

Dear Senators,

My name is Tony Kevin. I am an Australian citizen and a retired former Australian public servant and diplomat (1968-1998). I live in Canberra and have been a Visiting Fellow at the Research School of Pacific and Asian Studies in the Australian National University since 1998. I am a published author, a part-time lecturer in graduate courses at the Universities of Melbourne and Wollongong, and an independent commentator on various public issues of interest to me. I have previously testified in an independent capacity in two Senate Committee inquiries (into Australian policy in the 1999 East Timor transition, and in the CMI Committee inquiry into the sinking of SIEV X). I am the author of "A Certain Maritime Incident: the sinking of SIEV X " (Scribe, 2004) which won a Premier's Award at the recent 2005 Sydney Writers Festival, in the Community Relations Commission Award category.

At the end of this submission there is a final summary of my most important requests to the Committee.

I make this submission to the current Inquiry into the Administration and Operation of the Migration Act 1958, being conducted by the Senate Legal and Constitutional References Committee, which has membership as follows:

Members

Senator Crossin (*Chair*), Senator Payne (*Deputy Chair*), Senators Bartlett, Kirk, Ludwig and Scullion

Participating members

Senators Abetz, Barnett, Bishop, Brandis, Brown, George Campbell, Carr, Chapman, Colbeck, Conroy, Eggleston, Evans, Faulkner, Ferguson, Ferris, Humphries, Lightfoot, Lundy, McGauran, Mackay, Mason, Murray, Nettle, Ray, Sherry, Stephens, Stott Despoja and Watson

RELEVANCE OF MY SUBMISSION TO THE TERMS OF REFERENCE

I make this submission under the term of reference (e) of the enquiry's terms of reference, which are:

- a. the administration and operation of the *Migration Act 1958*, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- b. the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
- c. the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;

- d. the outsourcing of management and service provision at immigration detention centres; and
- e. any related matters.

The "related matter" under term of reference (e) that I wish the Committee to review is *the unfulfilled public accountability obligations of DIMIA under the Migration Act, in respect particularly of the activities of DIMIA's Border Control and Compliance Division in 2000-2001.*

Through this Division, DIMIA was and is responsible (together with the Australian Federal Police) for the collection and distribution of intelligence on people smuggling, and for the conduct of an Australian Government people smuggling disruption program that is still operating in Indonesia.

For the past four years 2002-2004, there have been Senate motions (details at **Ref 1**) demanding a full powers judicial inquiry into the sinking on 19 October 2001 of the asylum-seeker vessel known as SIEV X, drowning 353 people, in international waters between Indonesia and Christmas Island that came within the area of Australia's Operation Relex border protection military operations then being conducted by the ADF, and into the Australian Government's people smuggling disruption program in Indonesia.

During the 2 1/2 years since the first Senate motion was passed on 10 December 2002, the Australian Government has ignored all these motions. It has also ignored the earlier agreed first recommendation of the bipartisan Senate Select Committee into a Certain Maritime Incident, tabled in the Senate on 23 October 2002, as follows:

" 1. The Committee recommends that a full independent inquiry into the disruption activity that occurred prior to the departure from Indonesia of refugee vessels be undertaken, with particular attention to the activity that Australia initiated or was instrumental in setting in motion through both its partners in the Indonesian government and its own network of informants."

(CMI Committee Report, paragraphs 1.39-1.57 and Recommendation 1, Executive Summary, page xx.)

I submit that this important area of unfinished Senate business properly relates to the present Inquiry, for the following reasons:

- a. That this Senate Committee has the authority to question public servants appearing before it on any matter it considers relevant to the terms of reference of the inquiry, and that Senators of all parties have traditionally interpreted this authority quite broadly, with the public-interest aim of enhancing transparency and accountability of government activity. This has never been more important than it is today.

b. That the detention, deportation, border control and compliance activities of DIMIA all come under the authority of the same Migration Act, and are administered by the same DIMIA departmental executive.

c. That one important aim of this Committee is to try to re-establish public confidence in the integrity and accountability of executive and administrative processes in DIMIA, under its new Secretary, Mr Andrew Metcalfe.

d. That public confidence in DIMIA is indivisible, i.e., that public confidence in DIMIA could not be re-established if DIMIA's border control and compliance activities were to remain questionable and unaccountable, at the same time as DIMIA's detention and deportation activities now properly come under Senate scrutiny.

e. That we are looking here are related facets of the one whole-of-government border protection system, or culture. As journalist David Marr recently commented (SMH, 18 July 2005) in relation to the Rau case:

“And if the result [in Rau's case] was cruel, what does that matter? Isn't having an Immigration Department that's known to be nasty, dilatory and inflexible as much part of the deterrence system as putting the navy into the Indian Ocean and building detention prisons in the desert? Isn't this how Australia sends a message to refugees and would-be illegal immigrants across the world: don't try it on?”

f. That DIMIA's border control and compliance functions under the Migration Act have close connections to its detention and deportation functions under the Migration Act., in that often it has been (and still is) the same category of people, i.e. persons who have travelled to Australia on suspected illegal entry vessels (SIEVs), who have been subject to the detention and/or deportation provisions of the Migration Act.

g. That at least two currently serving senior officers of DIMIA, Mr Metcalfe and Ms Nelly Siegmund, occupy positions in which they could be questioned by the Committee about the activities of DIMIA through its Border Control and Compliance Division in 2001-2002, when Mr Metcalfe was First Assistant Secretary in charge of that Division and Ms Siegmund was Assistant Secretary, Border Protection Branch, within that Division (a position she still occupied last month, in June 2005).

h. That the evidence given by DIMIA and former DIMIA officers on these matters to the Senate Select Committee into a Certain Maritime Incident and to subsequent Senate Estimates Committees did not satisfy the Senate, otherwise the Senate would not have passed a series of motions calling for judicial inquiry into the sinking of SIEV X and the people smuggling disruption program.

h. That the reported use by the PSST disruption program in Indonesia of “partners in the Indonesian government and its own network of informants” (see CMI Report recommendation 1, quoted above) raises comparable issues of public service ethics and

public accountability that are raised by the outsourcing to non-public service agencies of management and service provision at immigration detention centres.

BACKGROUND

The Australian Government's people smuggling disruption program in Indonesia during 2000-2001 was implemented by a DIMA-AFP People Smuggling Strike Team (PSST), a joint 15-member DIMA-AFP operation conducted out of the Australian Federal Police headquarters in Canberra (10 AFP members, 5 DIMA members), with overseas-posted DIMA and AFP officers working out of the Australian Embassy in Indonesia to implement the program on the ground. The PSST was co-managed by an unnamed AFP officer and by the DIMIA Assistant Secretary, Border Protection Branch, Ms Nelly Siegmund..

Some evidence on the activities in 2000-2001 of the PSST and on the sinking of SIEV X was provided to the Senate Committee into a Certain Maritime Incident on 11 July 2002 (Senate CMI Hansard pages 1985-2037) by a team of three witnesses comprising the then DIMIA Deputy Secretary Ed Killesteyn, Acting Deputy Secretary Vince McMahan, and Ms Siegmund. On that day, opposition members of the Committee complained at the uninformative testimony offered. Senator Faulkner asked whether DIMIA witnesses were under instructions from the then Secretary (Bill Farmer) not to reveal anything that might damage the department's reputation. Mr Killesteyn denied this was so.

According to this official testimony, Ms Siegmund's Border Protection Branch was responsible for the DIMIA oversight of the PSST and for intelligence-gathering on people smuggling. Ms Siegmund said that her Border Protection Branch prepared briefs for the Minister on disruption activities conducted by the PSST (CMI Hansard page 2001).

As to the role of the PSST, Ms Siegmund said:

"... the role of the strike team is investigations leading to, hopefully, prosecutions. Their aim is to investigate the persons behind the organised criminality, then bring that to a prosecutions brief with DPP, hopefully leading to a successful outcome of that prosecution. With that role in mind, I do not think that that is really what I would call disruption activities, other than that they are attempting to arrest or prosecute some of the main organisers. I suppose in that sense you could call that disrupting a criminal network of some kind". (CMI Hansard page 2002-2003).

Ms Siegmund also gave some information on the people smuggling intelligence gathering and dissemination activities of a section within her Branch, the Intelligence Analysis Section that prepared classified DIMIA Intelligence Notes (DINs) for the Minister and other government recipients on people smuggling.

Some of these DINs were later submitted to CMI, in declassified form. These DINs became important late evidence in establishing that there was some Australian official prior knowledge of the principal SIEV X voyage organiser Abu Quassey, and of his preparations for the fatal SIEV X voyage.

Before SIEV X, Abu Quassey had organised three successful people smuggling voyages on the Christmas Island route – the (Australian-codenamed) *Donnybrook* in February 2000, *Gelantipy* in March 2001 and *Yambuk* in August 2001. DIMA had gathered intelligence on all these voyages and had been tracking Quassey's operations for a long time before SIEV X. Yet his name remained entirely hidden from public view before the SIEV X sinking. Details about his earlier voyages remained unknown to the CMI Committee in 2002, and such information only came to public light painstakingly and slowly afterwards, as a result of patient research and questioning by SIEV X independent researcher Marg Hutton.

I turn now to some specific major issues to do with SIEV X and the Australian people smuggling disruption program, on which I hope the Committee might take this opportunity to question DIMIA official witnesses:

1. CONTINUING SERIOUS OFFICIAL INCONSISTENCIES AS TO WHERE SIEV X SANK

One classified DIN was produced and distributed by Ms Siegmund's Branch on 23 October 2001, saying that the vessel we now know as SIEV X had sunk "approximately 60 nautical miles south of the Sunda Strait". It appears that the then Minister Mr Ruddock drew on this DIN, when he said on 23 October 2001 in reply to a media question on the sinking location:

"I am told it [where the boat went down] was off West Java ... It was, I understand, a number of nautical miles off the coast of West Java".

This DIMA intelligence note (DIN 83/2001) was released to the CMI Committee in September 2002, as the Committee was concluding drafting its Report, after having called its last witnesses on 30 July 200. This DIN is of crucial importance for two reasons.

Firstly, it was part of the data base by which SIEV X independent researcher Marg Hutton and I established beyond reasonable doubt that SIEV X had sunk in international waters and in the Australian ADF Operation Relex zone of operations, because "60 nautical miles south of Sunda Strait" defines a position well inside international waters and well inside the proclaimed operational area of the Operation Relex zone.

SIEV X did not sink, as official witnesses to the CMI initially falsely claimed, in Indonesian waters or in the Sunda Strait. Nor was the later amended claim by Defence officials (in the Defence Review of SIEV X Intelligence, prepared at the Minister's request and submitted in July 2002 to the CMI Committee by a Defence task force under

the direction of Admiral Raydon Gates), that “Defence can only speculate as to where the vessel foundered”, true. This false claim was then repeated by other agencies and departments in testimony before the Committee. The Committee accepted in good faith this false official written evidence, concluding in its own report (Paragraph 8.5) :

“ The exact location where the boat sank remains in doubt, with speculation that it might have gone down in the Sunda Strait within Indonesian waters”.

Four months after the CMI Report was presented to the Senate, on 4 February 2003, the Australian Embassy Jakarta cable of 23 October 2001, reporting the sinking of SIEV X, was finally produced (declassified) in the Senate after eight months of the Committee asking to see it. It said in its paragraph 6 that:

“The exact position of the vessel at the time of sinking is unknown, but it is judged as no further south than 8 degrees south latitude on a direct line from Sunda Strait to Christmas Island.”

This position may be charted accurately, because “Sunda Strait” in this context is professionally understood by mariners to be defined by the Admiralty-listed hydrographic buoys at the southern exit of Sunda Strait. These buoys are located at 6 degrees 30 minutes south and 105 degrees east. Marg Hutton and I charted the position reported in the DFAT cable as the southernmost limit of where the boat might have sank: it is a position some 80 nautical miles south of Java. It is some 30 nautical miles south of the sinking position stated in the DIN, and thus even further inside the Operation Relex zone: it is in fact near the southwestern boundary of the northwestern sector of the Operation Relex zone.

A third piece of strong evidence that SIEV X sank in international waters and in the Operation Relex zone had been publicly available since May 2002, namely the Jakarta Harbourmaster’s recorded coordinates of where the Indonesian fishing vessel rescued 44 SIEV X survivors. These coordinates – 7 degrees 40 minutes south, 105 degrees 9 minutes east- define a point 51.5 nautical miles south of the Indonesian coastline – again, inside international waters and inside the Operation Relex zone.

All these points were mapped by Marg Hutton and myself. This map appears on page 101 of my book “A Certain Maritime Incident: the sinking of SIEV X” (Scribe, 2004), which should be accessible to Senators.

Despite this strong multisource evidence of where SIEV X sank, available to departments since 2001 or 2002, all departments and agencies including DIMIA, and a former DIMIA officer then in the Prime Minister’s Department Mr Metcalfe, continued through 2002-2004 to adhere to the official advice that had been offered to the CMI Committee in 2002, that it could not be established where SIEV X sank.

Mr Metcalfe testified on SIEV X, as a Prime Minister and Cabinet officer in the Finance and Public Administration Committee on 10 February 2003 (FPA Hansard pages 48-61).

Senator Faulkner questioned him closely on the DFAT cable references to the sinking location, but Mr Metcalfe threw no further light on the question. Mr Metcalfe would, as the First Assistant Secretary in charge of the Border Protection and Compliance Division in 2001, have had access to both the DIN report and the Jakarta Embassy cable of 23 October 2001 on the sinking of SIEV X. He would in that position have had a professional obligation to be familiar with the meanings of the terms Indonesian waters, international waters, the Indonesian search and rescue zone, and the Operation Relex zone.

Now, in a major new development in recent weeks, both Immigration Minister Senator Vanstone and Justice Minister Senator Ellison have separately officially informed the public that SIEV X sank in international waters. Senator Vanstone in answer to Senate question no 431, "SIEV X", by Senator Brown, recorded in Senate Hansard 14 June 2005, referred to SIEV X as "an illegal venture out of another country *with the tragedy occurring in international waters*".

Senator Ellison's Media Release E070/05 of 8 June 2005, "Government welcomes SIEV X People Smuggler Conviction", stated: "In October 2001, the vessel known as Siev-X (Suspected Illegal Entry Vessel-Unknown) sank en-route to Australia from Indonesia *in international waters*, resulting in the death of 353 people."

Neither Minister has offered any public explanation, either as to the change of information offered to the public on this important matter, or on what new official data it might be based.

It is of great importance to establish an accountable public record as to where SIEV X sank and as to how departments obtained this information.

An Iraqi man, Khaleed Daoed, has recently been sentenced to nine years in an Australian jail as a result of a SIEV X related people smuggling prosecution. Was this perhaps the reason why Ministers felt it necessary finally to clean up the official public record, by admitting finally that SIEV X sank in international waters, after more than three years of official obfuscation and lying on this matter?

The second reason why the DIN of 23 October 2001 issued by Ms Siegmund's Branch in DIMA is important is that it is the only official piece of data that refers to SIEV X having sunk "approximately 60 nautical miles south of the Sunda Strait". This is a far more precise location statement than the Jakarta Embassy cable references of the same day as to where SIEV X sank. Yet the joint DIMA-AFP People Smuggling Strike Team was operating out of the one Australian Embassy in Jakarta. How is it that the DIN of 23 October 2001 offered such strikingly different data on SIEV X's sinking location than the Embassy cable? Did DIMA have a different intelligence source to other agencies at the Embassy? Had DIMA-AFP PSST working relations broken down at that crucial time? Why was not the differing information shared, compared and reconciled in the post's official reporting at the time?

These are very serious questions that has not to date been explored or explained. If different parts of the Australian government were collecting and reporting different information about Abu Quassey and SIEV X from different sources in Indonesia, it might suggest a lack of coordination and accountability that may itself have contributed to the SIEV X tragedy.

If DIMA's report that the boat sank 60 nautical miles south of Sunda Strait was known to other areas of the Australian Embassy in Jakarta, why was it not included in the Embassy cable - instead of the vaguer cable report that the boat was "judged" to have sunk "no further south than 8 degrees south latitude on a direct line from Sunda Strait to Christmas Island." ?

I request that the relevant DIMIA officials available to the Committee (Mr Metcalfe and Ms Siegmund) be questioned as to their information sources in the DIN on the location of the sinking of SIEV X: what DIMIA (formerly DIMA) officers knew, when and from whom they knew it, and how they processed that information within the Australian Government system.

It is of legal importance to establish firmly and beyond doubt that SIEV X sank in international waters and in the Operation Relex zone, in terms of the Senate's continuing interest in these unresolved matters of public interest and accountability.

As the Attorney-General Mr Ruddock said on ABC Radio News on 8 June 2005, in welcoming the conviction of Abu Quassey's assistant Khaleed Daoed:

"People smuggling is a very serious offence but if it ends as tragically as SIEV-X did with so many people losing their lives, those responsible ought to be held accountable, and that's what we've been determined to ensure happens. That's the reason prosecutions were initiated."

2. UNANSWERED PUBLIC QUESTIONS ABOUT THE DIMIA-AFP PEOPLE SMUGGLING DISRUPTION PROGRAM

On 23-26 September 2002, after witness testimony before the CMI Committee had concluded, Senator Faulkner gave four historic speeches in the Senate that went to the heart of the responsibilities of the Australian government for the conduct of the joint AFP-DIMIA people smuggling disruption program in Indonesia. I urge Committee senators to read these speeches again (listed at Ref 2), because of how clearly they set out the still unanswered questions of public importance. By way of example, Senator Faulkner said this on 25 September 2002:

"The issue of sabotage of people smugglers' vessels has been canvassed by the AFP informant Kevin Enniss. I ask these questions: was Enniss involved in the sabotage of vessels? Were others involved in the sabotage of vessels? Do Australian ministers, officials or agencies have knowledge of such activities? And what about the vessel now known as SIEVX, part of the people-smuggling operation of the notorious people

smuggler Abu Qussey? That vessel set sail on 18 October 2001 and sank on 19 October 2001, drowning 353 people, including 142 women and 146 children. Were disruption activities directed against Abu Qussey? Did these involve SIEVX?

I intend to keep asking questions until I find out. And, Mr Acting Deputy President, I intend to keep pressing for an independent judicial inquiry into these very serious matters. At no stage do I want to break, nor will I break, the protocols in relation to operational matters involving ASIS or the AFP. *But those protocols were not meant as a direct or an indirect licence to kill.*" (My italics)

On 26 September 2002, Senator Faulkner said this in his closing statement in the Senate (I quote it in full because of its relevance to the DIMIA-AFP PSST):

"I have been asking questions for months about Australia's involvement in disrupting and dismantling people-smuggling syndicates in Indonesia. I am still not satisfied by the answers I have received. The disruption policy is undertaken by the Australian government and funded by the Australian taxpayer, yet the Howard government has so far avoided parliamentary scrutiny of this policy.

The government claims that its policy of disruption has had a significant influence on the decline in the numbers of people trying to get to Australia illegally. In March this year the Minister for Immigration and Multicultural and Indigenous Affairs, Mr Ruddock, cited the government's policy of physically disrupting the work of people-smugglers as one of the main reasons for the decline in asylum seeker boats coming to Australia.

We know disruption includes physically disrupting the people-smuggling syndicates and the asylum seekers who seek assistance. We know from the *Sunday* program and from evidence given by the AFP that an Australian by the name of Kevin Enniss was involved in the people-smuggling disruption program. We know that Enniss worked for the AFP and that he was paid over \$25,000 by the AFP. We know Kevin Enniss admitted to reporter Ross Coulthart from the *Sunday* program that he had paid Indonesian locals on four or five occasions to scuttle people-smuggling boats with passengers aboard.

When these claims were made on the *Sunday* program, I called at the time for a full, independent judicial inquiry into those serious matters. The government have dismissed the calls. They still are ignoring the calls for a proper inquiry. But the denials of the government on these issues are not sufficient. It is not enough to say, as Senator Ellison and Mr Downer have said publicly today, that it has never been the policy of the Australian government to sabotage people-smuggling vessels. It is not enough to say that the Australian government has never sabotaged vessels or directed that they be sabotaged. There was the usual huff and puff - they denounced the opposition and criticised us for daring to ask what they described as 'outrageous questions'.

I say that asking these sorts of questions and demanding answers is the responsibility of the opposition. It is the responsibility of the government to answer those questions. I want to know, and I intend to keep asking until I find out, about a number of things.

How far does disruption go? What are the limits, if any? I want to ask, and I want an answer to, precisely what disruption activities are undertaken at the behest of, with the knowledge of or broadly authorised by the Australian government. I want to know, and I think the parliament and the Australian public are entitled to know, what directions or authorisations ministers have issued in relation to disruption. I want to know how the policy of disruption is funded. We would like to know who funds the policy of disruption. How much does it cost to fund the policy of disruption? Who actually receives those taxpayers' moneys for the disruption program? Who tasks the Indonesian officials or others to disrupt people-smugglers or the clients of people-smugglers?

We also want to know whether Australians are involved in disruption activities in Indonesia. And it is perfectly reasonable for us to ask about the accountability mechanisms that are in place in relation to these activities, particularly when the MOU governing these particular matters collapses: the commissioner for the AFP and the minister cannot say why; the commissioner cannot even say he asked why that occurred. We want to know whether Kevin Enniss was actually involved in the sabotage of vessels, as Kevin Enniss has claimed. We want to know if others were involved in the sabotage of vessels and we want to know why the government is avoiding an independent inquiry into these very important issues.

Nothing else will suffice in these circumstances.” (My italics)

Against the background of Senator Faulkner's still unanswered questions about the disruption program, DIMIA officials, in particular Mr Metcalfe and Ms Siegmund, are in positions where they could properly be further questioned by Committee members on how the PSST operates in Indonesia and what mechanisms are in place to ensure that it operates within the laws of Australia. Senator Faulkner's September 2002 statements, the unactioned first CMI Recommendation calling for an inquiry into people smuggling disruption, and the subsequent series of ignored annual Senate motions, will remind Committee members how important this matter still is, as part of any serious investigation into DIMIA's accountability to observe the law.

According to a recent joint media release by Senators Vanstone and Ellison, E037/05 of 3 April 2005, “Indonesian Police stop people smuggling mission to Australia”, the DIMIA-AFP People Smuggling Strike Team still operates today : (extract)

“Senators Vanstone and Ellison said that since 2000, the AFP-DIMIA People Smuggling

Taskforce [*sic: I assume the PSST is meant here – perhaps its official title has been changed since 2002*] has been working with Indonesian authorities to disrupt the activities of people smuggling groups across the Archipelago. The Taskforce continues to assist through a number of avenues including through the bilateral sharing of information. This has been part of a whole of government campaign to deter people smuggling activities and protect Australian interests”.

The fact admitted here by Senators Vanstone and Ellison here that people smuggling disruption in Indonesia is still an ongoing Australian Government activity in 2005 emphasises the Senate's legitimate continuing interest in proper public accountability for what Australian people smuggling disruption program officials in Indonesia , and their agents with whom or through whom the program is being conducted there, are doing - if we are not to see more SIEV X -type tragedies happen in future.

The Senate was not satisfied with the official testimony and explanations offered by DIMIA and by AFP in 2002 or thereafter. Nothing has happened since 2002 to offer any greater public assurance on these matters.

3. UNANSWERED QUESTIONS ABOUT THE SINKING OF SIEV X

These are complex questions and it is obviously impossible for the Committee to reopen them all now in any detailed way, when the CMI was unable to get to the bottom of them in five months of investigation. Replies to subsequent questioning by non-government senators, to questions on notice or in various Senate estimates committees, rendered the situation more opaque than ever.

In my view, the Senate has been subjected to a deliberate and sustained cover-up of the facts about SIEV X by a series of senior government official witnesses. With the added experience of the Rau and Solon cases, Senators will know that what government officials say about contentious border control issues cannot necessarily be taken at face value.

My book " A Certain Maritime Incident: the sinking of SIEV X" (Scribe 2004) attempted to summarise the most important unanswered questions about SIEV X. Here I will simply indicate in abbreviated form some of the most important unanswered questions about SIEV X that bear on the DIMIA Border Control and Compliance Division:

In the CMI inquiry on 11 July 2002 , DIMIA witnesses Killesteyn, McMahon and Siegmund claimed that DIMIA had been "out of the loop" of SIEV X intelligence in the crucial days 16-22 October 2001. There has never been any explanation as to how or why this could have happened, when as a member of the joint DIMIA-AFP PSST, they should have been always in the loop of Australian intelligence on such a crucial SIEV voyage at such a crucial time.

In stark contrast, AFP Commissioner Keelty of AFP admitted in his testimony on 11 July 2002 that AFP was receiving and sending detailed and regular intelligence reports on SIEV X in those days, but he refused flatly to answer any further questions about it.

Since that time AFP has been no more forthcoming on SIEV X, either to the Senate or to the public. There remain serious public interest questions about what AFP knew, when it knew, from whom it knew, and how and when it reported to Canberra the information received. Why, for example, did AFP accurately report on 20 October 2001 the exact circumstances of the boat's reported departure - small, overloaded, more than 400 people

on board, 10 people refusing to board because of their concerns about the vessel's seaworthiness – while claiming at the same time that it did not know when the boat had sailed, or from what location it had sailed?

It appears that the officer in AFP who initially received and processed this vital 20 October report, Ms K [REDACTED], may possibly have been a DIMIA officer in AFP as part of the PSST.

It has also never been made clear how the Jakarta Embassy sourced the detailed information it reported by its cable on 23 October 2001 (and DIMIA officers at the Embassy also reported on some of this in separate emails on that day), about the boat's exact dimensions, construction, passenger land itinerary in Indonesia, and passenger statistical details of nationality, age, gender. Such detailed numerical and technical information cannot credibly have come, as was claimed, from talking to one or two SIEV X survivors. It had to have come from a source or sources within or close to Abu Quassey's people smuggling organisation that prepared the SIEV X and compiled the passenger list. Did that intelligence source communicate to Australian agencies a knowledge of an intention on the part of any persons involved to sink the vessel through deliberate dangerous overloading ?

At the recent Khaleed Daoed people smuggling trial in Brisbane, the fact that the charges were limited to people smuggling made it legally impossible for survivor witnesses to offer evidence as to the unseaworthy and overloaded condition of the boat and whether it might have been deliberately sabotaged in this way . Nor was Daoed examined or cross-examined on these matters. Repeatedly, when survivor witnesses tried to speak on these matters, they were cut off as their evidence was ruled inadmissible to the charges before the Court .

Nevertheless, it did emerge in Court evidence from passengers that an earlier people smuggling vessel sent by Quassey to Christmas Island on 2-4 August 2001, known as the *Yambuk*, had followed exactly the same land itinerary, launch location, and launch procedures as SIEV X, 11 weeks later. This was new information – because no government officials had revealed any information about *Yambuk* in their evidence to the CMI Committee.

After the Brisbane trial, I believe that this newly revealed *Yambuk* history may be a further key to unravelling the SIEV X mystery. The DIMIA-AFP PSST would have learned about the successful Quassey *Yambuk* voyage from debriefing *Yambuk* passengers after it reached Christmas Island on 4 August. The PSST would have known that *Yambuk* , a boat around the same size as SIEV X, carried only 147 passengers, and that great care was taken by Quassey to ensure its safety, e.g., when the engine broke down at departure, a replacement boat was obtained within hours .

Why then, when Quassey prepared 11 weeks later to launch a voyage on a boat approximately the same size as *Yambuk*, with the same high-level Indonesian police

assistance, but this time with *over 430 people* booked to sail, did no safety alarm bells ring in the PSST in Jakarta and Canberra?

Why was nothing done to “disrupt” this obviously highly dangerous voyage on Indonesian land at the embarkation point, when 353 lives could still have been saved? And why, once the SIEV X had sailed on 18 October, were no emergency procedures set in train by the PSST to ask Operation Relex to try to save the people once SIEV X had set to sea? The accountability questions multiply.

It is clear that the Daoed trial outcome has in no way laid the SIEV X issue to rest – on the contrary, it has re-emphasised its unfinished nature. Senator Bartlett said on ABC Radio on 9 June, commenting on the Daoed verdict:

“I think the Siev-X issue is as open as ever and as needing as ever to be investigated. The fact that somebody's been shown to be involved as a people smuggler just reinforces the fact that it was a highly organised activity. I actually went along to a little bit of a trial and heard a small amount of the evidence.

It's quite clear that all of the asylum seekers that survived that spoke... have the same story about strong involvement of a number of Indonesian officials, and quite a sophisticated operation, and the very, very big question remains is how all of that could've happened without any significant Australian awareness

“This trial didn't go in any way to the involvement of Australians, but it did have a number of people give evidence about the extents of involvement of Indonesian officials. I think we can quite rightly again seek to follow up what the Australian Government, the Australian Federal Police knew about that and how they can possibly say that activities that must've involved a lot of radio communications weren't things that they were aware of. “

After Daoed's sentencing on 14 July, Senator Bartlett said outside the Court that there needed to be an independent inquiry into the disaster, “particularly when you consider there was evidence emerging within the trial of the involvement of the Indonesian military”.

4. THE STILL-DENIED LISTS OF THE DEAD ON SIEV X

It is a gross human rights abuse, for which DIMIA is in part accountable as co-manager with AFP of the PSST, that information that Australian government agencies certainly have in their possession, about the names of those who embarked, and who lived or drowned, on SIEV X *is still being withheld from public knowledge*. There are possibly hundreds of bereaved men in Australia who lost wives and children and other family members on SIEV X, but who still cannot get the psychological closure of final official confirmation that their relatives were on the boat. This is information that DIMIA and AFP clearly have, but are holding back.

I believe the reason the AFP and DIMIA will not release these lists is because it would raise embarrassing questions for them to explain how they came into possession of such detailed passenger information, which can only have come from a source within or close to the people smuggling organisation and who had access to the passenger manifest.

Senator Ellison provided on 11 August 2003 the following reply to Question on Notice No 1229 (part) from Senator Brown on 27 February 2003: (Senate Hansard pages 13092-3)

Question:

(3) Does Mr Keelty know:

- (a) the name of the vessel known as SIEV X; and
- (b) (b) the names of the victims who died in the sinking of SIEV X?

Answer:

(3) (a) No

(b) Ongoing enquiries with survivors are providing details which will assist in the identification of victims who died in the sinking.

A list was provided to the AFP from a confidential source after the vessel sank. Provision of any details of that list would compromise that source. It may also compromise a current ongoing investigation in Indonesia. The list purports to contain some details of passengers, but its veracity has not been tested.

The AFP believes it is unlikely that a full and comprehensive list of those who boarded SIEV X or those who subsequently drowned will ever be available

Senator Vanstone gave this reply (Senate Hansard, 14 June 2005) to a Question on Notice No 431 asked by Senator Brown on 10 March 2005 about the SIEV X deaths list:

Question. With reference to the sinking of the boat known as SIEV X:
(1) Will the Minister now release the list of names of people who are thought to have drowned.

(2) How many queries has the Government had from people seeking the names of persons thought to have been on board:

(a) from within Australia and (b) from outside Australia.

(3) If the list is not to be released: (a) what are the precise reasons; and (b) if one reason is that release of the list would endanger an informant, in what way.

Answer:

(1) The Government has no way of knowing or verifying all those who drowned, being an illegal venture out of another country with the tragedy occurring in international waters. Some names of those who have thought to have drowned [*sic*] are held.

(2) Records of requests are not held.

(3) The Government does not hold comprehensive information nor is it in a position to verify it.

I submit that these are unacceptably careless and callous responses, fully on a level with the DIMIA culture of indifference to human suffering from which Cornelia Rau and Vivian Solon and many other people have suffered so much. I urge the Committee to press strongly on DIMIA official witnesses the need to release the names of the SIEV X dead now. Not to do so is a gross human rights abuse. It dishonours the good name of Australia to keep these names undisclosed. It conveys a message that the names of the 353 dead on SIEV X simply do not matter to the Australian Government. But to the bereaved SIEV X families, these names do matter greatly.

SUMMARY: CONCLUDING REQUESTS TO THE COMMITTEE

At the very least, I submit that it would be appropriate and in keeping with the terms of reference of this inquiry for this Committee to question Mr Metcalfe closely on what he has learned from his professional encounters in both DIMA and PM&C with the SIEV X tragedy and the disruption program, and to ask him what he proposes to do as incoming DIMIA Secretary to ensure that there is no possibility of any Australian border control agencies operating in Indonesia ever being involved with such avoidable tragedies in the future? What safeguards, and what accountability mechanisms, does he propose to introduce in the Border Control and Compliance Division, in order to ensure that the safeguarding of human life is given a truly high priority in all border control operations in which DIMIA is involved ?

He should also be pressed strongly on the question of the release of the names of the SIEV X dead – this human rights abuse cannot be left to fester any longer.

Finally, I earnestly request this Committee to reaffirm in its findings the repeated calls of the Senate for an independent full-powers judicial inquiry into the sinking of SIEV X and the activities of the Australian Government's people smuggling disruption program in Indonesia.

Tony Kevin
Forrest, Canberra ACT