs goes the 19th, the 22nd, the 23rd, the 24th—

Senator JACINTA COLLINS—Is that usual? Is that a weekend thing?

Ms Siegmund—The DIN would have been produced on the Monday in a written form, but it is not unusual for us to be contacted either at night, after business hours, or weekends.

Senator JACINTA COLLINS—But what I mean is, for the reports to go out, is it usual that there would not be a report over the weekend period and the Monday report would catch up on whatever intelligence had come through?

Ms Siegmund—Yes, that is usual.

Senator JACINTA COLLINS—What day of the week was the 20th?

Ms Siegmund—Saturday.

Senator JACINTA COLLINS—If it was not unusual for you to receive phone calls and such like over the weekend, did any such calls occur?

Ms Siegmund—No.

Senator JACINTA COLLINS—So then the information that you put out on the 22nd that ending up being incorrect, as you have said—

Ms Siegmund—Incomplete.

Senator JACINTA COLLINS—Sorry—incomplete. Was there anything new to the intelligence you put out on the 19th?

Ms Siegmund—On the Monday report we were still reporting that it had not been sighted, but the change was that we now had information that the vessel was possibly carrying up to 400 passengers. So that is a change.

Senator JACINTA COLLINS—If it did not come from the AFP report, where did that information come from?

Ms Siegmund—I am afraid I cannot provide that information for you.

Senator JACINTA COLLINS—Is that because you do not have it or because there is a classification problem?

Ms Siegmund—There is a classification problem.

Mr Killesteyn—We really do need to go through a declassification exercise.

Senator JACINTA COLLINS—I am happy for you to say these things in relation to particular areas.

Ms Siegmund—That might solve the problem though, too. If we go through the classification problem that might answer your question.

Senator JACINTA COLLINS—I may also be able to reframe the question which satisfies the issue that I am exploring without it being problematic. Can you say to me that it was different to the AFP reported data?

Ms Siegmund—No, I cannot say that.

Senator JACINTA COLLINS—Again, the same issue of classification?

Ms Siegmund—Yes.

Senator JACINTA COLLINS—Was that the only change?

Ms Siegmund—With regard to the Abu Qussey vessel, yes, we were still maintaining the same intelligence in the area from where we thought it had departed.

Senator JACINTA COLLINS—Did the information that you got before the report on the 22nd actually corroborate the departure?

Ms Siegmund—No. We were still making an assessment that we believed it was that same town or area from where the vessel—

Senator JACINTA COLLINS—So the new information that told you there were 400 passengers did not corroborate the departure.

Ms Siegmund—No.

Senator JACINTA COLLINS—Did you usually receive things such as the NORCOM intelligence summaries?

Ms Siegmund—Yes, we have occasionally received NORCOM intelligence reports.

Senator JACINTA COLLINS—Did you receive the one from 20 October? It stated that:

NORCUM INTSUM assesses there is a high probability of the vessel arriving vic Christmas Island from 21 Oct 01, and that due to its overcrowding and need to maintain stability it may be limited to a slow passage, and therefore a later time of arrival could be expected.

Ms Siegmund—I would have to take that on notice. I do not have that information in front of me.

Senator JACINTA COLLINS—It would be of concern to your unit though, if the information arrived on the 20th, anticipating an arrival at Christmas Island on the 21st, and you had not been contacted over the weekend. You would be concerned about your internal administration, wouldn't you?

Ms Siegmund—Yes, certainly it would be of concern. As I mentioned to you though, in terms of either after hours or weekends, the procedure would normally be for agencies—whether it is Coastwatch, NORCOM or whomever—to contact us by telephone rather than rely on a report, for example, that is sent—

Senator JACINTA COLLINS—On a fax?

Ms Siegmund—Yes, on a secure fax or by some other means, because they would know, obviously, that we were not there.

Senator JACINTA COLLINS—Are you suggesting to me that, if NORCOM reached an assessment that there is a 'high probability' of an arrival on the 21st, you should have received a call on the 20th?

Ms Siegmund—I would have expected to, yes.

Senator JACINTA COLLINS—Was there any follow-through on why that did not occur when you discovered after the 22nd that you had not been called?

Ms Siegmund—Do you mean us following up with NORCOM why they did not telephone us?

Senator JACINTA COLLINS—NORCOM, Coastwatch or whomever you felt was responsible for the lack of communication.

Ms Siegmund—I will have to take that on notice and provide you with some detail. I think I made the point earlier, and forgive me if I am repeating myself, that we certainly rely on other agencies. We are in that position of having to rely on people feeding us information. One of the issues is where there are operational considerations, as I mentioned. If an agency decides that the information is to do with an operational issue, we might be third or fourth on the list for them to telephone. Having said that, we have always taken—I certainly have and I am aware that Mr Killesteyn and my staff have, too—every opportunity in every forum to continue to remind agencies that it is our role to collate and pull together all of the intelligence to do with illegal immigration and people-smuggling. It is our expectation that we would be provided with intelligence in as timely and accurate a fashion as possible. If events are unfolding in a certain operational context, obviously we understand that there is a need, for example, to ring the

operational agencies before they ring us. But we still have the expectation that we will be part of that information loop.

Senator JACINTA COLLINS—I assume, for instance, if this sort of information is being dealt with by the People Smuggling Task Force, where you are represented, your own people would be particularly conscious of that and the internal communication would occur.

Ms Siegmund—Yes.

Senator JACINTA COLLINS—So then the question goes to whether on the 20th or the 21st that information was raised at the People Smuggling Task Force. If we go to the minutes on the relevant days, Mr Killesteyn was there on the 20th and Bill Farmer and Christine Sykes were there on the 21st. The 21st was the day when one of the issues raised was to check whether ‘Defence P3 is maintaining surveillance over Christmas Island’. Mr Killesteyn, can you fill us in on why that issue was raised?

Mr Killesteyn—Frankly, I cannot recall the discussions of the task force on those particular days. The point I would make in relation to the information that was not passed on on the 20th is that we have a clear focus, from the intelligence group, on building information around any impending departure, in particular. A lot of that information, as we said before, is then used in activities to try to prevent the departure or to frustrate it from happening in the first place. When you get to a situation in an operational environment, with Coastwatch and Navy patrolling particular areas, it then becomes a matter of trying to surveil and intercept the particular vessel.

I suspect that the particular piece of intelligence we are referring to—from AFP to Coastwatch on Saturday 20—was around the process of interception as distinct from making sure that there was an opportunity to build it into a report. It was very much a focus on interception, and then dealing with the vessel and its passengers at that point. I cannot recall whether it was communicated at the People Smuggling Task Force. I would be surprised if it was not because of the level of representation that we had from the various agencies, but I have no specific recollection of that piece of information.

Senator JACINTA COLLINS—If we go back to 20 October, which was the meeting you were present at, under the heading ‘Further arrivals’ we have:

Second boat expected at Christmas tomorrow. If arrives, assessment to be made whether possible to return larger vessel.

Do you know which was the larger vessel? Were they talking about SIEVX as being larger than SIEV6 at that stage?

Mr Killesteyn—I cannot recall, specifically. It is probably a bit obvious that the minutes are a bit cryptic.

Senator JACINTA COLLINS—Yes, which is why we are sitting here asking questions.

Mr Killesteyn—Exactly.

Senator JACINTA COLLINS—It then goes on to say, ‘*Arunta* to relieve possible overcrowding.’ My question there is whether that relates to the AFP report about how overcrowded SIEVX was.

Mr Killesteyn—We are just speculating on whether that meant overcrowding of the SIEV or whether it meant overcrowding on *Arunta*, because the naval vessels were being used to ferry passengers off vessels to Christmas Island. Again, I cannot shed any real light on that.

Senator JACINTA COLLINS—At that stage, according to the minutes, we had SIEV6 moored at Smith Point, with 222 people plus crew—so they were still on SIEV6. I understand in part what you say about DIMIA’s role, with intelligence being more focused on departures and avoiding departures. But equally, there was the DIMIA role in terms of dealing with asylum seekers once they arrived at Christmas Island. I assume that Ms Siegmund’s intelligence was relevant to that process as well.

The minutes on that day in relation to SIEV6 point out that the 222 people plus the five crew were still moored on SIEV6 at Smith Point and that ministers are maintaining the public line that the government is still considering the handling of SIEV6. When you go down to the heading ‘Further arrivals’, it talks about a ‘second boat expected at Christmas tomorrow’—which is the 21st—and that is consistent with the NORCOM assessment. It then says, ‘If arrives, assessment to be made whether possible to return larger vessel.’ I do not know off the top of my head at the moment which was the larger or indeed what this assessment regards as the larger—the vessel itself or the number of people on it.

Ms Siegmund—I am trying to look at the DINs that we produced and what you are relaying to me in the minutes. I am trying to see how they made a connection.

Senator JACINTA COLLINS—The problem in part is that your DINs have not accommodated the information that was also discussed at the People Smuggling Task Force that SIEVX was anticipated as arriving on the 21st.

Ms Siegmund—In terms of those exact dates you are quite right.

Senator JACINTA COLLINS—And, if you go back to the NORCOM assessment, at a high level of probability.

Ms Siegmund—I do not know what they are basing that high level of probability on either.

Senator JACINTA COLLINS—It appears from other evidence we have had that it is based on the AFP report that you did not receive. The point that I am making is that it appears as though that AFP report was discussed at the People Smuggling Task Force on the 20th, by the status of information here, where DIMIA was represented as well—in fact, I think, well represented on that day by Bill Farmer, Ed Killesteyn and Vince McMahon—but still that information did not get to your own intelligence. You did not get a call from your own people.

Mr Killesteyn—It may or may not have, Senator. I do not think we can take the minutes as absolutely verbatim as to what information was or was not provided, at least in terms of

information that may not have been provided to our intelligence area. But the fact is that on the—

Senator JACINTA COLLINS—‘Second boat expected at Christmas tomorrow.’ Obviously a report was made, probably consistent with what NORCOM had put in their report, that they were anticipating would arrive on the 21st, and that information was not relayed to the DIMIA intelligence unit, a fact confirmed by your own indication of what was in your report on the 22nd.

Ms Siegmund—Senator, I have not relayed to you the full contents of the DINs. I am constricted in doing so because of classification issues and I apologise—that is an issue. I have taken on notice, though, whether I can, because I think it is important to try and do that. NORCOM received our reports. The way the DINs are set up—and we have provided some of these to you before—is that there is a summary section, we go through the current situation, then we do an assessment. The assessment we made on the 19th was that we anticipated that one of the vessels that we are talking about—it is not the Qussey vessel; it is the other one—would arrive off Christmas Island by the weekend. I do not know whether that statement has then translated into the 20th or 21st, because they are obviously the dates of the weekend, or whether that is where it has come from, but Defence obviously got our reports. They got this one on the 19th.

Senator JACINTA COLLINS—That is SIEV6 that you are referring to, isn’t it?

Ms Siegmund—I do not know whether SIEV6 is this one. I have the name of the organiser for this one but I do not have it written as SIEV6, because that is not how we reported our intelligence at the time. We went on the basis of who the organisers were.

Senator JACINTA COLLINS—Did you have the name of the ship: the *KM Mulya Jaya*?

Ms Siegmund—No, as that was prior to its arrival.

Senator JACINTA COLLINS—Okay.

Ms Siegmund—But I can find that out. As you said earlier, we can backtrack it. My difficulty is in not being able to go through this in graphic detail with you to see how it then possibly relates. As I said to you before, the members of the People Smuggling Task Force had all of these reports in front of them, and that is what you do not have in front of you.

Senator JACINTA COLLINS—No. And, again, that is why I am finding it problematic that the AFP report of the 20th had not been encompassed in your reporting until after the 22nd. That is what I am still finding problematic because, at the same time, as you said, you have even DIMIA officials attending the People Smuggling Task Force with your own reports in front of them with this gap of information in the DIMIA reports.

Ms Siegmund—To ascertain how much of a gap it is I would need to look at the minutes and then compare them to my two or three complete DINs to try and answer that.

Senator JACINTA COLLINS—Put it this way: you will be providing us with a declassified version. You may want to reconsider these questions when that information is available to us, and respond to anything that you think is outstanding with respect to this conversation. I suppose I should ask you the questions that way. It gives you the opportunity then to deal with them in the light of what facts we will later have before us.

Ms Siegmund—I understand.

Senator JACINTA COLLINS—Mr Killesteyn and Mr McMahon, you were both present on the 22nd, so I will ask you both this question. Can you explain to me the reference in the minutes—to the extent that you understand it—to the ship as being ‘SIEV8’ and the comments:

Not spotted yet, missing, grossly overloaded, no jetsam spotted, no reports from relatives.

Mr Killesteyn—I can probably explain very little more than what is in the minutes.

Senator JACINTA COLLINS—Mr Killesteyn, what was your understanding of the attribution of a number to a SIEV?

Mr Killesteyn—It was essentially a sequential allocation as the SIEVs arrived.

Senator JACINTA COLLINS—Done by whom?

Mr Killesteyn—It is done within the unauthorised arrivals section of DIMIA. As I say, it is essentially a sequential ordering.

Senator JACINTA COLLINS—But it is done within DIMIA, from your perspective?

Mr Killesteyn—That is right.

Senator JACINTA COLLINS—Defence tell us it is done within Defence—that they are the ones who number these ships as they intercept them.

Ms Siegmund—Sorry, that was my error. We previously gave boats codenames. They were named after towns in Victoria or Western Australia. The SIEV numbering—1, 2, 3, 4—was actually done by Defence, you are quite correct.

Senator JACINTA COLLINS—At what stage do they number a SIEV?

Mr Killesteyn—We can only speculate, but I think the obvious answer would be that it is upon the boat actually arriving.

Ms Siegmund—And also upon determining that it is in fact a SIEV. We have had sightings of vessels that have turned out to be inter-island ferries or fishing vessels. I would imagine that that would be the other issue.

Senator JACINTA COLLINS—The earlier evidence we received in terms of SIEVX was essentially that we really did not know anything about it until after we were told that it had sunk. That information did not arrive until the 23rd, and yet, in these minutes, we have a report about this SIEV—which it has been accepted was SIEVX:

Not spotted yet, missing, grossly overloaded, no jetsam spotted, no reports from relatives.

It leaves this committee with some very serious questions about what precisely the discussions were that occurred at the task force in relation to SIEVX. I am going to ask both of you to give the committee your recollections of how SIEVX was discussed at the task force between the first reference—which I think was on the 18th—and this reference, very clearly marked in the minutes in relation to SIEVX, before we knew that it had sunk.

Mr McMahon—I will talk from my recollection of it. This was like one of many boats which had come. Within the task force, we were quite used to receiving a report that a boat had left and then receiving a report that it had not left. I had a particular interest in the numbers coming, because I was looking after the infrastructure side, and I read those now as saying that there was a report, but nothing happened following that report. In other words, there was no information saying that it had left, nothing had been sighted—no flotsam had been sighted—and it was missing. We could have expected, the next day, to find that it had returned to port or that it had not actually left. The state of the intelligence at that stage was such that you would often get quite conflicting information, and in that discussion, as I recall, it simply said that we had no more information on the boat. There are different things you can look for to verify whether or not a boat is on the way, but none of those particular leads had given fruit.

Senator JACINTA COLLINS—We have two corroborations of the departure on the 22nd. This is without even taking into account what other information DIMIA might have elsewhere on the public record that we are not aware of.

Mr McMahon—With a departure, as has happened, we often find that they have returned to port or they have stopped a couple of hundred metres up the road. Certainly, from my perspective—and this was not my focus within the task force—it simply meant that we had no confirmation of where the boat might be.

Senator JACINTA COLLINS—I appreciate the perspective and the focus you had in your role, but the concern at least I have, and possibly, more broadly, the committee has, is whose focus was the safety of life at sea issue. We have an AFP report from the 20th, saying the boat was ‘grossly overloaded’ and that there were concerns for safety, but apart from references such as this in the minutes, we do not seem to see any safety of life at sea response to that report. Is one of the problems that nobody had that clear responsibility or focus?

Mr Killesteyn—The focus of the People Smuggling Task Force was managing the surge in unauthorised arrivals. Information was being provided about the likely time of arrivals, there were naval assets and Coastwatch assets in the vicinity and, to the extent that safety of life at sea issues arose at that time, I imagine they would have been fulfilled. Here we had imprecise information about potential boats, and I guess it is a question of on what basis do you then go and look for a possible boat—when you do not even know where it is—to execute some possible safety of life at sea issue.

Senator JACINTA COLLINS—There does seem to be some confusion. Again, whilst this was not your particular focus, it is obvious that this issue was at least discussed by the task force so I am discussing it with you now on that basis. But there is a difference between Defence maintaining some sort of regular surveillance pattern in relation to surveillance of potential arrivals and their actually responding to a safety alert of a grossly overloaded ship, and we seem to be getting to some conflicting information here. We have information, on one side, saying that a large search for this vessel was occurring and then, on the other side, we have Defence saying to us: ‘No, it was just regular surveillance occurring’. From the discussions at the task force, what was your understanding as to what was occurring? Was there a search for this vessel or not?

Mr Killesteyn—As I said, there was a surveillance pattern in place, there was information, albeit imprecise, about the vessel potentially arriving, and the naval assets and Coastwatch were looking for the boat.

Senator JACINTA COLLINS—So this reference on 21 October ‘Check Defence P3 is maintaining surveillance’ has no meaning? You just told me you understood surveillance was occurring.

Mr Killesteyn—Sorry, where are you referring to now?

Senator JACINTA COLLINS—The last dot point on the minutes of 21 October: ‘Check Defence P3 is maintaining surveillance’. Whoever compiled these notes was obviously responding to some discussion or some question as to whether that surveillance was occurring.

Mr Killesteyn—That may be the case, Senator. It was surveillance over Christmas Island that was obviously the major area or pattern of the search and surveillance was in place at the time.

Ms Siegmund—I think there were several boats on the horizon near Christmas Island at that time.

Senator JACINTA COLLINS—Mr Killesteyn, correct me if I am wrong, but I just want to be sure I understand what you are saying. You were not aware that Defence was indicating that they were actively searching for this vessel?

Mr Killesteyn—What I am saying is that the whole of Operation Relex with the combined assets of Coastwatch and Navy was based on the surveillance of the normal areas in which the vessels arrive both at Ashmore and Christmas Island. That is what I am saying. That presumes that they are searching for vessels.

Senator JACINTA COLLINS—In their normal surveillance patterns?

Mr Killesteyn—In whatever pattern was being employed at the time. That is beyond my expertise, Senator.

Senator JACINTA COLLINS—That may be beyond your expertise but again I am asking you this question in terms of being someone who participated in a number of discussions about these issues and that response just does not seem to sit with the response, for instance, of the

dialogue between AusSAR and Defence over what was happening with this vessel. You have this dialogue, for instance: ‘Defence contacting AusSAR to say, “Just got your fax—what is your source?”’ and AusSAR then saying ‘Coastwatch’. Defence says, ‘We already have a large search for this vessel for surveillance matters.’ That language does not sit with a description that we would assume that we would pick this ship up under our normal surveillance.

Mr Killesteyn—All I am suggesting is that in terms of specific activities of surveillance and pattern and so forth those were not matters that were discussed in any, again, chapter and verse in the People Smuggling Task Force.

Senator JACINTA COLLINS—Okay, but there was a question of whether it was occurring over Christmas Island on 21 October?

Mr Killesteyn—In relation to one P3, that would appear to be correct.

Senator JACINTA COLLINS—But you have no knowledge of that?

Mr Killesteyn—I have no recollection of it.

Senator JACINTA COLLINS—Let us look at 22 October. This is not actually in the minutes but it is from our evidence from Katrina Edwards. Do you recall a discussion about issuing a safety alert?

Mr Killesteyn—I am sorry, I don’t.

Senator JACINTA COLLINS—Were you present, Mr McMahon, on that day?

Mr McMahon—I was and I do not recall it.

Senator JACINTA COLLINS—You don’t recall that either? Do you recall in relation to any of these SIEVs, many of which as has been recognised were unstable in terms of their seaworthiness, discussions about safety of life at sea issues at the People Smuggling Task Force?

Mr Killesteyn—Actually I do not recall any such discussions.

Mr McMahon—There were a number of discussions or references to the responsibilities associated with safety of life at sea. I am not sure whether that leaps to the next bit about going to look for them or whatever. Essentially, on a number of occasions, in discussion, when we were talking about what would be done in respect of particular boats, there was a clear spelling out by Defence of their responsibilities associated with safety of life at sea. I am not sure whether that goes to the point of your question.

Senator JACINTA COLLINS—I am sorry, but could you please repeat the last bit. It is getting late; I did not pick up the last part of your point.

Mr McMahon—What I am saying is that, if people are in the water, there would be automatic responses or whatever from the Department of Defence. I think you are asking a wider question as to whether, if they were looking at point X and there was a possible safety of life at sea issue at point Y, that would completely change your configuration to look at that possibility? I do not recall that sort of discussion taking place.

Senator JACINTA COLLINS—As you said a moment ago, you do not recall any discussion about whether a safety alert should be made?

Mr McMahon—No, I do not.

Mr Killesteyn—In relation to SIEVX?

Senator JACINTA COLLINS—Yes.

Mr Killesteyn—No. As I suggested in my earlier evidence, we had had a significant arrival of a number of boats. All of them arrived safely, I guess, with the exception of this one. The advice in relation to SIEVX was never precise to the extent that it was overcrowded.

Senator JACINTA COLLINS—Certainly from your point of view, because you did not get the AFP report.

Mr Killesteyn—That only arrived after the event. The information about overcrowding arrived after it actually sank.

Senator JACINTA COLLINS—The AFP report about the overcrowding arrived when these people were still in the water, and possibly some of them died in the time before they were picked up by Indonesian fishing vessels. We have yet to get to the bottom of why it took the time it did for intelligence that is clearly from the departure on the 18th to reach us on the 20th. That is an issue aside from this. But the next point, too, is that that information arrived on the 20th when these people were still in the water and there was limited response to it. And from your department's point of view, you did not even get that information in your own intelligence unit until after the 22nd. There are some very serious communication issues here.

Senator FAULKNER—Mr Killesteyn, could you explain to the committee the request that the secretary put out in relation to inappropriate public comment from departmental officers that might compromise the conduct of DIMIA work. What is the background to that?

Mr Killesteyn—My apologies; I missed your question.

Mr McMahon—What date is that, Senator?

Senator FAULKNER—I was interested in the instruction to all staff, both in Australia and overseas, that Mr Farmer put out on 20 June this year. Are you aware of that?

Mr Killesteyn—I do not have a copy. I would prefer to see a copy before I comment.

Senator FAULKNER—Did Mr Farmer put out a statement to all staff beginning with these words:

Subject: All Staff

You will have noted the increased public interest, particularly in the media, in some business activities of the portfolio in recent times.

It goes on:

One feature of this interest has been the protests held outside DIMIA offices around Australia. These demonstrations have caused inconvenience to some employees and I take this opportunity to thank you all for the professionalism you have displayed in dealing with these interruptions.

Do you know the note I am referring to?

Mr Killesteyn—Yes, I do now.

Senator FAULKNER—Yes. Then it says:

The increased public scrutiny of our activities provides a timely reminder of our obligations as DIMIA employees.

It then goes on:

In order to maintain this record—

this is the good record—

we all need to be aware that there may be occasions when a perception of a conflict of interest may arise. This may occur where your personal affairs have an impact, or may be seen to have an impact, on your work. Inappropriate public comment, for instance, may be seen as a conflict of interest and may create a range of problems including compromising the conduct of DIMIA work.

And it outlines what ‘inappropriate public comment’ is. One of them is:

... personal criticism of employees or clients of DIMIA, the Minister or the Minister’s office.

Can someone tell me what the background to this is?

Mr Killesteyn—Firstly, that is a general minute which tries to deal with the whole question of ethics and integrity in the public sector. But what, from my recollection, prompted the note to staff were one or two incidents. One where, I think, one of our employees was seen as part of a group of demonstrators outside one of the buildings—I have forgotten whether it was Melbourne or not—and the implication of that incident was that the person was participating in the demonstration. That was investigated and, as I understand it, the person was simply observing what was going on rather than necessarily participating.

Senator FAULKNER—But how does such a minute affect those who are giving evidence before parliamentary committees like this?

Mr Killesteyn—I hope it would not affect them at all. I do not think it would. Indeed, why would it?

Senator FAULKNER—It is unethical to bag the minister, is it?

Mr Killesteyn—No, I am not suggesting that. But you are suggesting that that is an invitation not to provide honest and open advice to a committee such as this. I do not see anything in that document—

Senator FAULKNER—No, I am asking if it is. I am not suggesting anything. I rarely make suggestions, Mr Killesteyn; I merely ask questions.

Mr Killesteyn—I am saying there is nothing in that document which would prevent a person from providing open and honest advice to a committee such as this.

Senator FAULKNER—I see. And that is what:

... personal criticism of employees or clients of DIMIA, the Minister or the Minister's office ...

means? It is not a shot across the bows?

Mr Killesteyn—No, it is simply, as I said, that the background was a couple of incidents where innocent behaviour could be interpreted in a way which goes to the person's involvement in activities such as demonstrations.

Mr McMahon—Senator, I believe that that statement is consistent with the APS Code of Conduct. The general principle within the Public Service—

Senator FAULKNER—Why was there any need to put it out, then?

Mr McMahon—There is occasionally a need to remind people of their obligations—and we do code of conduct training quite regularly—because some people forget. The general principle within government, as I understand it, is that people are free to express their opinions, and they can do it in newspapers or wherever, but that there is a conflict of interest when you actually start expressing views in respect of the portfolio that you are working in, because it can imply that the way you go about your duties within the portfolio may be tainted. I believe that that is an accepted APS principle reflected in the code of conduct, which is a regulation for the Public Service.

Senator FAULKNER—What about honest and open advice that might be critical of a minister or his office?

Mr McMahon—In respect of a public forum, it is inappropriate. In respect of internal advice, the expectation is of frank and honest advice.

Senator FAULKNER—Is this public advice that you are providing here tonight? What should my expectation be?

Mr McMahon—The expectation here would be that we provide frank advice about questions of fact and that we leave matters of policy alone.

Senator FAULKNER—Sure. I do not think you have been asked questions about policy, have you? I do not think other officials who have come before the committee have. Most senators are pretty careful about those sorts of things and appreciate that they are matters for the political representative, the minister—although it is very difficult when ministers are so reluctant to front up to committees. But even so, even under such severe provocation, I do not think you would find too many senators asking those sorts of policy questions to witnesses.

Mr McMahon—I think the comment that Mr Killesteyn made earlier is that I would be astonished if the secretary, in writing that, believed that he was putting any boundaries around the sort of advice that we would give before a committee such as this.

Senator BRANDIS—You are not really giving advice, are you, Mr McMahon? We are not saying it is in relation to matters within your knowledge.

Senator FAULKNER—It is only a filler, Mr McMahon, while Senator Collins looks up what she is going to do. I am relieved at that. Anyone outside this committee who is interested in this extraordinary document is welcome to a copy.

Mr Killesteyn—We will certainly reject any assertion—

CHAIR—Was there a rash of criticism of the minister from inside the department?

Mr Killesteyn—No, Senator.

CHAIR—Then why was it necessary to put out a statement saying that it is not on?

Mr Killesteyn—It is a timely reminder to staff who might put themselves in that position—

Senator FAULKNER—To watch themselves.

Mr Killesteyn—inadvertently—

Senator FAULKNER—Come on! You are pulling our leg now.

Mr Killesteyn—I am giving you my assessment of the situation, and I reject any implication or assertion that that document has been issued to prevent people in any way from giving honest and open advice to the committee or whomever.

Senator JACINTA COLLINS—This is in part related to that question. I have not been able to find the place again in the minutes, so we might both need to deal with this, depending on where we go with the question. There is a report in the minutes that there was a leak from the task force and an AFP investigation. Are you aware of that, Mr Killesteyn?

Mr Killesteyn—Yes, I am. I recall reading it in the minutes just recently.

Senator JACINTA COLLINS—I, like you, at the moment and at this hour cannot find the precise reference, but was that related to this issue?

Mr Killesteyn—To SIEVX?

Senator JACINTA COLLINS—No; was the leak related to Senator Faulkner's issue and why that notice was sent out?

Mr Killesteyn—No, Senator. As I explained, there was the incident—I think it was a demonstration in relation to detention policy—where one of our officers was observed with the group. The implication of course was that he or she—I cannot recall even that, now—was participating in the demonstration.

Senator JACINTA COLLINS—Are you aware of any resolution of the AFP investigation?

Mr Killesteyn—I would have to take that on notice.

Senator JACINTA COLLINS—If it was someone from your own department you would be aware of it, wouldn't you?

Mr Killesteyn—We are very confident that those sorts of things do not happen in DIMIA.

Senator FAULKNER—Not confident enough not to put out a document—

Mr Killesteyn—There was no AFP report to our department in relation to that particular leak that implicated any DIMIA employee.

Senator JACINTA COLLINS—Also in these minutes—Ms Siegmund, you might be able to help us here—early on, on 13 September, there is a reference to the 'poison pill' boat. Do you know what that was?

Ms Siegmund—I am aware of the issue you are referring to, but I am unable to provide you with the details about that, because of the classification. If you wish, that would be another DIN that we could have a look at declassifying.

Senator JACINTA COLLINS—Okay. Was that an actual boat that was named the poison pill boat? Or can you not say that much either?

Ms Siegmund—No, it was not the name of a boat.

CHAIR—Was it a designation assigned to a boat.

Ms Siegmund—No.

CHAIR—Was it a colloquial way of referring to a boat?

Ms Siegmund—It was referring to a boat that contained that issue, rather than calling the boat that name.

Senator JACINTA COLLINS—‘Let me in or I’ll take a poison pill’—was that the threat?

Ms Siegmund—I would prefer to—

Senator JACINTA COLLINS—Declassify what you have.

Ms Siegmund—be able to hand you the DIN, to be honest. I will put it on that list in terms of those dates.

Senator JACINTA COLLINS—My final question is in relation to assessments that SIEVX had returned to Java. The only indication we have of such an assessment comes from the NORCOM intelligence summary of 22 October. It is not sourced and does not refer to any evidence. Are you aware of such an assessment?

Ms Siegmund—That SIEVX had returned to Java?

Senator JACINTA COLLINS—Is there any basis for it?

Ms Siegmund—On 22 October, in our reporting regarding SIEVX, as I mentioned to you, the change was to the number of passengers, and it was still the departure from the same place. I do not have anything in that report regarding a possible return. I am just looking at 23 October. No, I do not have anything about a possible return to Java on the 22nd. Senator Collins, in terms of the DINs that we would like to look at getting declassified and presenting to you, I have got 13 September and the 16th—through to which particular date?

Senator JACINTA COLLINS—As far as it is relevant. The 23rd was when CNN reported, but if your intelligence has been delayed by another day or so then I would like to see it.

Mr Killesteyn—In terms of Senator Collins’s questions around SIEV8, I appreciate that tracking the numbers with particular vessels is proving problematic, and I am probably just going to add to that, but there is a reference in the minutes of 29 October—

Senator JACINTA COLLINS—That is the SIEV8. They renamed another ship SIEV8. We have had that explanation, yes. The explanation we have been given is basically that whoever compiled these notes incorrectly attributed SIEVX to be SIEV8 because it had not actually been intercepted yet and the number 8 was actually attributed to a later ship carrying 33 Vietnamese.

Mr Killesteyn—That is right. I just wanted to clarify.

Senator JACINTA COLLINS—The reference in these minutes to SIEV8 on 22 October or thereabouts is actually SIEVX.

Mr Killesteyn—Yes.

Senator FAULKNER—Could you please take on notice to provide the committee with the informational material that was printed for distribution as part of the disruption activities in Indonesia. I expect this is not in English.

Ms Siegmund—I am sure we would have an English copy I could provide to you.

CHAIR—Would you like a T-shirt as well, Senator Faulkner?

Senator FAULKNER—I believe that the T-shirts were produced by Department of Foreign Affairs and Trade. Correct me if I am wrong. Hence it would be improper to place such a request on notice to this department.

CHAIR—Indeed! Thank you, Mr Killesteyn, Mr McMahon and Ms Siegmund for your forthright answers to questions. The committee is adjourned until a date to be fixed.

Committee adjourned at 11.01 p.m.