

## CHAPTER 2

### BACKGROUND AND EVIDENCE TO THE INQUIRY

#### Introduction

2.1 The following chapter outlines the background and events that led to the Committee's inquiry into the role of AusSAR in the search for the *Margaret J* and crew. It will provide an overview of the vessel's movements and the timeline of the voyage and foundering. The chapter also examines the salient issues arising from the coronial inquest into the deaths of the crew and in evidence to this inquiry.

#### The *Margaret J*

2.2 The fishing vessel *Margaret J* departed from its home port of Ulverstone, Tasmania on 7 April 2001 and sailed to Stanley on the first leg of a planned fishing trip. The vessel carried two crew members, Mr Hill and Mr Giles, and collected a third, Mr Kirkpatrick, at Stanley.<sup>1</sup>

2.3 The vessel left Stanley on 9 April 2001 with the intention of sailing to and fishing around Robins Island.<sup>2</sup>

2.4 The crew planned to return to Ulverstone via Stanley on 12 April 2001. The *Margaret J* failed to return and was reported as overdue on 13 April 2001.<sup>3</sup>

2.5 The Coroner's report notes the lack of direct evidence in establishing the circumstances surrounding the foundering of the *Margaret J*. The Coroner's findings were based on circumstantial evidence and the probable circumstances in which the vessel sank and the three men aboard lost their lives.

2.6 The Coroner found that the *Margaret J* sank on its day of departure, 9 April 2001. The Coroner also found that the three crew members launched and entered the vessel's life raft at that time. He estimated the probable time of sinking as approximately 11:27am, based on a mobile phone call made by one of the crew and the time at which a recovered clock had stopped. No radio contact was made and neither of the two Emergency Position Indicating Radio Beacons (EPIRBs) on board the vessel was activated.<sup>4</sup>

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1 Coroner's Report, 26 August 2002, p. 15

2 Coroner's Report, 26 August 2002, p. 15

3 Coroner's Report, 26 August 2002, p. 15, 19

4 Coroner's Report, 26 August 2002, pp. 17-18

## The Search for the *Margaret J*

2.7 Before embarking on a chronology of events with regard to the search in question, it is useful to refer to the division of responsibility between state and Commonwealth agencies when a search and rescue operation is initiated.

2.8 The agreed demarcation of responsibilities, reflected in the National Search and Rescue Manual ('the Manual'), holds that state authorities are responsible for coordinating searches and rescue operations for fishing boat or pleasure craft crew. This is confirmed in a specific search and rescue agreement between the Commonwealth and Tasmania.<sup>5</sup>

2.9 The protocol for transferring responsibility for coordinating search and rescue operations is the subject of further discussion later in the report.

2.10 In accordance with this division of responsibilities, Tasmania Police coordinated the initial search for the *Margaret J*. On 13 April 2001, Tasmania Police authorised an aerial search from Smithton to Cape Grim. An additional aerial search was organised by the friends and family of Mr Kirkpatrick. The search area covered the coastline between Smithton and Cape Grim, all rocky outcrops and islands including Trefoil Island, Steep Head, South Black Rock, Albatross, Bird, Stack, Hunter, Three Hummock, Walker and Robbins Islands and Penguin Islet.<sup>6</sup>

2.11 On 14 April 2001, two aircraft and one helicopter searched the same area and extended the search eastwards. The Tasmania Police vessel *Van Diemen* searched the Hunter Island group of islands.<sup>7</sup>

2.12 On 15 April 2001, police vessels continued to search south to Studlands Bay and north to the western side of Hunter Island and other offshore islands to the west. At approximately 10.30pm on 15 April, Tasmania Police suspended the search until "further information was available".<sup>8</sup>

2.13 The decision to suspend the search on 15 April 2001 was based on AusSAR's response to a facsimile from Tasmania Police outlining the search procedures to date and requesting assistance to search the greater Bass Strait area.

2.14 AusSAR's reply stated:

Search actions detailed in Ref A [Tasmania police description of search] fully supported. However, in view of length of time vessel has now been missing (6 days) consider further search activity impractical due to size of potential search area and little likelihood that persons in the water would

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5 AMSA, Submission 1, pp. 2-3

6 Coroner's Report, 26 August 2002, p. 20

7 Coroner's Report, 26 August 2002, pp. 20-21

8 Coroner's Report, 26 August 2002, p. 21

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have survived. Based on Ref A, consider police search would have located the vessel or survivors had they been in the police search area. It is noted that vessel had the means to communicate a distress situation had it been able to; namely, HF and VHF radios and an EPIRB. No confirmed beacon has been detected in the area over the last week. In the absence of further intelligence AusSAR does not intend conducting a search of the greater Bass Strait.<sup>9</sup>

2.15 On 16 April 2001, the *Margaret J* was located in approximately 15 metres of water by a passing aircraft. Tasmania Police conducted a search of the vessel, specifically searching for the bodies of the crew. Information supplied to police regarding the existence of a life raft was not conveyed to police divers.<sup>10</sup>

2.16 On 17 April 2001, Tasmania Police requested information on drift patterns from AusSAR. The information provided indicated a minimum possible search area of 50 000 square nautical miles. AusSAR advised Tasmania Police that:

...it would not be possible to search an area of this size because we could not get enough search aircraft to cover the minimum area in one day. Typically it would take over 100 aircraft (with track spacing of one nautical mile), each doing a four hour sortie and if this was not achieved it would take even more aircraft each subsequent day because the search area will continue to grow with the extra drift time.

AusSAR recommends that without some specific new information to indicate that the missing men are actually in the life raft or some information about the location of the life raft that it is not possible to mount a realistic search effort.<sup>11</sup>

2.17 Based on this advice from AusSAR, Tasmania Police again suspended the search for the crew of the *Margaret J*.<sup>12</sup>

2.18 The *Margaret J* was salvaged on 30 April 2001 and, following a review of the available evidence and at the request of Tasmania Police, AusSAR assumed responsibility for the search coordination that afternoon.<sup>13</sup> It was then determined that a search of the uninhabited islands around Flinders Island should be undertaken.<sup>14</sup>

2.19 On 2 May 2001, the life raft from the *Margaret J* and the body of one crew member was located on Prime Seal Island. A second body was located on Flinders Island. The body of Mr Kirkpatrick was not found.<sup>15</sup>

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9 Message sent from RCC Australia to Police Devonport, AUSSAR 01/2688 of 15 Apr 01

10 Coroner's Report, 26 August 2002, pp. 29-32

11 Facsimile message to Insp. Lindsay, Devonport Police from AusSAR, 17 April 2001

12 Coroner's Report, 26 August 2002, p. 35

13 Coroner's Report, 26 August 2002, p. 39 & 42

14 Coroner's Report, 26 August 2002, p. 38

15 Coroner's Report, 26 August 2002, pp. 42-43

## Issues

- 2.20 The primary issues raised in evidence to this inquiry pertained to:
- (a) The life-saving potential of a better coordinated and more effective search and rescue effort following reports of the missing *Margaret J* crew;
  - (b) The effectiveness of communication between AusSAR and the Tasmanian Police, particularly with regard to the transfer of responsibility for search and rescue coordination from State to Commonwealth authorities; and
  - (c) The accuracy and effectiveness of AusSAR's information recording and documentation procedures.

### *Survival prospects for the crew of the Margaret J*

2.21 The Coroner found, on the basis of the limited evidence available, that the three crew members died on 11 April 2001.<sup>16</sup> In relation to the possibility of a more effective coordination of the rescue effort saving the lives of the crew, he stated that:

I am satisfied that at the time the matter was first reported to police (13 April 2001), the crew of the *Margaret J* had perished.

It therefore follows that a search of the waters to the east of what was subsequently identified as the splash point<sup>17</sup> would not have saved the lives of the three (3) men.

I further find that it would not have been reasonable to expect that a search should have been undertaken further to the east in the initial stages of the search due to the lack of communication from the vessel and the absence of a splash point.

To suggest that a large number of planes should have been launched for a vessel that may or may not have sunk, for a life raft that may or may not have been launched, would have been placing the lives of a number of searchers at risk. Such a risk in the overall circumstances was not warranted.<sup>18</sup>

2.22 The Committee notes the evidence of forensic pathologist Dr Kelsall to the coronial inquiry estimating the time of death of Mr Hill as between 9-16 April and that of Mr Giles between 16-27 April 2001.<sup>19</sup> In evidence to the Committee the CEO of AMSA, Mr Davidson, interpreted Dr Kelsall's evidence as follows:

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16 Coroner's Report, 26 August 2002, pp. 44-48

17 The term splash point refers to the location at which the crew abandoned the foundering vessel

18 Coroner's Report, 26 August 2002, pp. 48-49

19 Coroner's Report, 26 August 2002, p. 43

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My understanding of it is that what the pathologists concluded was from an examination of the bodies. That was the period that they could determine, as best they could, the time of death – given the evidence in front of them. Other factors had to be brought to bear in order to refine that, and that was indeed what the coroner did.<sup>20</sup>

2.23 In his evidence to the Committee, local marine expert Mr Jim Hooper stated that the men would have lived beyond April 11. He based this assertion on the resilience of the life raft, which he had recently serviced, the quantity of rations that had been consumed by the crew and his estimation of the warmer water temperature in Bass Strait at that time of the year.<sup>21</sup>

### ***Communication between authorities and transfer of responsibility***

2.24 Early communications between the Tasmanian Police and AusSAR focussed on seeking advice as to a potential search area based on the likely drift of the missing crew. AusSAR's refusal to attempt to calculate a drift pattern on April 13 was addressed by the Coroner, stating that:

In respect of the request for the drift pattern, Mr Adrian Johnson, an AusSAR officer, indicated without a reliable splash point the figures would be meaningless, and I have no hesitation in accepting this statement. At this point in time the vessel could have been anywhere, and without basic information of a last sighting or position, it would be impossible to calculate the effects of wind or current on a vessel.<sup>22</sup>

2.25 Under the relevant 1977 search and rescue agreement between Tasmania and the Commonwealth, transferring responsibility from Tasmanian authorities to AusSAR occurs, "should an operation which is the responsibility of [Tasmanian] Authority overreach that Authority's capacity, responsibility will be transferred to, and accepted by, the Commonwealth Authority".<sup>23</sup>

2.26 The Committee notes that this 1977 arrangement was not as clearly defined as that with other states under the same agreement, whereby a transfer of responsibility occurs by mutual agreement as to overreached capabilities.<sup>24</sup>

2.27 On 13 April 2001 an AusSAR officer explained this arrangement to Tasmania Police, who had just received report of the missing vessel, indicating that AusSAR

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20 Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 19 September 2002, pp. 28-29

21 Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 27 November 2002, pp. 58-62

22 Coroner's Report, 26 August 2002, p. 27

23 Quoted in Coroner's Report, 26 August 2002, p. 25

24 Australian Maritime and Safety Authority, Submission 3, Attachment D

would take over only after an adequate search had been undertaken and Police resources would not allow a more extensive search.<sup>25</sup>

2.28 The Committee finds that a transfer of responsibility consistent with the search and rescue agreement between Tasmania and the Commonwealth could have been effected on 15 April 2001. It is clear that an intended transfer request from Tasmania Police was thwarted by AusSAR's reluctance to assume responsibility for coordination of the search for the *Margaret J.*<sup>26</sup>

2.29 In relation to a recorded telephone conversation between Mr Lloyd of AusSAR and Constable Archer of Tasmania Police on 15 April 2001, relating to a Tasmania Police request for assistance, the Coroner notes:

... Constable Archer was taken by surprise by the approach of Mr Lloyd and does not proceed with what was his obvious intention, of transferring coordination to AusSAR.<sup>27</sup>

2.30 In a response to a question taken on notice from the Committee about this matter, AMSA said:

The Police facsimile asked for assistance with a search of the Bass Strait area. AusSAR responded by facsimile ... indicating that AusSAR fully supported the Police search actions but concluded that further search activity was impractical given the length of time (six days) since the vessel was last sighted because of the size of the search area and the little likelihood of survival of anyone in the water. AusSAR noted that no communication had been received although the vessel had a radio and distress beacon. In the absence of further intelligence AusSAR advised that it was not intending to search the greater Bass Strait.<sup>28</sup>

2.31 The Committee notes AMSA's statement that Tasmania Police "asked for assistance with a search of Bass Strait". While this may have not constituted a direct request for a transfer of responsibility, it suggests that as of April 15 the Tasmania Police communicated to AusSAR that the search effort had gone beyond their operational capacity.

2.32 The clearest opportunity for the transfer of responsibility occurred on 17 April 2001, the day after the sunken vessel was located (and consequently a splash point had been identified). On this occasion advice was sought from AusSAR on possible drift patterns and a likely search area (see paragraph 2.16).

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25 Coroner's Report, 26 August 2002, p. 26

26 Coroner's Report, 26 August 2002, pp. 28-29

27 Coroner's Report, 26 August 2002, p. 29

28 Rural and Regional Affairs and Transport Legislation Committee, Response to question on notice, Canberra, 19 September 2002, p. 19

2.33 In evidence to the Committee, Tasmania Police officers indicated that they were unable to conduct a search of the magnitude required to locate the missing life raft:

We were positioned and capable of conducting coastal searches, which we had done to that point. When you are getting involved in a search of the magnitude of Bass Strait, which involves two jurisdictions – Tasmania and Victoria – you then start to get to the point where it is way beyond the capabilities firstly to conduct the search and secondly to conduct it.<sup>29</sup>

2.34 The Committee notes that Tasmania Police's decision to suspend the search for a second time was again based on insufficient resources and AusSAR advice that it was not possible to mount a realistic search effort (see paragraph 2.17). A transfer of responsibility for the search did not occur; the search was suspended by the Tasmanian authorities on the advice of AusSAR, not by AusSAR itself.

2.35 In relation to AusSAR's responsibilities following the location of the sunken vessel on 30 April 2001, the Coroner concluded that:

Had AusSAR been placed in the position of being responsible for the search on the 17<sup>th</sup> April 2001, I believe they would have ... coordinated a search of the uninhabited islands in Bass Strait, which may have led to an earlier retrieval of the life raft.

It is regretful that AusSAR did not give closer consideration to the situation as at the 17<sup>th</sup> April and offered to undertake a review of the search at this time.<sup>30</sup>

The Committee supports the Coroner's conclusion on this point.

2.36 AMSA emphasised to the Committee that what they judged to be a remote possibility of locating survivors was not worth the risk associated with attempting to undertake a comprehensive search over a large area of Bass Strait on 17 April 2001.<sup>31</sup> In evidence to the Committee officers contrasted this judgment with the 30 April 2001 decision to conduct a search of the northern Tasmanian coast and along the beaches on islands on the eastern side of Bass Strait, which soon after located two of the bodies. In evidence to the Committee, they stated that this later search was for debris, not survivors, and was therefore targeted more precisely at coastline areas.<sup>32</sup>

2.37 The Committee is not comfortable with AMSA's explanation of the decision-making that rejected AusSAR-coordinated search activity on 15 and 17 April 2001 but

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29 Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 27 November 2002, pp. 40-41

30 Coroner's Report, 26 August 2002, p. 38

31 Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 19 September 2002, pp. 23-24

32 Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 19 September 2002, p. 24

endorsed such coordination on 30 April 2001. The success of the restricted search activity on 30 April 2001 leaves the Committee unwilling to accept that earlier similarly targeted search activity would not have yielded a similar result.

### ***Information recording and documentation***

2.38 The Committee notes that deficiencies were present in the information recording procedures of both state and Commonwealth authorities. In relation to AusSAR, the Coroner regretted an absence of accurate note keeping of conversations held and actions taken, resulting in inconsistent information being available to him on which to reach positive findings.

2.39 He specifically referred to a lack of recorded information on AusSAR's understanding of whether or not the Tasmania Police had already searched Flinders Island when responsibility was transferred. This, it was stated, restricted the Coroner's capacity to draw conclusions as to the accuracy of conflicting statements regarding this aspect of the search.<sup>33</sup>

2.40 Moreover, the Coroner highlighted AusSAR's mishandling of information on the ship's generator and its effect on the seaworthiness of the *Margaret J*. Citing dramatic changes - over a short period of time - of recollected facts passed between AusSAR officers, the Coroner stated that:

There is a need to ensure that information received is accurately recorded and should not be subject to embellishment.<sup>34</sup>

2.41 In evidence to the Committee, AMSA conceded that the *Margaret J* incident had highlighted problem areas in the organisation's procedures:

We are always looking for improvements in our practices. We can always do better. We are never satisfied. The basis of our approach is continuous improvement.<sup>35</sup>

2.42 The Coroner also made a number of criticisms of the recording procedures of Tasmania Police. However, the Committee notes the terms of reference and its

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33 Coroner's Report, 26 August 2002, p. 42

34 Coroner's Report, 26 August 2002, pp. 51-52

35 Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 19 September 2002, p. 13

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emphasis on inquiring into the role of AusSAR, rather than Tasmania Police, in the search for the *Margaret J*. The Committee also notes advice from the Clerk of the Senate indicating that the Committee does not have the authority to pass judgment on, or censure the conduct of, state office holders.<sup>36</sup> Accordingly, the Coroner's criticisms of Tasmania Police's procedures will not be addressed in this report.

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36 Correspondence from Clerk of the Senate dated 17 August 2001

