

[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

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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.**