

Dr Margot Kerley
Secretary
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT

Dear Dr Kerley

INQUIRY INTO COASTWATCH

DIMA appreciates the opportunity to make a submission to the Committee's inquiry into Coastwatch (see attached).

The recent upsurge in unauthorised boat arrivals in Australia has significantly elevated the importance of DIMA's relationship with Coastwatch that is central to the Government's effective management of the unauthorised arrivals phenomenon.

I am optimistic that DIMA and Coastwatch will continue to work together constructively in addressing future challenges to the integrity of Australia's borders.

I wish the Committee well in its deliberations.

Yours sincerely

**W. J. Farmer
June 2000**

DIMA SUBMISSION TO JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT - INQUIRY INTO COASTWATCH

BACKGROUND

The framework within which the Government manages unauthorised boat arrivals has attracted considerable attention and scrutiny over the last 12 months due to the greatly increased volume of arrivals. The relationship between DIMA and Coastwatch is a major element of that framework. DIMA's core business includes the managed entry of people to Australia. DIMA must ensure that Australia's immigration border is an effective barrier in terms of the timely detection and management of unauthorised boat arrivals. In this context, DIMA is a major client of the services which Coastwatch provides.

2. On behalf of DIMA and other client agencies Coastwatch provides a coastal and offshore surveillance and response service. This includes the provision of airborne and seaborne patrols, the detection and identification of vessels of concern and general surveillance activities in respect to potential or actual unlawful activity in Australian coastal and offshore waters. As required by client agencies, Coastwatch coordinates the response to and the interception of detected vessels of interest.

3. The early detection and response to suspected illegal entrant vessels (SIEVS) is critical to the control of the Australia's border. There has been a significant increase in the number of unauthorised boat arrivals:

- in 1997-98 there were 13 vessels carrying 157 persons
- in 1998-99 there were 42 vessels carrying 923 persons
- in the 1999-00 financial year to the end of May there have been 72 unauthorised boat arrivals carrying 4042 persons.

The role and expectations of Coastwatch

4. Coastwatch controls and coordinates the civil surveillance and response program by determining the national direction of and focus for surveillance and response activities in accordance with priorities identified by client agencies. Regular meetings involving client agencies allow an opportunity for discussion of priorities and for the concerns of client agencies to be worked through.

5. Most clients provide Coastwatch with strategic taskings that are factored into the long term strategic surveillance flying and sailing programs. The Department has a small number of strategic taskings based on known areas of threat. The reality is that all flights and patrols are multitasked on behalf of all Coastwatch clients. DIMA's requirements of Coastwatch are largely tactical in response to information received about, or the detection of, suspected illegal entrant vessels (SIEVs).

6. DIMA's relationship with Coastwatch is primarily managed within DIMA's Border Control and Compliance Division. There are three major areas of interaction between DIMA and Coastwatch:

- the exchange of intelligence concerning possible and actual SIEV activity;

- the detection of SIEVS through strategic and tactical surveillance, and
- the operational response to a SIEV detection.

7. The gathering, analysis and distribution of intelligence relating to people smuggling is a whole of Government effort which involves a number of agencies including DIMA, Coastwatch, ACS, DFAT, ONA, Defence and AFP. These agencies work cooperatively to maximise the value of intelligence as a tool to combat people smuggling. DIMA's intelligence gathering and analysis capability includes:

- DIMA's offshore network of overseas immigration officers posted specifically for immigration compliance liaison and activity;
- Airline liaison officers in key airports;
- Intelligence Analysis Section in Border Protection Branch which coordinates the intelligence gathering and distribution process.

8. Coastwatch also maintains a specific intelligence gathering and analysis unit. There is good exchange of information between the intelligence units in both agencies and between intelligence and operational units.

9. DIMA intelligence and the broader intelligence product is critical to strategic and tactical tasking. Effective information flows are the precondition for a sound working relationship between DIMA and Coastwatch.

10. Once a SIEV has been detected, Coastwatch deploys assets in consultation with DIMA and other agencies (ACS, AQIS) to ensure that the incursion or potential incursion is managed in line with the legislative requirements. The Migration Act is a major focus of this activity. Within the ambit of the Migration Act, Coastwatch may deploy assets in respect of some or all of the following actions :

- chasing, boarding and searching of vessels:
- warning master, crew and passengers of consequences of unlawful entry into Australian territorial waters.,
- seizing of vessels;
- shadowing (air and seaborne surveillance) of vessels which have not yet entered Australian territorial waters;
- taking passengers who have entered Australian territorial waters without authority into immigration detention;
- (in circumstances where immigration detention provisions are engaged), transferring passengers and crew to the mainland for onward transfer to an Immigration and Refugee Processing Centre and, in the case of crew, for detention pending examination of grounds for prosecution;
- assessment and destruction of vessels.

Management of a SIEV arrival requires prompt and ongoing consultation with nominated DIMA personnel to ensure that the actions taken are consistent with the legislative framework.

The relationship of Coastwatch as "service provider" and its client agencies as service purchaser

11. The Department enjoys a productive working relationship with Coastwatch. The relationship is two way and not simply a provider/purchaser arrangement. DIMA provides information to Coastwatch to assist the agency in directing its resources and Coastwatch provides advance warning to DIMA of the impending arrival of suspect illegal entrant vessels.

12. DIMA and Coastwatch are currently negotiating a Service Level Agreement which sets out the roles and responsibilities of both agencies and establishes performance standards for evaluating Coastwatch as a service provider to DIMA. There are no major points of difference in respect of this document and DIMA expects that it will be signed in the near future.

13. There is an additional element in the service provider/client relationship flowing from the allocation to DIMA of funds for the provision and ongoing deployment of two Dash 8 aircraft and a night capable helicopter for deployment in the Torres Strait. This measure was a recommendation of the Prime Minister's Task Force on Coastal Surveillance which reported in June 1999. A framework for monitoring provision of the service and managing the transfer of funds has been incorporated in the Service Level Agreement between DIMA and Coastwatch. The first transfer of funds (\$5.49 million) covering the period October 1 999 to June 2000 has just been finalised.

The effectiveness of Coastwatch's allocation of resources to it's tasks

14. The dramatic increase in SIEV arrivals in the 1999-00 program year has substantially elevated the significance of unauthorised boat arrivals as a whole of government issue and has greatly increased demands on both Coastwatch and DIMA. While this has placed occasional strains on the availability of assets, DIMA is generally satisfied with the effectiveness of Coastwatch tasking and the level of consultation with DIMA in terms of implementing the relevant provisions of the Migration Act.

15. The Department considers that the allocation of additional resources by the Prime Minister's Task Force on Coastal Surveillance to enable surveillance in emergent areas of threat has reduced pressure on available resources for surveillance required by clients in the traditional threat areas in the north and north west of Australia.

New technologies

16. Coastwatch is conducting a business analysis that includes a review of business processes and consultation with users, including clients, to develop requirements for a proposed enhanced Coastwatch Command and Support System. The Department has been consulted as part of that process.

The Adequacy of Existing or Proposed legislation which Underpins Coastwatch's Functions

17. Coastwatch itself does not have legislation that underpins its functions. Instead, it is the clients' legislative framework that determines how Coastwatch is tasked. It is the clients' jurisdiction that provides where surveillance may be undertaken and what action may be taken against a detected vessel of interest.

18. The Prime Minister's Task Force on Coastal Surveillance recommended legislative changes that incorporated the United Nations Convention on the Law of the Sea powers of constructive presence and hot pursuit presence. These amendments have been enacted through the Border Protection Legislation Amendment Act 1999. This has extended the jurisdiction of the Migration Act and provided certain additional powers of coercion to chase, board and search suspect illegal entrant vessels. These powers are quite specific and limited.

19. The Department considers that the current domestic legislative framework, as enhanced by the Border Protection Legislation Amendment Act 1999 is adequate in terms of the capacity to manage SIEV arrivals in concert with Coastwatch and other relevant agencies.

Whether an Australian Coastguard should be created

20. DIMA is concerned to ensure that there are appropriate air and seaborne assets under an appropriate and responsive command structure to support DIMA in discharging its obligations under the Migration Act. DIMA notes that there has already been a very major surge in SIEV arrivals in 1999-00 and considers that this upsurge has been appropriately managed.

21. It is difficult or impossible to predict the nature and scope of future challenges to Australia's border integrity. DIMA's primary concern is that, whatever the nature of this challenge, an appropriate response capability is maintained.

OTHER ISSUES RAISED BY AUDIT REPORT 38

An improved tasking system

22. In relation to suspect illegal entrant vessels the tasking of Coastwatch and operational control is centralised in the Department. This is to ensure portfolio objectives are met. The benefits of centralised control include clear lines of communication and lawful decision-making. It also ensures that the Department's response is seamless over separate areas of responsibility of state/territory/regional offices.

Attributing Coastwatch funding

23. The ANAO has recommended revised attribution procedures with funding to be devolved to client agencies with Coastwatch providing services on a user pays basis. The ANAO has suggested a trial of funding attribution procedures be undertaken on the basis of the funds allocated to DIMA by the Prime Minister's Task Force on Coastal Surveillance to finance additional Coastwatch surveillance and response by the provision of two Dash 8 aircraft and a night capable helicopter for deployment in the Torres Strait.

24. All Coastwatch surveillance flights and patrols are multi-tasked. The Department expects that flights funded by DIMA (utilising the PMTF funds) will also be multi-tasked. Similarly there will also be instances when non Prime Minister's Task Force funded operations will meet DIMA tasking requirements.

25. The Department shares Australian Customs Service concerns at the additional administrative burdens of an attributed funding approach and possible loss of operational reaction and flexibility in a dynamic environment.

Suspect illegal (black) flights into Australian airspace

26. The Department is concerned at the potential for breaches of the border by suspect illegal flights. Although there is anecdotal advice that the problem exists there has been no analysis of the magnitude of the problem or the extent to which offences are being committed under Commonwealth law.

27. The Department notes the work being undertaken by the Australian Defence Force (Headquarters Northern Command) and Coastwatch in this area and the threat assessment which has been commissioned by the Australian Customs Service. Once the nature and extent of the problem is identified, DIMA will be in a position to assess options and make appropriate recommendations to manage the border integrity implications of these incursions.

28. The Department recognises the inherent difficulties in enforcing applicable Commonwealth law in relation to the interception of suspect illegal flights and enforcing a request to land.

An integrated approach to Coastwatch intelligence management

29. ANAO reported that it had been informed by Coastwatch that it does not receive all relevant intelligence from clients/stakeholders. DIMA provides to Coastwatch **all** relevant information and intelligence. This involves raw information about possible departures or imminent departures of suspect illegal entrant vessels for Australia and intelligence relating to the organisation of suspect illegal entrant vessels, eg. organisers, movement of potential unauthorised arrivals to and within in Indonesia, preparation of boats, and possible departure points.

30. Where there have been undetected landings on the Australian mainland the Department has not had any prior information or intelligence about the vessel or a possible vessel.