



**Australian
CUSTOMS AND
BORDER PROTECTION**

OPENING STATEMENT

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AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE

Senate Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into the Breach of Indonesian Territorial Waters

Friday, 21 March 2014

As Chief Executive Officer of the Australian Customs and Border Protection Service, I exercise with GEN David Hurley, the Chief of Defence Force, authority over Border Protection Command (BPC), which is a joint command constituted by personnel and assets of my Service and the Australian Defence Force.

BPC undertakes all civil maritime security operations under Australian Government strategic direction, pursuant to applicable laws and regulations. This includes

relevantly operations under the direction of the Joint Agency Task Force, Operation Sovereign Borders, whose Commander is LTGEN Angus Campbell.

On behalf of CDF and myself, I am making this statement as the jointly accountable agency head and as the co-appointing authority for the Joint Review of Operation Sovereign Borders Vessel Positioning, which was undertaken by the Service and Defence, and to which I will turn shortly.

On Wednesday 15 January 2014, HQ BPC identified that Australian vessels operating under the control of BPC had sailed through Indonesian waters on several occasions. Over the subsequent 48 hours, relevant senior officials and Ministers were advised. Australian officials also briefed Indonesian officials. The Australian Government formally apologised to the Indonesian Government, through diplomatic channels and publicly. As the Committee would be aware, the Minister for Immigration and Border Protection, the Hon Scott Morrison MP, and LTGEN Campbell, announced in a press conference on 17 January 2014 that a Joint Review (mentioned above) would be conducted, under the authority of the CDF and me. Relevantly, control measures were implemented immediately to preclude any further breach of Indonesian waters. Ongoing monitoring of operational positioning to date

confirms that these measures have been effective and no further breaches have occurred.

The Joint Review commenced on 21 January 2014 and was conducted by two senior officers from Defence and my Service. CDF and I released a public version of the Review on 19 February 2014. It found that Australian vessels inadvertently entered Indonesian waters on six occasions between December 2013 and January 2014, contrary to Australian Government policy and operational instructions in relation to Operation Sovereign Borders.

On each occasion the incursion was inadvertent in that each incursion occurred from an incorrect calculation of the boundaries of Indonesian waters rather than as a deliberate action or navigational error.

The Review identified that there was a clear Government intention to achieve the relevant missions with a focus on safety and effectiveness, without compromising Indonesian sovereignty, and that there was nothing in the strategic guidance provided for the overall operation which required, implied, or suggested that a breach of Indonesian sovereignty would be acceptable.

I will not further describe in this opening statement the narrative of events, the findings or the recommendations of the Joint Review, save a number of matters with which I will deal before I conclude this statement.

Prior to release of the public version of the Joint Review, Indonesian authorities were briefed by Australian officials. Separately the CDF and I briefed the Hon Richard Marles MP, Shadow Minister for Immigration and Border Protection.

The classified version of the Review contains information regarding on-water activities and as a consequence, the CDF and I have decided it will not be released in full. Disclosures of information pertaining to certain operational activities could not only cause damage to national security and international relations, but would also prejudice the outcomes of current or future operations, and endanger the lives of our officers and others.

CDF and I do not believe in secrecy for secrecy's sake. We are also cognisant of the Minister for Immigration and Border Protection's relevant decision in relation to public interest immunity. The release of information relating to operational matters needs to balance the public's legitimate right to be aware of such matters with operational requirements. In this area, we know that people smugglers use knowledge of the

location and operating methods of our vessels to make ill-informed judgements about voyage planning, putting people's lives at risk. They also use information about operational procedures to instruct crew and passengers on how to disrupt lawful boardings by our officers. In some cases, this has led people to sabotage their own vessel, further increasing the risk to life.

Let me assure the Committee that the classified Review was very comprehensive. It involved a full analysis of all patrols conducted during the relevant period to identify those patrols that resulted in incursions into Indonesian waters by Australian vessels, as well as the causal factors. The Review examined:

- the sequence of events leading to the incidents including the planning of the patrols and the preparation of each vessel for these patrols;
- the operational orders, instructions, protocols and procedures observed by BPC assigned assets and involved agencies;
- the compliance of operations with procedural and legal requirements;
- the post incident response, including reporting and communications between relevant senior officials and Government agencies;

- the instructions issued which were designed to prevent subsequent occurrences of the same nature; and
- the briefing, training and pre-mission preparation of personnel involved in operations, including information regarding maritime borders.

The CDF and I have accepted the recommendations made by the Review, and I would like to update the Committee on progress in relation to implementation:

Recommendations 1 and 2 broadly relate to the consideration of potential lapses in professional conduct which contributed to the incidents.

Inquiries are underway in relation to the professional conduct of relevant personnel. To preserve the integrity of these inquiries, officials do not propose to comment further about the actions of individual officers at this stage.

Recommendation 3 relates to the amendment of Force Preparation training for vessels being assigned to Operation Sovereign Borders.

Both Defence and the Service's force preparation training regimes are under review. Interim measures have been implemented to address any gap in force preparation.

Revised force preparation training for crew and vessels assigned to BPC will be implemented by early May 2014.

Recommendation 4 dictates that a range of policies procedures and operational documents be reviewed as a result of the incursions.

All relevant operational documents have been reviewed by BPC and are being amended to include additional advice regarding the conduct of operations and to include internal control measures. All relevant charts and systems have been updated to include relevant operational information. All operational policy and planning documents are now explicit in their guidance in relation to the Indonesian maritime boundaries. A new procedure has been developed and implemented for approval and oversight of certain operational activity. Work pursuant to this recommendation is almost complete, with final completion due mid April 2014.

I would note that the actions taken by BPC, which relate to this recommendation, began as soon as the incursions were discovered, not as a consequence of the Review process.

Recommendation 5 dictates that Border Force Division within my Service review operational training provided to ACBPS Commanding Officers and Enforcement Commanders to ensure a tactical appreciation of the United Nations Convention on the Law of the Sea.

A comprehensive review of operational training has been initiated. Remedial training for Commanding Officers and Enforcement Commanders has been implemented as an interim measure. Permanent measures will be in place by end June 2014.

Both the Service and Defence acknowledged at the time, and continue to recognise, the seriousness of these incursions into Indonesian sovereign waters. That is why we sought to review the matter as a matter of urgency and put immediate measures in place to prevent a recurrence. The Joint Review was conducted in a way that issues of procedural and systemic causation could be immediately identified and dealt with. The issue of professional conduct was deliberately segregated from the Joint Review so that:

- operations could proceed without waiting for the conclusion of professional conduct inquiries; and

- professional conduct inquiries could proceed in accordance with agency specific regimes.

Consistent with the approach to public release of information for Operation Sovereign Borders previously set out by the Minister for Immigration and Border Protection and the Commander of the Joint Agency Task Force, I will be unable to discuss matters which disclose operational information relevant to ongoing Operation Sovereign Borders operations.

All I am able to say in this forum is that it is the policy of the Australian Government, as stated by the Minister, to protect Australia's sovereignty by preventing any vessel illegally entering our territorial and contiguous waters, and in these circumstances it is the policy and practice of the Government to intercept any such vessel and, where safe to do so, remove it outside our territorial waters and beyond our contiguous zone.

I would like to take the opportunity to thank BPC assigned personnel, who operate in a challenging environment and consistently demonstrate great courage, often at great risk to their own safety. I have previously had cause to refute allegations against our officers concerning alleged mistreatment of people attempting to enter Australia illegally by boat. The most recent allegations raised on the ABC-TV's 730

Report are no different. The claims are false, and inconsistent with the professionalism and practices of my Service or the Australian Defence Force.

Can I finish by re-stating on my behalf, and on behalf of CDF, we regret that these incursions occurred. We repeat today our earlier apologies to the Government and people of Indonesia. We are determined to ensure that such incursions do not occur again. We value our cooperative and productive partnerships with our counterpart Indonesian agencies, including the Indonesian armed forces, and Indonesia's customs and border protection agencies, and in this domain we look forward to many decades of close collaboration on matters of mutual defence and maritime security interest.

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