



Western

Australia

Inquest into 30 deaths of -

Fatemeh BAGHAIE (**aka**) Fatama BAGHAE /BAGHA'E or Fatmeh BAQAIE

Khedier EIDAN MADHI (**aka**) Khodair MAHDI

Khoshqhadam AMINI

Hassan SHAHVARI

Ali KHEDIER EIDAN (**aka**) Ali EDAN

Afssaneh ABDULLAHI- MEHER

Haifa BAWY (**aka**) Haifa MOHAMMED or Haifae AHMED MOHAMMAD

Mehran ZAREH

Fawzeya BAWY (**aka**) Fawziyah MOHAMMED

Fatemeh TAYARI (**aka**) Fatemeh TAYYARI

Mahan SHAHVARI

Shekooh TAROMI NEJAD SHEERAZY (**aka**) Shekooh TAROMINEJAD SHIRAZI

Mariam SHAHVARI (**aka**) Nazanin SHAHVARI

Ahmed Oday AL KHAFAJI

Nasrollah AKBARI (**aka**) Nasrala AKBARI or Nasralah AKBARI or Nasroallah AKBARI

Mariam Fakri Kadum AL KHAFAJI (**aka**) Mariam Oday AL KHAFAJI

Maryam ZAREH

Elmira KHORSHIDI (**aka**) Shakiba KHORSHIDI or Shakiby KHOORSHIDY

Javed SHIRVANI

Soha ZAREH (**aka**) Soho ZAREH

Sam Hussain HUSSAINI (**aka**) Sayed Sam HUSSAINI

Zahra Median IBRIHIMI (**aka**) Zahra'a IBRAHIMI

Khalil BEHZADPOUR (**aka**) Khalil BEHZADPOOR

Abbas AKHONDY (**aka**) Abbas AKHONDI SHIVIYARY

Mehrdad KARBAVI

Malektaj KARIMI (**aka**) Malaktaj KARIMI

Reza GANDOMI

Kobra DAVARY YEKTA (**aka**) Kubra DAVARIYAKTH

Oday Rashed Mohammed Hassan ALSALMAN

Farhad AKHLAGHI SHAIKHDOOST (**aka**) Farhed AKHLAGHI SHAIKHDOOST



Coroners Act, 1996
[Section 26(1)]



Western

Australia

Inquest into 20 suspected deaths of -

Nahaye Ahmad Mohammed BAWY

(aka) Nehayah MOHAMMED, or Nehaya BAWY, or Nihaya Ahmed MUHAMMED

Esraa Eidan MAHDI (aka) Asra EIDAN or Isra KUDAIR or Assraaa KHEIDER EIDAN

Siamak KHORSHIDI

(aka) Shahin KHORSHIDI or Shaheen SYAMACK, or Seyamak, Siyamak

Koorosh KHORSHIDI

Zaman Ali HESNAWI (aka) Ali ZAMAN, or Zaman Ali DAWAS or Zaman ALI AL HASSNY

Maryam HOSSEINI (aka) Mariam HUSSAINI, Hussine

Nazar ELEBRAHEMI (aka) Medin NAZAR or Nizar Medlan IBRIHIMI

Kamran ABDOLLAHI MEHR

(aka) Kamvan ABDOLLAH MEHEN or Camran, or Komron KHURSHIDI

Abbas Ody Rashed SALMAN (aka) Abbas AL SALAN or Abbas AI ALI

Hana Sabz ZADEE (aka) Hana SABZ-ZADAH or Hana SABZOZADA

Mahsa AKBARI

Mohammad Reza SARDARI (aka) Mohammad Reza or Mohammad Reza SARDEARI

Ali AI KHAFAGY (aka) Ali Aly KHAFAJI or Ali Oday KHAFAJI or Ali Fakri Kadum

Abdul Amir SADATI (aka) Abdul Amir SAADATI KHASEH or PASHA or Amir SADATI

Kathm BEDIRI (aka) Kathem RAHI AL BRAIRI or Kadum RAHI

Somieh ARAM (aka) Somaieha ARAM or Somayeh ARAM

Hossein ABDOLLAHI KOUSHKI (aka) Hossein KOUSHKI ABDOLLAHI, Hussain

Hossein NABATI (aka) Hossein NABAATI

Naser HOSSEINI (aka) Seyyed Naser, Nasser

Abouzar HASANZADEH (aka) Abuza HASSAN ZADEH





Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 37/07

I, Alastair Neil Hope, State Coroner, having investigated the deaths of persons who were on board a vessel known as SIEV 221 which sank off Christmas Island on 15 December 2010 and whose bodies were located afterwards, find that the identity of each of the following named persons¹ has been established, that all the deaths occurred at sea off Christmas Island and that in each case the cause of death was consistent with immersion (drowning) in the circumstances detailed herein.

	Name	Gender	Believed Country or Origin	Age
<i>Believed name</i>	<i>Fatemeh BAGHAIE</i>	<i>Female</i>	<i>IRAN</i>	<i>27 yrs</i>
<i>AKA:</i>	<i>Fatama BAGHAE /BAGHA'E Fatmeh BAQAIE</i>			
<i>Believed name</i>	<i>Khedier EIDAN MADHI</i>	<i>Male</i>	<i>IRAN</i>	<i>approx 53 yrs</i>
<i>AKA:</i>	<i>Khodair MAHDI</i>			
<i>Believed name</i>	<i>Khoshqhadam AMINI</i>	<i>Female</i>	<i>IRAN</i>	<i>31 yrs</i>
<i>Believed name</i>	<i>Hassan SHAHVARI</i>	<i>Male</i>	<i>IRAN</i>	<i>approx 53 yrs</i>
<i>Believed name</i>	<i>Ali KHEDIER EIDAN</i>	<i>Male</i>	<i>IRAQ</i>	<i>7 yrs</i>
<i>AKA:</i>	<i>Ali EDAN</i>			
<i>Believed name</i>	<i>Afssaneh ABDULLAHI- MEHER</i>	<i>Female</i>	<i>IRAN</i>	<i>approx 27 yrs</i>



¹ It should be noted that the names of these persons do not translate directly from their language of origin into English and spellings are not reliable and for this reason the gender, believed country of origin and age are given.

<i>Believed name</i>	<i>Haifa BAWY</i>	<i>Female</i>	<i>IRAQ</i>	<i>42 yrs</i>
<i>AKA:</i>	<i>Haifa MOHAMMED Haifae AHMED MOHAMMAD</i>			
<i>Believed name</i>	<i>Mehran ZAREH</i>	<i>Male</i>	<i>IRAN</i>	<i>36 yrs</i>
<i>Believed name</i>	<i>Fawzeyya BAWY</i>	<i>Female</i>	<i>IRAQ</i>	<i>48 yrs</i>
<i>AKA:</i>	<i>Fawziayh MOHAMMED</i>			
<i>Believed name</i>	<i>Fatemeh TAYARI</i>	<i>Female</i>	<i>IRAN</i>	<i>approx 47 yrs</i>
<i>AKA:</i>	<i>Fatemeh TAYYARI</i>			
<i>Believed name</i>	<i>Mahan SHAHVARI</i>	<i>Male</i>	<i>IRAN</i>	<i>3 yrs</i>
<i>Believed name</i>	<i>Shekooh TAROMI NEJAD SHEERAZY</i>	<i>Female</i>	<i>IRAN</i>	<i>45 yrs</i>
<i>AKA:</i>	<i>Shekooh TAROMINEJAD SHIRAZI</i>			
<i>Believed name</i>	<i>Mariam SHAHVARI</i>	<i>Female</i>	<i>IRAN</i>	<i>10 yrs</i>
<i>AKA:</i>	<i>Nazanin SHAHVARI</i>			
<i>Believed name</i>	<i>Ahmed Oday AL KHAFAJI</i>	<i>Male</i>	<i>IRAQ</i>	<i>9 yrs</i>
<i>Believed name</i>	<i>Nasrollah AKBARI</i>	<i>Male</i>	<i>IRAN</i>	<i>37 yrs</i>
<i>AKA</i>	<i>Nasrala AKBARI Nasralah AKBARI Nasroallah AKBARI</i>			
<i>Believed name</i>	<i>Mariam Fakri Kadum AL KHAFAJI</i>	<i>Female</i>	<i>IRAQ</i>	<i>1 yr</i>
<i>AKA:</i>	<i>Mariam Oday AL KHAFAJI</i>			
<i>Believed name</i>	<i>Maryam ZAREH</i>	<i>Female</i>	<i>IRAN</i>	<i>28 yrs</i>
<i>Believed name</i>	<i>Elmira KHORSHIDI</i>	<i>Female</i>	<i>IRAN</i>	<i>20 yrs</i>
<i>AKA</i>	<i>Shakiba KHORSHIDI Shakiby KHOORSHIDY</i>			
<i>Believed name</i>	<i>Javed SHIRVANI</i>	<i>Male</i>	<i>IRAN</i>	<i>approx 30 yrs</i>
<i>Believed name</i>	<i>Soha ZAREH</i>	<i>Female</i>	<i>IRAN</i>	<i>9 mths</i>
<i>AKA</i>	<i>Soho ZAREH</i>			



<i>Believed name</i>	<i>Sam Hussain HUSSAINI</i>	<i>Male</i>	<i>IRAN</i>	<i>3 mths</i>
<i>AKA</i>	<i>Sayed Sam HUSSAINI</i>			
<i>Believed name</i>	<i>Zahra Median IBRIHIMI</i>	<i>Female</i>	<i>IRAQ</i>	<i>11 mths</i>
<i>AKA</i>	<i>Zahra'a IBRAHIMI</i>			
<i>Believed name</i>	<i>Khalil BEHZADPOUR</i>	<i>Male</i>	<i>IRAN</i>	<i>29 yrs</i>
<i>AKA</i>	<i>Khalil BEHZADPOOR</i>			
<i>Believed name</i>	<i>Abbas AKHONDY</i>	<i>Male</i>	<i>IRAN</i>	<i>25 yrs</i>
<i>AKA</i>	<i>Abbas AKHONDI SHIVIYARY</i>			
<i>Believed name</i>	<i>Mehrdad KARBAVI</i>	<i>Male</i>	<i>IRAN</i>	<i>34 yrs</i>
<i>Believed name</i>	<i>Malektaj KARIMI</i>	<i>Female</i>	<i>IRAN</i>	<i>47 yrs</i>
<i>AKA</i>	<i>Malaktaj KARIMI</i>			
<i>Believed name</i>	<i>Reza GANDOMI</i>	<i>Male</i>	<i>IRAN</i>	<i>39 yrs</i>
<i>Believed name</i>	<i>Kobra DAVARY YEKTA</i>	<i>Female</i>	<i>IRAN</i>	<i>21 yrs</i>
<i>AKA</i>	<i>Kubra DAVARIYAKTH</i>			
<i>Believed name</i>	<i>Oday Rashed Mohammed Hassan ALSALMAN</i>	<i>Male</i>	<i>IRAQ</i>	<i>approx 29 yrs</i>
<i>Believed name</i>	<i>Farhad AKHLAGHI SHAIKHDOOST</i>	<i>Male</i>	<i>IRAN</i>	<i>32 yrs</i>
<i>AKA</i>	<i>Farhed AKHLAGHI SHAIKHDOOST</i>			





Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 37/07

I, Alastair Neil Hope, State Coroner, having investigated the suspected deaths of persons who were on board a vessel known as SIEV 221 which sank at the coast of Christmas Island on 15 December 2010 and were not located afterwards, find that the deaths of the following named² persons has been established beyond reasonable doubt and that all of the deaths occurred at sea off Christmas Island from drowning or injuries suffered as a result of impact with the shore or debris in the ocean in circumstances detailed herein.

	<i>Name</i>	<i>Gender</i>	<i>Believed Country or Origin</i>	<i>Age</i>
<i>Believed name</i>	<i>Nahaye Ahmad Mohammed BAWY</i>	<i>Female</i>	<i>IRAQ</i>	<i>35 yrs</i>
<i>AKA:</i>	<i>Nehayah MOHAMMED, Nehaya BAWY, Nihaya Ahmed MUHAMMED</i>			
<i>Believed name</i>	<i>Esraa Eidan MAHDI</i>	<i>Female</i>	<i>IRAQ</i>	<i>10 yrs</i>
<i>AKA:</i>	<i>Asra EIDAN Isra KUDAIR Assraaa KHEIDER EIDAN</i>			
<i>Believed name</i>	<i>Siamak KHORSHIDI</i>	<i>Male</i>	<i>IRAN</i>	<i>37 yrs</i>
<i>AKA:</i>	<i>Shahin KHORSHIDI Shaheen SYAMACK, Seyamak, Siyamak</i>			
<i>Believed name</i>	<i>Koorosh KHORSHIDI</i>	<i>Male</i>	<i>IRAN</i>	<i>1 yr</i>

² It should be noted that the names of these persons do not translate directly from their language of origin into English and spellings are not reliable and for this reason the gender, believed country of origin and age are given



Believed name	Zaman Ali HESNAWI	Female	IRAQ	24 yrs
AKA:	Ali ZAMAN, Zaman Ali DAWAS Zaman ALI AL HASSNY			
Believed name	Maryam HOSSEINI	Female	IRAN	28 yrs
AKA:	Mariam HUSSAINI, Hussine			
Believed name	Nazar ELEBRAHEMI	Male	IRAQ	5 yrs
AKA:	Medin NAZAR Nizar Medlan IBRIHIMI			
Believed name	Kamran ABDOLLAHI MEHR	Male	IRAN	36 yrs
AKA:	Kamran ABDOLLAH MEHEN Camran, Komron KHURSHIDI			
Believed name	Abbas Ody Rashed SALMAN	Male	IRAQ	5 yrs
AKA:	Abbas AL SALAN Abbas Al ALI			
Believed name	Hana Sabz ZADEE	Female	IRAN	3 yrs
AKA:	Hana SABZ-ZADAH Hana SABZOZADA			
Believed name	Mahsa AKBARI	Female	IRAN	4 yrs
Believed name	Mohammad Reza SARDARI	Male	IRAN	27 yrs
AKA:	Mohammad Reza Mohammad Reza SARDEARI			
Believed name	Ali Al KHAFAGY	Male	IRAQ	8 yrs
AKA:	Ali Aly KHAFAJI Ali Oday KHAFAJI Ali Fakri Kadum			
Believed name	Abdul Amir SADATI	Male	IRAN	48 yrs
AKA:	Abdul Amir SAADATI KHASEH PASHA Amir SADATI			
Believed name	Kathm BEDIRI	Male	IRAQ	31 yrs
AKA:	Kathem RAHI AL BRAIRI Kadum RAHI			



<i>Believed name</i>	<i>Somieh ARAM</i>	<i>Female</i>	<i>IRAN</i>	<i>29 yrs</i>
<i>AKA:</i>	<i>Somaieha ARAM Somayeh ARAM</i>			
<i>Believed name</i>	<i>Hossein ABDOLLAHI KOUSHKI</i>	<i>Male</i>	<i>IRAN</i>	<i>36 yrs</i>
<i>AKA:</i>	<i>Hossein KOOSHKI ABDOLLAHI, Hu</i>			
<i>Believed name</i>	<i>Hossein NABATI</i>	<i>Male</i>	<i>IRAN</i>	<i>approx 35 yrs</i>
<i>AKA:</i>	<i>Hossein NABAATI</i>			
<i>Believed name</i>	<i>Naser HOSSEINI</i>	<i>Male</i>	<i>IRAN</i>	<i>39 yrs</i>
<i>AKA:</i>	<i>Seyyed Naser, Nasser</i>			
<i>Believed name</i>	<i>Abouzar HASANZADEH</i>	<i>Male</i>	<i>IRAN</i>	<i>approx 30 yrs</i>
<i>AKA:</i>	<i>Abuza HASSAN ZADEH Abozahar</i>			

Counsel Appearing :

Mr M McCusker QC and Mr M Tedeschi and assisted by Mr P Yovich

Mr P Hanks QC and Mr Livermore on behalf of the Commonwealth Government

Mr S Owen-Conway QC (instructed by Australian Government Solicitors) on behalf of Rear Admiral Barratt

Ms G Archer SC (instructed by Corrs Chambers Westgarth) on behalf of SERCO

Ms C O'Connor with Mr G Newhouse (instructed by Shine Lawyers) on behalf of family members and survivors



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EXECUTIVE SUMMARY

These 50 deaths were inquested in one inquest pursuant to section 40 of the *Coroners Act 1996 (WA) (CI)*.

All 50 deaths took place in the coastal sea of the territory of Christmas Island and the relevant coronial legislation applicable is the *Coroners Act 1996 (WA) (CI)* (the Act).

Of the 50 who died, the bodies of 30 of those persons were recovered and subsequently those persons were all identified. In each case based on the account of forensic pathologists I was satisfied that the cause of death was consistent with immersion (drowning).

In respect of the other 20 persons who died, in each case the evidence established beyond all reasonable doubt the identity of those persons and the fact that they are deceased. In respect of those persons as the bodies were not located it was not possible to determine with precision the causes of death, but I was satisfied that the deaths resulted from drowning or injuries suffered as a result of impact with the shore or debris in the ocean.

On Wednesday 15 December 2010 between 6:40am and 7am Christmas Island time Suspected Irregular Entry Vessel (SIEV 221)



crashed on the rocky shoreline of Christmas Island and sank. At the time it was the monsoon season at Christmas Island and sea conditions were very rough, particularly near the coast.

The vessel, the engine of which had failed, was driven repeatedly by the ocean onto the low cliffs on the shoreline and was then swamped by waves and backwash causing it to sink. On the boat at the time there were 92 persons, 89 passengers and 3 crew. The passengers were mostly from Iran and Iraq and were seeking to enter Australia.

At one stage when the vessel struck the low cliffs one passenger was able to jump from the vessel onto the rocky shore and he survived. 41 persons were saved from the ocean by naval and customs officers in rigid-hulled inflatable boats (RHIBS) which had been launched from the naval vessel, HMAS Pirie, and tenders which had been launched from the customs vessel, ACV Triton.

The success of those involved in saving survivors from the ocean was due in no small part to the very considerable contribution made by Christmas Island residents who threw lifejackets to persons in the water. Without those lifejackets many more would have perished.

The residents also provided considerable assistance by acting as spotters, pointing out to those in the rescue vessels the locations of survivors in the water.



The bravery of those involved in the rescue efforts, both navy and customs personnel and local people, was exceptional.

The tragedy involved the largest loss of human life in a maritime incident in Australian territorial waters during peace time in 115 years.

Suppression Orders

Suppression orders were made in respect of the publication of the names and other identifying information relating to the passengers of SIEV 221 and other asylum seeker witnesses at the inquest.

A suppression order was also made that there be no report of the inquest or any part of the inquest which would identify or tend to identify either the alleged organisers or crew of SIEV 221.

The latter suppression order will continue until the completion of the trials of the alleged crew and organiser. That suppression order was made as a result of concerns expressed relating to possible prejudice of criminal trials and in that context reference to the behaviour of those involved in organising the journey and the crew of SIEV 221 was limited at the inquest and has not been dealt with in great detail in these reasons.



The “People Smugglers”

In respect of individuals categorised as “people smugglers” or as “organisers of the venture” it appeared clear from the evidence at the inquest that the actions of those persons contributed to the deaths. Those persons provided the passengers with a vessel which was not suitable for the journey across open seas in the monsoon season to Christmas Island. They did not provide enough lifejackets or other emergency safety equipment. The boat was overloaded and the person who appears to have been acting as captain left part of the way through the voyage and the remaining crew appear to have been inadequately trained or qualified for such a journey. These are just a few of the many safety deficiencies in the approach taken by these persons to the safety of the passengers and crew.

The passengers on SIEV 221 appear to have been lied to by a person or persons involved in organising the journey about the quality of the boat which was to be used, the number of lifejackets which would be available and other matters bearing on the hazards associated with the journey.

The Arrival of SIEV 221 at Christmas Island

On the early morning of 15 December 2010 there was almost no surveillance being conducted of the ocean to the north and north-west of Christmas Island.



The first sightings of SIEV 221 were made by individuals on the island coincidentally looking out to sea at the time.

It appears that the first sighting of the boat was by a resident who lived on an address on Gaze Road. According to her evidence she first saw the boat at about 5:20am.

At about 5:40am on that morning a customs officer staying at the Mango Tree Lodge walked out on the balcony of the room he was occupying and saw SIEV 221.

That customs officer contacted the customs on-call officer by telephone at 5:46am and advised him of the situation.

In the area of the Island near Flying Fish Cove conditions were particularly severe that morning. For vessels travelling from Rocky Point towards Flying Fish Cove there was an area where the deep sea ocean swells struck the cliffs of the Island and backwashed back out to sea. A combination of backwash and on coming swell created what was described by a number of witnesses as a “washing machine affect” making this water very hard to navigate and unpredictable. It was at this location that SIEV 221 was driven onto the rocky cliffs and sank.



It appears that SIEV 221 had travelled in a generally north to south direction from Indonesia to Christmas Island until it approached the shore close to the Mango Tree Lodge where it was first seen. SIEV 221 then travelled in a westerly direction towards Rocky Point and then south to the area near the Golden Bosun Tavern where it sank.

The decision to turn the boat to the west into the weather was a fatal one in the circumstances. Had the boat travelled to the east, it is possible that it would have reached the relatively sheltered waters near Ethel Beach and the disaster may not have happened.

In Flying Fish Cove on that morning conditions were extremely severe and there was no real possibility that asylum seekers on the boat could have been offloaded there safely. It appears, therefore, that from the moment when the decision was made for the boat to travel in a westerly direction all on board were in great peril and faced possible death.

This fact was appreciated by a number of the residents of Christmas Island who saw SIEV 221 on its journey to Flying Fish Cove. A number of these residents contacted 000 and described what they had seen. A number of these calls were made shortly before 6am or shortly afterwards.



It appears that SIEV 221 was first observed to approach Christmas Island at between 5:20am and 5:40am, the disastrous decision to turn to the west took place at about 5:55am and the boat then travelled to Rocky Point and then to the location where it sank.

Emergency Calls Made by Asylum Seekers

A number of emergency calls were made from SIEV 221 to the emergency number 991 which were redirected to 000. These calls were made by asylum seekers using mobile telephones.

Three calls were successfully transferred to the WA Police Call Centre and they were logged at between about 5:50am and 6:05am. It is clear the makers of the calls were extremely distressed and that their grasp of the English language was limited. It is also clear that the police officers who took the calls struggled to understand what was being said and experienced difficulty in obtaining information which could be acted upon.

While the immediate response to the calls appeared to demonstrate some inexperience on the part of the operator, senior officers at the Police Operations Centre became involved quickly and appropriate responses were made within a short period of time.



The calls came through at about the same time as emergency calls made by residents on Christmas Island which were received by the AFP On Call Officer.

The emergency calls from SIEV 221 were not made sufficiently early in the course of events to significantly advantage those involved in the subsequent rescue operation. If the calls had been made an hour earlier, for example, they may have resulted in an earlier response.

The Responsibility for Intercepting SIEVs

The responsibility for intercepting SIEVs entering any of Australia's contiguous zones rested with Border Protection Command.

Border Protection Command was comprised of consolidated assets and resources from the Australian Customs Service and Defence.

The Commander of Border Protection Command was Rear Admiral Timothy Barrett.

At the time Border Protection Command regularly deployed an asset to Christmas Island. At the time of the tragedy HMAS Pirie was the Christmas Island response vessel. This was usually the only asset at Christmas Island conducting surveillance on behalf of Border Protection Command.



At the time of the incident there were two assets allocated to Border Protection Command at Christmas Island, HMAS Pirie and ACV Triton, but these were to the east of Christmas Island for reasons discussed herein and could not provide effective surveillance of the north and north-west of Christmas Island.

While it was accepted by Rear Admiral Barrett that Border Protection Command was responsible for surveillance for SIEVs he expressed the view that –

I am unaware of any Government policy that requires BPC [Border Protection Command] to conduct surveillance in any part of the Australian Search and Rescue Region for the purpose of providing safety monitoring of vessels during sea passage³.

In the context of the priority allocated to intercepting vessels such as SIEV 221 Rear Admiral Barrett made the following observation –

The reality is that in the event of a SIEV landing without being intercepted, the consequences from a border security perspective, and the difficulty in recovering the situation, are significantly less for a Christmas Island arrival than for a mainland arrival⁴.

The above observation was clearly correct. Christmas Island is a small island surrounded by large areas of ocean and there would have been no possibility that asylum seekers from a SIEV, if they landed without being intercepted, would avoid detection. In addition it was obvious that asylum seekers intending to travel to Christmas Island were not wishing to avoid detection.



³ Statement of Timothy William Barrett dated 17 May 2011 at para 19

⁴ Supra at para 22

While it clearly would have been preferable if action could have been taken to intercept SIEV 221 prior to the stage when its engines failed and disaster was inevitable, at the time of its arrival the assets available to Border Protection Command, HMAS Pirie and ACV Triton, were involved in the performance of the core functions of Border Protection Command and were not available to conduct surveillance to the north of the Island.

It is noted that until the early hours of 15 December 2010 Border Protection Command had received no information which would suggest that an immediate response was required to prevent a possible tragedy on that morning or at all.

Available intelligence to Border Protection Command provided no direct information to the effect that imminent arrival of a SIEV was expected during the period of the evening of 14 December 2010 into the morning of 15 December 2010.

In that context the threat level for an arrival at the time was considered to be “medium”.

ACV Triton

In respect of ACV Triton, that vessel is chartered by Australian Customs and Border Protection Service to patrol Australia’s northern waters.



On 15 December 2010 it was only by coincidence that ACV Triton was at Christmas Island. At the time ACV Triton had on board 108 detainees who were being transported from the vicinity of Ashmore Islands to Christmas Island.

ACV Triton had arrived at Christmas Island on 13 December 2010 but due to prevailing weather conditions had been unable to offload the detainees being transported.

On the morning of 15 December 2010 ACV Triton was taking shelter to the east of the Island, a decision having been made that the 108 detainees on board should not be offloaded until the weather conditions improved.

HMAS Pirie

At the time of the tragedy HMAS Pirie was the Border Protection Command Christmas Island response vessel.

HMAS Pirie is an Armidale class patrol boat. The Commanding Officer of HMAS Pirie was Lieutenant Commander Mitchell Livingstone.

On 14 December 2010 HMAS Pirie had been involved with the apprehension of another SIEV, SIEV 220. SIEV 220 had been



escorted to the east of Christmas Island by HMAS Pirie and ACV Triton.

The occupants of SIEV 220, 8 asylum seekers and 3 crew, were transferred directly from the SIEV to Ethel Beach boat ramp on the evening of 14 December 2010 using HMAS Pirie's RHIBS.

Throughout the night of 14 December 2010 and the early morning of 15 December 2010 HMAS Pirie was monitoring SIEV 220 on which there were 4 members from the HMAS Pirie (a steaming party). The plan was to wait for conditions to ease so that SIEV 220 could be destroyed at sea.

There was no available mooring so the boarding party from HMAS Pirie on SIEV 220 were endeavouring to keep it from crashing on the Island or drifting out to sea.

In the early hours of the morning of 15 December 2010 HMAS Pirie was travelling in a north-south direction, altering course each 10 minutes, over a distance of approximately 1 mile, at a distance of approximately 1 mile from the coast of Christmas Island in the vicinity of Ethel Beach.

ACV Triton was also the lee of Christmas Island, further to the south, so that the two vessels would be a safe distance apart.



Radar Surveillance

There was no effective radar surveillance being conducted north of Christmas Island at the time when SIEV 221 arrived.

The Jindalee Operational Radar Network (JORN) was not turned on at the time when SIEV 221 was wrecked and was never designed as a surveillance tool for detecting small wooden boats such as SIEV 221.

At the time of the incident Border Protection Command had commenced a process to trial a land based radar system but that system was not operational. It is doubtful whether that type of radar system would have been capable of detecting SIEV 221 on the morning of 15 December 2010.

Surveillance – Summary

While surveillance to the north of Christmas Island was a priority of Border Protection Command, the priority was not such that it was considered appropriate to allocate a second vessel to conduct surveillance when HMAS Pirie was unavailable or to put in place other means of effective surveillance which would have required significant additional resources. In the context of the functions of Border Protection Command, arrangements put in place for surveillance were reasonable.



The Emergency Response

In respect of the response to the emergency, while there were some delays in HMAS Pirie and ACV Triton and their small boats arriving at the scene of the disaster, it is important to note the fact that 41 persons were saved from the ocean by naval and customs officers who all risked their lives in doing so.

There was no guarantee at the time that the vessels, HMAS Pirie and ACV Triton, would have been available and able to assist. If, for example, ACV Triton had not been at Christmas Island, there would have been more deaths. If neither vessel had been able to assist it is likely that there would have only been one survivor, the passenger who was able to jump from the vessel to the rocky shore.

While there were a number of delays in the response from 5:46am, when the Customs on-call officer was advised of the arrival of SIEV 221, until about 7am, when the RHIBs from the HMAS Pirie arrived at the scene, the reasons for those delays resulted from the position in which HMAS Pirie and ACV Triton were placed at the time when the disaster took place.

I am satisfied that Lieutenant Commander Livingstone on HMAS Pirie and Andrew Stammers, Master of the ACV Triton, acted as promptly and efficiently as they could in the circumstances. The officers on the RHIBS and tenders demonstrated great courage and



resourcefulness in the circumstances and I have nothing but praise for them.

The Christmas Island Emergency at Sea Response Capability

On 15 December 2010 there were no vessels from Christmas Island involved in the rescue efforts, all of the rescue vessels involved came from HMAS Pirie and ACV Triton. In the circumstances as they existed at the time there was no realistic possibility that any vessels from the Island could have participated in the rescue efforts. This was because of two factors –

- (a) the sea state at the time, which was extreme; and
- (b) the fact that there were no vessels on the Island capable of a rescue response in bad weather.

The agency with primary responsibility for an immediate search and rescue response in the area of the tragedy was the Australian Federal Police (AFP).

At the time of the tragedy the search and rescue vessel provided to the AFP for use on Christmas Island was a LeisureCat, the “Colin Winchester”.

At the time of the tragedy that vessel was out of survey and believed to be unsafe for use in bad weather.



On the Island at the time there was a Volunteer Marine Rescue Service (VMRS) provided by local volunteers, the Commander of which at the time was Greg Riley.

It was clear from the evidence at the inquest that these volunteers were dedicated and committed people. I have great admiration for the contribution to marine safety provided by VMRS volunteers.

Responsibility for providing vessels for use by the VMRS rested with the Commonwealth. The vessel provided to the VMRS was a LeisureCat vessel, similar to the vessel provided to the AFP, namely the “Sea Eye”.

At the time of the tragedy that vessel was also out of survey and was believed to be unsafe for use in bad weather.

There were no other vessels on Christmas Island on 15 December 2010 which were capable of taking part in a rescue operation in difficult conditions and so on that morning there was no capability for an emergency response in rough seas.

At the inquest the circumstances which resulted in there being no vessels on the Island capable of a rescue response in bad weather were explored. This involved reviewing the circumstances from the time of purchase of the LeisureCat vessels the “Colin Winchester”



and “Sea Eye”. These were purchased by the AFP with funding provided by the Department of Regional Australia.

The evidence revealed that –

1. In respect of the purchase of the vessel for the VMRS, at the time when the decision was made to purchase the LeisureCat, earlier documentation which related to recommendations made by the Fire and Emergency Services Authority of Western Australia (FESA) which had set up the VMRS and had ongoing interactions with the Department of Regional Australia were somehow not considered and the views of the intended users of the vessel were not taken into account.
2. The contract for purchase of the vessels was entered into with a named company when the name of that company had changed years earlier.
3. Problems were experienced with the LeisureCat vessels sent to Christmas Island virtually from the outset and on their arrival the Harbour Master placed the “Sea Eye” into quarantine as he was concerned that the vessel had not been built according to the United Shipping Laws (USL) Code.



4. On arrival the “Sea Eye” was damaged and relevant documentation was not available and was difficult to obtain.
5. On 11 August 2010 the “Colin Winchester” was comprehensively inspected by an Australian Maritime Safety Authority (AMSA) Inspector and a significant number of deficiencies were noted in a marine surveyor’s report of that date.
6. An almost identical marine surveyor’s report of deficiencies was also provided by AMSA in respect of the “Sea Eye” dated 12 August 2010 following inspection of that vessel.
7. The reports required the defects to be corrected by 11 November 2010 and 12 November 2010 respectively. Those defects were not corrected and the vessels were not replaced.
8. Concerns had been raised in respect of the stability of both vessels as it was believed they were overweight.
9. In September 2010 Sergeant Swann was directed by AFP Management that he was not to use the vessel, the “Colin Winchester”.
10. In respect of the VMRS vessel, the “Sea Eye”, as a result of the problems relating to that vessel Mr Riley, the Commander, had advised Sergeant Swann by letter dated 1 December 2010 that the VMRS was unable to provide a dedicated, viable marine rescue service.



The fact that neither the AFP nor the VMRS had access to a suitable vessel which could be used in rescue operations in bad weather and that there was no viable marine rescue service on the island was extremely unsatisfactory and unsafe. That this situation was allowed to exist for over four months leading up to the tragedy and afterwards at a time when the monsoon season was approaching and then during the monsoon season was particularly unsatisfactory and unsafe.

In addition it appeared that on 15 December 2010 the AFP on Christmas was not well prepared in respect of its role as a search and rescue authority in a number of respects.

Claims that information had been provided of the pending arrival of SIEV 221

After the inquest had commenced information was provided to the effect that identified detainees claimed that they had provided actionable information to persons in authority which could have enabled an earlier response to take place resulting in the tragedy either being avoided altogether or the number of deaths being reduced.

The detainee whose Department of Immigration and Citizenship (DIAC) number is OTF 018 claimed that he had told a guard at the



Christmas Island Detention Centre of the impending arrival of SIEV 221 hours before it arrived.

In his statements OTF 018 claimed that a number of fellow detainees were involved in reporting the imminent arrival of the boat to a Serco employee. The most prominent among these were a detainee whose DIAC number was ZUC 001 (the alleged translator of OTF 018's account) and a detainee whose DIAC number was OTF 016 (OTF 018's room mate).

These allegations were investigated in great detail by police and at the inquest. It became clear that the account of OTF 018 and the accounts of those who gave evidence and provided information supporting that account were false. The accounts were a fabrication, inconsistent with the objective evidence.

The only account by any person in authority provided to the inquest which would suggest that an advance warning had been received of the arrival SIEV 221 was provided in a statement by an employee of MSS who had been employed as a fly-in fly-out contractor to Serco on Christmas Island.

The account of this witness in evidence was significantly different from the account given in his statement and was not credible. In any event, based on the witness' evidence at the inquest, the



information which he claimed to have received and communicated was not credible information which ought to have been passed on or which would have been likely to have been acted upon.

On 5 September 2011 information was provided that a young woman, who had been a detainee on Christmas Island at the time of the wreck of SIEV 221, had told employees of Serco and DIAC that SIEV 221 was on the way from Indonesia before it arrived and specifically that she had done so on the night before the wreck.

This person was referred to at the inquest as MS 1 and was an Iranian national who had arrived on Christmas Island on 13 October 2010.

Extensive investigations were conducted into the allegations made by MS 1, but ultimately no oral evidence was called at the inquest in relation to those allegations. No party at the inquest submitted that it would have been helpful to receive oral evidence in relation to the issues. It appeared abundantly clear from objective evidence obtained by police investigators that the claims were unfounded.

It appeared, therefore, that there was no reliable, actionable information available to any persons in authority to the effect that



SIEV 221 or any other similar vessel was expected to arrive at Christmas Island on the early morning of 15 December 2010.

Conclusions

The evidence revealed that individuals categorised at the inquest as “people smugglers” or as “organisers of the venture” contributed to the deaths. To a lesser extent it could be said that the crew, in being involved in transporting passengers of SIEV 221 to Christmas Island and by their decision making and steering of SIEV 221, also contributed to the circumstances which resulted in the deaths.

In the context of pending criminal prosecutions it is not appropriate for me to consider whether a verdict of unlawful homicide or a verdict of accident would be appropriate. In those circumstances I have made an Open Finding as to how the deaths arose.

Comments

A number of comments including recommendations have been made based largely on the recommendations of Sergeant Adam Mack of the WA Water Police, who assisted with the search and rescue response after the tragedy, and Lieutenant Commander Livingstone, who was in command of HMAS Pirie at the time of the emergency response.



Those comments and recommendations are directed largely towards the possibility of enhancing surveillance to the north of Christmas Island, improving the capability for an emergency at sea response from Christmas Island and reducing risks for naval personnel involved in rescue operations.



INTRODUCTION



The above photograph taken from the shore shows SIEV 221 as it approached the location where it sank

Unless otherwise stated the photographs herein were all taken by persons on the island on 15 December 2010 and are part of Exhibit "9"

On Wednesday 15 December 2010 between 6.40am and 7.00am Christmas Island time Suspected Irregular Entry Vessel (SIEV) 221 crashed on the rocky shoreline of Christmas Island and sank. At the time it was the monsoon season at Christmas Island and sea conditions were very rough, particularly near the coast.





The above photograph shows SIEV 221 immediately before it was forced onto the cliff

Winds were generally from the north-west with speeds of 20 to 30 knots at times on 14 and 15 December. Significant wave height most likely peaked at 3 to 4 metres overnight on 14 December⁵.

The vessel, the engine of which had failed shortly before the disaster, was driven repeatedly by the ocean onto low cliffs at the shoreline and was then swamped by waves and backwash causing it to sink. On the boat at the time there were 92 persons, 89 passengers and 3 crew. The passengers were mostly from Iran and Iraq and were seeking to enter Australia.



⁵ Bureau of Meteorology Report, Exhibit 9, Annexure 9

At one stage when the vessel struck the low cliffs one passenger was able to jump from the vessel onto the rocky shore and he survived. 50 passengers died, subsequently the bodies of 30 of those persons were recovered. In respect of 20 persons who died, their bodies have not been recovered.



The above photograph shows SIEV 221 forced against the cliff

41 persons were saved from the ocean by naval and customs officers in rigid-hulled inflatable boats (RHIBS) which had been launched from the naval vessel, HMAS Pirie, and tenders which had been launched from the Customs vessel, ACV Triton.





Neither vessel was at the location when SIEV 221 first struck the shore. When the first naval and customs responders arrived at the scene they observed the semi-intact hull of SIEV 221 smashing against the rocks, at that stage people from that boat were already spread out in the water and the sea was throwing debris and people onto the cliff face⁶.



The above photograph shows SIEV 221 after it had been driven against the shore being swamped by the ocean



⁶ t.430

In the conditions which existed at the time they arrived at the scene it was a remarkable achievement on the part of the naval and customs officers in the RHIBS and tenders from the HMAS Pirie and the ACV Triton that 41 survivors were recovered from the sea. Those officers demonstrated great bravery in extremely difficult and dangerous circumstances. In my view it is extremely fortunate that none of them died in the rescue operation.



Photograph showing rescue efforts

The success of those involved in saving survivors from the ocean was due in no small part to the very considerable contribution made by Christmas Island residents who threw life jackets to persons in the water. Without those life jackets many more would have perished.





Photographs showing rescue efforts



The residents also provided considerable assistance by acting as spotters, pointing out to those on the rescue boats the location of survivors in the water.

Efforts were also made by those on the island to pull survivors out of the water using ropes. Residents of the island put their lives at risk by going to the edge of wet, jagged cliffs in order to do so. Tragically those efforts were unsuccessful, although one man was pulled out of the water and almost made it to safety.

The bravery of those involved was described by the Administrator the Island, Brian Lacy, who commented on the rescue response in the following terms⁷ -

Your Honour, it was one of the most heroic things I've ever seen by the Navy personnel. I mean, they were putting their lives in danger and the bravery of our own people, our own community, was something I've never seen before as well in human rescue attempts.

I would add the observation that the above comments also apply to those on the customs tenders involved.

Mr Lacy further described the efforts of the local people in the following exchange⁸ -

Well, it was pouring with rain, your Honour. There was a very strong wind blowing. People were standing down on the edge of the cliff without their shirts on trying to throw ropes and life vests out to people in the water. They were actually in danger themselves of falling on the rocks and if you fell on those rocks in those conditions it would be almost [certainly] disastrous, your Honour.

At the time when they were doing it as I understand there was a great amount of water going over the top of them as well? - - - There was. It was spraying right up to the top of the verge of the grass area. Yes, your Honour.



⁷ t.2040
⁸ t.2042

So a very wet, unsafe environment? - - - They were, yes.

Sharp jagged rocks? - - - Yes.

People in the sea below them? That's exactly right, your Honour.

Yes. Yes? - - - They were very brave.

I would add in the context of the bravery of the naval and customs officers the observation that all of the rescue boats were jet powered and all encountered difficulties with their jet intakes becoming blocked by debris in the ocean which added to the risks they were facing. In the case of one of the RHIBs from HMAS Pirie, a life jacket effectively blocked the impeller intake and it was necessary for the RHIB to return to the HMAS Pirie for this to be removed. There were a number of stages during the recovery process when failed engines could have resulted in a RHIB or tender being dashed against the cliffs or being otherwise compromised with more loss of life including loss of life of navy or customs personnel.

Jonathan West, Leading Seaman Boatswain Mate from HMAS Pirie who was in charge of one of the RHIBs, described one of the incidents which occurred during the rescue operation in the following terms⁹ –

There came a point in the rescue where my RHIB became swamped time and time again by the rolling swell. Swamped means that my RHIB had been filled with water repeatedly. At this point I had ten survivors embarked in my RHIB. I made the decision to return to HMAS Pirie and off load the survivors.



⁹ Para 23 of Statement of Jonathan West, Annexure 6.21

While there could easily have been many more deaths and it is fortunate that navy and customs personnel and island residents did not die as well as asylum seekers, had it been possible for the rescue vessels to have arrived earlier, preferably before SIEV 221 was driven against the shore, or had there been more rescue vessels available, it is likely that more lives could have been saved. Whether or not there was a realistic possibility that either of these events could have occurred was a question which was explored at the inquest.

An aspect of the disaster which is relevant in this context is the fact that the disaster was foreseeable and, indeed, the possibility that rescuers could have also died was foreseeable and was foreseen.

The island provided a particularly inhospitable destiny for illegal entry vessels.

The shores of the island are largely comprised of jagged cliffs and there were very few locations where a boat could safely off-load passengers to the shore even in good weather conditions.

In a context where there were an increasing number of unsafe illegal entry vessels making the journey from Indonesia to Christmas Island and the physical structure of the island made it a dangerous destination there was an ever increasing



likelihood there would be a major tragedy, particularly during the monsoon season.

In fact on the night before the tragedy members of the Volunteer Marine Rescue Service (VMRS) were discussing the boat arrivals and Gregory Riley, the Commander, expressed concern that the swell was so big that people could be killed and he hoped that the dead would not come from one of his rescue teams¹⁰.

As it was the tragedy involved the largest loss of human life in a maritime incident in Australian territorial waters during peace time in 115 years¹¹.

LOCATION OF THE INCIDENT : RELEVANT CORONIAL LEGISLATION

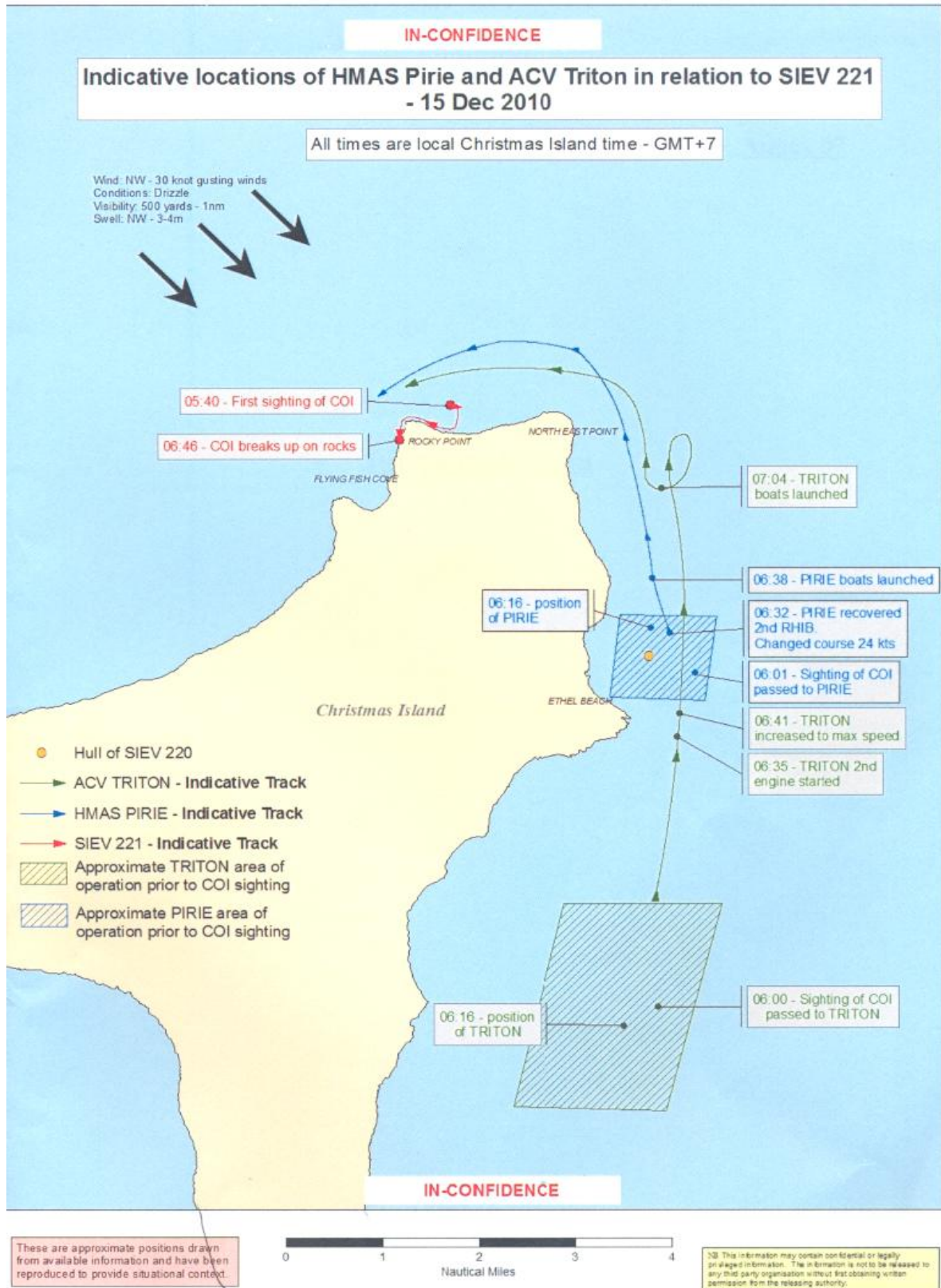
Christmas Island is the summit of a submarine mountain located approximately 2650km north-west of Perth and it covers an area of approximately 135 square kilometres.

The island rises steeply to a central plateau dominated by strands of rainforest, this plateau reaches heights of up to 361 metres and consists mainly of limestone and layers of volcanic rock.



¹⁰ Statement of Gregory William Riley – 19 January 2011 – Annexure 2, 6.2.123

¹¹ Report of Sergeant Alan Mack – Annexure 24, 24.1 at p.5, t.1292



The above map taken from the SIEV 221 Internal Review, Annexure 6, shows the approximate paths of SIEV 221 (described as COI), HMAS Pirie and ACV Triton
Other information on the map which is inconsistent with these reasons should not be relied upon



The island's coastline is an almost continuous sea cliff, up to 20 metres in height.

In several locations the cliff gives way to shallow bays, the largest of these bays forms the island's only port known as Flying Fish Cove.

On the north-east of the island at a location known as Ethel Beach there is a boat ramp which although steep can be used to launch small trailerable vessels, particularly when prevailing wind conditions are from the north-west.

The crash site of SIEV 221 occurred at a populated area of the island known as the Settlement in an area known as Bosun's. That name is derived from a local tavern at the location called "The Golden Bosun Tavern".

The exact latitude and longitude co-ordinates of the crash site were, latitude 10^o 25.0 South, longitude 105^o 40.4 East.

The cliff area at the crash site presented a very hard and sharp jagged surface.

The island is surrounded by a narrow coral reef. There is virtually no coastal shelf and the sea plummets to a depth of approximately 500 metres at approximately half a nautical mile offshore.



Christmas Island was a popular destination for potential irregular immigrants (PII) seeking entry to Australia.

In the six month period from 15 June 2010 until 15 December 2010 59 SIEVs entered Australian territory, of which 36 travelled to Christmas Island (approximately 61%).

The Territory of Christmas Island is run and funded by the Commonwealth of Australia, and not by any state or territory government, although in a number of key areas of responsibility assistance is provided by agencies of the state of Western Australia.

The relevant coronial legislation applicable to the Territory of Christmas Island is the *Coroners Act 1996 (WA) (CI)* (the Act). The Act comprises the *Coroners Act 1996*, an Act of Western Australia, as amended and in force under section 8A of the *Christmas Island Act 1958*.

For the purposes of the Act I have jurisdiction to investigate a reportable death which means a “Territory death” –

- (a) that appears to have been unexpected, unnatural or violent or to have resulted, directly or indirectly from injury;

....



A Territory death includes a death that occurred “in the Territory or the coastal sea” and “the coastal sea” means:

- a) the territorial sea adjacent to the Territory; *and*
 - b) the sea on the landward side of the territorial sea adjacent to the Territory and not within the limits of the Territory;
- and includes the airspace over, and the sea bed and subsoil beneath, that sea.¹²

As all of the deaths the subject of the inquest occurred at or very close to the shore of Christmas Island they were clearly Territory deaths and as they resulted from injury or drowning they were reportable deaths. This inquest has been held pursuant to the provisions of Section 25(1) the Act with a view to finding in respect of each deceased person:

- a) the identity of the deceased;
- b) how the death occurred;
- c) the cause of death; *and*
- d) the particulars needed to register the deaths under the *Births, Deaths and Marriages Registration Act 1998*.

In respect of the suspected deaths of the 20 persons missing, presumed dead, it has been necessary for the inquest to explore the circumstances of each suspected death and for me to determine whether the death in each case has been established beyond all reasonable doubt, and if so how the death occurred and the cause of the death¹³.

In addition, in a context where 50 deaths have occurred, an important focus of the inquest has been to determine whether



¹² Section 3 of the Act
¹³ Section 23

comments could be made on any matters connected with the deaths with a view to preventing deaths occurring in similar circumstances in the future¹⁴.

THE INVESTIGATION

Following the disaster on 15 December 2010 it was necessary for the deceased persons to be identified. 30 separate identification files were prepared, one in respect of each deceased person whose body was recovered. Evidence comprised accounts of witnesses including survivors of the disaster, family members in Australia and overseas and other witnesses. DNA evidence was used in many cases to establish proof of identity. In a number of cases dental evidence was obtained from the countries of origin and dental comparisons provided conclusive evidence as to identity. All 30 deceased persons were identified to the satisfaction of a Disaster Victim Identification Board (DVI) and of the State Coroner or Deputy State Coroner.

In respect of the deceased persons whose bodies were not recovered, the process was much more complicated. Again in each case a separate file was created, largely as a result of investigations conducted by the Australian Federal Police (AFP). Unfortunately in some of these cases the evidence initially presented was not sufficient to provide proof



¹⁴ Section 25(2)

of identity and further investigations were conducted by WA Police.

None of these cases was reviewed by a DVI Identification Board.

In respect of these suspected deaths difficulty was encountered in establishing whether or not some of the persons in question were on the vessel. In many cases there was evidence that the persons suspected of being deceased had left Iran or Iraq, but evidence as to their being on the boat in question was lacking. This situation was further complicated by the fact that many of the witness statements obtained had been obtained for other purposes and only dealt with the identity of the missing persons in an indirect and inconclusive way. A further problem related to the fact that many of those on the vessel were known by a number of different names and those names did not translate easily from the language of origin into English and spellings were inconsistent.

WA Police officers were required to obtain a number of additional statements from family members, some of whom were able to identify those missing using photographs of passengers on the vessel taken by those on shore shortly before it sank.



The investigation into the circumstances surrounding the incident was extremely extensive and a large number of issues were raised by a range of different individuals and parties. The ultimate brief prepared by WA Police contained 25 annexures, each annexure comprising multiple lever arch files. Annexure 2, for example, comprised 9 lever arch files. The total brief comprised well over 100 lever arch files.

The brief included about 730 witness statements as well as a very large number of reports, records, emails and other documents. The brief, as updated during the inquest, was received as one exhibit¹⁵, and references in these reasons to statements being located in numbered annexures relate to the annexures to that brief.

The fact that a brief was prepared in time for the inquest to start and continue during the year, although a very large number of additional statements were obtained subsequently, is a great credit to all concerned. The Australian Federal Police (AFP) obtained a large number of statements particularly shortly after the incident, but ultimately much of the subsequent investigation fell to WA Police officers whose performance was outstanding.



¹⁵ Exhibit "9"

My particular thanks go to Detective Superintendent Graham Castlehow of WA Police and his staff for their dedication and willingness to explore issues in a professional and competent manner.

**SUPPRESSION ORDERS:
NON USE OF NAMES OF ASYLUM SEEKERS**

The court was advised that a suppression order should be made in respect of the publication of the names and other identifying information relating to passengers of SIEV 221 and other asylum seeker witnesses at the inquest. In that context a suppression order to that effect was made as follows –

That there be no report of the inquest or any part of the inquest which would identify or tend to identify any person(s) who are seeking refugee status.

In the above context during the course of the inquest asylum seekers were referred to either by their Department of Immigration and Citizenship (DIAC) identification numbers or by initials.

In respect of the alleged crew and organiser of the journey, it was contended that their names should not be published and they should not be otherwise identified as those persons are currently before the courts in relation to criminal proceedings.



A letter was received from the Commonwealth Director of Public Prosecutions addressed to Counsel Assisting dated 21 July 2011 in which it was emphasised that it was important to avoid publication of the name of the organiser of the journey. The advice of the Director was also to the effect that he had concerns in relation to possible publication of findings against the alleged crew and organiser, particularly if such publication would be proximate to criminal trials.

In respect of the concern relating to possible prejudice of criminal trials, evidence relating to the behaviour of those involved in organising the journey was limited, largely to written rather than oral evidence.

In that context the following suppression order was made –

That there be no report of the inquest or any part of the inquest which would identify or tend to identify either the alleged organisers or crew of SIEV 221.

Following receipt of correspondence from representatives of persons charged pursuant to provisions of the *Migration Act 1958 (Cth)* and further correspondence on behalf of the Commonwealth Director of Public Prosecutions the latter order was specified to continue until the completion of the trials of the alleged crew and organisers.



For the above reason there is limited reference to the conduct of the individual people smugglers and crew herein, although it was accepted by all involved at the inquest that the conduct of the people smugglers contributed to the deaths and to a lesser extent the conduct of the crew also contributed to the deaths.

THE CONDUCT OF THE PEOPLE SMUGGLERS

In the context of the above observations I do not consider it appropriate to explore in detail the conduct of various individuals who at the inquest were categorised as “people smugglers” or as “organisers of the venture”. The Commonwealth submissions described the conduct of those persons as follows –

99. Examples of the callous disregard of the organisers of the venture for the safety of those onboard SIEV 221 are summarised in the WAPOL report to the Coroner and supported by evidence of survivors and by observations of numerous witnesses. They are not contentious in terms of evidentiary support, are mentioned in passing in various parts of the Closing and identified individually as “causes of death” : see, for example paragraphs 1546(a), (b), (c), (d), (e), (f), (g), (i) and (j) of the Closing. The examples include (page references are to the WAPOL report) –

- 99.1 the boat had no radio : p.6;
 - 99.2 there were not enough life jackets : pp 23, 24, 107;
 - 99.3 the boat was overloaded : pp 23, 105;
 - 99.4 the captain left halfway through the voyage : p23;
 - 99.5 the bilge pump was faulty : p23;
 - 99.6 people were instructed to throw their mobile phones away : p23;
 - 99.7 the engine had problems before the journey : pp23, 105;
 - 99.8 the fuel was not secured : pp25, 83;
 - 99.9 the survivors observed no emergency safety equipment, such as a maritime radio or EPIRB : p104; and
 - 99.10 the GPS was thrown overboard, thereby abandoning a navigational tool that could have ensured safe passage to the lee of the island;
- all in the most treacherous of weather conditions.



In my view there was ample evidence at the inquest to support most if not all of the above submissions which I generally accept as accurate.

In addition the submissions on behalf of survivors and relatives of the deceased contended that the people smuggler or smugglers lied to many who took the journey on SIEV 221 about the safety equipment on the boat and the availability of life jackets, by claiming that ample food would be provided and by failing to describe the inadequate toileting facilities on the boat etc.

In addition in this context it was submitted that having been lied to about the journey they were about to take, the passengers in SIEV 221 found themselves in an extremely difficult position when they were finally taken to SIEV 221¹⁶ .

The passengers were all taken to the SIEV 221 by two or three smaller boats. By the time they are on board the SIEV 221 they are at sea, in the dark and have no ability to turn back. Many might ask why a passenger would travel this way if they could see how poor the boat was and could see there were few life jackets. The passengers had no ability to turn back once they appreciated this was their 'final' boat and the one to take them to Australia.

THE CONDUCT OF THE CREW

In the context of pending trials I am particularly concerned about exploring the conduct of the crew in any detail. It does appear clear, however, that the crew by taking



¹⁶ Family submissions, para 59 ii

the passengers of SIEV 221 to Christmas Island and by their decision making which impacted on the safety of the voyage contributed to the circumstances which resulted in the deaths.

THE ACCOUNTS OF SURVIVORS FROM SIEV 221

Of the 89 passengers and 3 crew on board SIEV 221 at the time of the disaster, there were 18 family groups and 16 independent travellers. Only 42 individuals survived, 3 Indonesian crew members and 39 asylum seekers. Of the asylum seekers 25 were Iranian, 7 were Iraqi and 7 had stateless citizenship.

Of the initial 93 persons who departed from Indonesia, there were 4 male crew members, one of whom, the captain, was taken from SIEV 221 onboard a different vessel prior to its reaching Christmas Island. Of the passengers there were 55 males and 34 females ranging in age from 2 months to 54 years.

There were 24 juveniles and infants onboard SIEV 221 of whom 15 died during the incident (the bodies of eight were recovered) and nine survived.

The cost of travel for the asylum seekers to Australia from Indonesia appears to have varied from about \$4,000 to \$8,000 (US dollars) each up to \$64,000 (US dollars for a family).



In respect to asylum seekers travelling from Iraq, it appears that their path to Indonesia started with air travel to Kuala Lumpur. These people travelled by boat from Kuala Lumpur to Indonesia where they would be met by people smugglers and taken to secluded houses. They would later be taken by vehicles to Jakarta where they stayed in hotel accommodation.

The majority of Iranian asylum seekers travelled by aircraft to Jakarta and on arrival were conveyed to hotel accommodation.

It appears that the asylum seekers were generally given false information by the people smugglers about the quality and safety of the vessel on which they would be travelling to Australia.

On 12 December 2010 all the asylum seekers were collected from their respective accommodation in Jakarta and conveyed by vehicle to a remote location where they were taken to two boats which conveyed them to their ultimate larger travel boat, SIEV 221, which was located further out at sea.

SIEV 221 was described by survivors as being a wooden boat which would normally be used for fishing. The cabin of the boat was positioned at the rear, directly over the engine room. A makeshift hole at the back of the boat was to be used as a toilet by the passengers.



It appears that there were only about twenty lifejackets on the boat and these were not seaworthy. No safety instructions were provided by the crew as to how to use the lifejackets or what to do in an emergency.

On board SIEV 221 there was some drinking water and orange juice and noodles available for consumption by the asylum seekers while some asylum seekers had been told to bring their own food and drink.

The boat was cramped for room and some asylum seekers were located below deck and others on top. All of the asylum seekers appear to have suffered from exposure to the elements during the trip to Christmas Island, they were consistently wet as a result of rainy periods and many complained of seasickness.

When SIEV 221 left Indonesia it had a crew of four Indonesians including at least one person who acted as captain. After three days the person who appears to have acted as the captain left SIEV 221 on another vessel which had been trailing it from Indonesia. It is believed that this person then returned to Indonesia.

In respect of the three remaining crew, they appear to have had limited relevant seafaring experience.



It appears clear that so far as the people smugglers were concerned, both the vessel and its passengers were expendable.

THE ARRIVAL OF SIEV 221 AT CHRISTMAS ISLAND

On the early morning of 15 December 2010 there was almost no surveillance being conducted of the ocean to the north and north-west of Christmas Island¹⁷. This was despite the fact that another vessel SIEV 220, had arrived on the morning of 14 December and had first been detected by persons onshore in the area of the Settlement when it was only 300 yards north of Flying Fish Cove and over the preceding six months there had been an increasing number of SIEVs arriving at Christmas Island.

The first sightings of SIEV 221 were made by individuals on the island coincidentally looking out to sea at the time.

Possibly the first person to see the boat was Mrs Beverley Orchard who lived at an address on Gaze Road, situated almost directly in front of the Mango Tree Lodge.

On the morning of 15 December 2010 Mrs Orchard woke up at about 5.15am and went to her balcony where she saw what she believed to be a large Indonesian fishing boat with its bow facing her house. She knew immediately that the boat was a SIEV.



¹⁷ The extent of surveillance being conducted by HMAS Pirie is discussed later herein

Mrs Orchard said she checked the time of 5:15am on her clock. She said she first saw the boat about five minutes later after she put on a robe¹⁸. Assuming that this evidence is accurate, she must have first seen the boat at about 5:20am.

She described the weather conditions on the morning as severe or cyclonic. There were very strong winds from the north-west. It was raining on and off and she thought there was about a four metre swell on the ocean.

When Mrs Orchard first saw the boat she thought it was about 400 metres away from the shore.

When Mrs Orchard saw the boat it was under power and she saw fumes coming from stacks which she believed were diesel fumes.

Mrs Orchard watched the boat approach the cliffs in front of her and then turn to the west. She said that it was “off” her house for about 25 minutes¹⁹. The SIEV then travelled towards Rocky Point and she could hear voices from people on the boat calling out.

It appears that sunrise on that morning was at about 5.31am and so if Mrs Orchard saw the boat prior to that time, it must have been in the early morning light prior to sunrise.



¹⁸ t.1663
¹⁹ t.1665

At about 5.40am on that morning Ross Martin, a Customs Officer, walked out on the balcony of the room where he was staying at the Mango Tree Lodge and saw what he believed to be a foreign fishing vessel. This vessel was the SIEV 221.

When Mr Martin first saw the vessel he thought it was approximately 500-600 metres away from the coast. Mr Martin first saw smoke coming from the vessel which he took to be exhaust smoke and this drew his attention to the boat.

The weather at the time was overcast but it was not raining. The sea conditions were rough and it was very windy. Later Mr Martin could hear people on the vessel whistling and shouting for attention over the sound of the engine as the vessel proceeded towards Flying Fish Cove.

When Mr Martin first saw the vessel he believed that it was travelling from west to east in a south-easterly direction, it then travelled almost directly towards Mr Martin in a southerly direction.

In respect to Mr Martin's evidence as to the initial west to east direction of the boat it is not surprising if the boat's direction of travel was far from straight, but in my view it is clear from the evidence of the survivors and others that its general direction at that stage was north to south towards the Settlement.



It was submitted on behalf of the Commonwealth that Mr Martin must have seen the boat before Mrs Orchard because her evidence cannot be reconciled with his and because of the evidence of other witnesses who she referred to in her evidence.

I do not accept that submission. In my view Mrs Orchard was a reliable witness who gave definite direct evidence about looking at her clock shortly before seeing the boat. In respect of the other witnesses who Mrs Orchard saw that morning, it is obvious from her evidence taken as a whole and the objective facts that she saw them some time after she first sighted the boat.

Mrs Orchard's house is closer to the shore than the Mango Tree Lodge where Mr Martin was standing and there is no physical reason why she could not have seen the boat first. As to estimates of the distance the boat was from shore or how it was moving when first seen by both Mr Martin and Mrs Orchard, I do not place great reliance on those estimates.

It is notoriously difficult to estimate distances at sea and it must have been particularly difficult on this occasion because of prevailing weather conditions.

While in my view it is likely Mrs Orchard saw SIEV 221 before Mr Martin she did not call police or take other action to alert authorities to the situation. It appears that it was not until



the boat had approached shore and changed direction to travel towards Rocky Point that she realised that it was in serious trouble. I assume it was then that she considered the possibility of calling police and by that stage other people were alert to the boat's arrival and were responding to it.

Mr Martin was reasonably confident about the time when he first observed the boat as he believed he had taken his glasses from beside a clock radio and noticed the time.

Questioned about his ability to see the vessel at about 5.40am when it was approximately 600 to 500 metres offshore, Mr Martin stated, "T241 There were periods where it dropped in the troughs, but with the smoke being emitted from the exhaust, I was able to see the trail of black smoke." He said that at that time it was sunrise and first light had been at about 5.07am²⁰.

Mr Martin contacted the customs on call officer, Les Jardine, by telephone at 5.46am and advised him of the situation.

When SIEV 221 arrived within about 100 metres off the coast it travelled in a westerly direction towards Flying Fish Cove and Mr Martin followed it. He went to the shoreline adjacent to the Golden Bosun Tavern and took video footage of the boat using his mobile telephone.



²⁰ t.241

It is clear from the evidence of many witnesses that on 15 December 2010 the weather was coming from the north-west with strong winds and high sea swell. Weather conditions experienced at the Island depended on the location –

- ✚ To the east of the Island at the location where HMAS Pirie and ACV Triton were located prior to the arrival of SIEV 221 conditions were relatively sheltered. These conditions applied at the area of Ethel Beach where there was a steep boat ramp going to the ocean.
- ✚ The exposed areas of the Island, particularly to the north, were experiencing the full force of the weather with strong winds and high seas. These conditions were experienced by the HMAS Pirie and the ACV Triton and their small boats when they went from North East Point towards the Settlement after the arrival of SIEV 221.
- ✚ In the area of the Island near Flying Fish Cove conditions were particularly severe. For vessels travelling south from Rocky Point towards Flying Fish Cove there was an area where the deep sea ocean swell struck the cliffs of the Island and backwashed out to sea. A combination of backwash and oncoming swell created what was described by a number of witnesses as a “washing machine effect” making this water very hard to navigate and unpredictable²¹. It was at this location that SIEV 221 was driven onto the rocky cliffs and sank.



²¹ Statement of Special Constable Shane Adams Annexure 3.34 at para 4

It appears that SIEV 221 travelled in a generally north to south direction to Christmas Island until it approached the shore close to the Mango Tree Lodge where it was seen by Mrs Orchard and Mr Martin. SIEV 221 then travelled in a westerly direction towards Rocky Point and then south to the area near the Golden Bosun Tavern where it sank.

The decision to turn the boat to the west into the weather was a fatal one. Had the boat travelled to the east, it is possible that it could have reached the relatively sheltered waters near Ethel Beach and the disaster may not have happened.

As the boat was under power when it turned west and travelled to and around Rocky Point, the decision to travel in that direction must have been a conscious one made by a member or members of the crew. That decision-making may have been the result of inexperience.

In Flying Fish Cove on that morning conditions were extremely severe and there was no real possibility that asylum seekers on the boat could have been offloaded safely. It appears, therefore, that from the moment when the decision was made for the boat to travel in a westerly direction all on board were in great peril and faced possible death.

This fact appears to have been appreciated by a number of the residents of Christmas Island who saw SIEV 221 on its



journey towards Flying Fish Cove. It is clear, however, that many of these residents were expecting the Australian naval vessel (HMAS Pirie) to intercept the boat and none were aware of the problems which would ultimately delay the arrival of that vessel.

As SIEV 221 travelled west from the vicinity of the Mango Tree Lodge it travelled in front of Triadic Crescent where it was seen by the occupants of numbers 4, 6 and 8.

Paul Maberly and his wife Glenda lived at 4 Triadic Crescent and they watched SIEV 221 pass in front of their house. They described the boat as being only about 15 metres away from the coast and they could hear people on the boat screaming and calling out. According to Mr Maberly the people on the boat appeared to be very scared and the screaming appeared to get worse every time they went down the face of the each wave.

In the circumstances SIEV 221 was far too close to the coast and this added to the danger for all on board.

Similar accounts were given by the occupants of 6 Triadic Crescent, Brendan Tiernan and Amy Luetich, and the occupant of 8 Triadic Crescent, Alan Thornton.

It appears from the evidence of the witnesses from Triadic Crescent that SIEV 221 came past their houses at about 5:55am.



Mr Maberly believed that his wife drew his attention to the boat at between 7 to 8 minutes prior to 6am.

Mr Maberly was so concerned for the welfare of the people on the boat he decided to contact 000. He told the operator that he could see a refugee boat out the front of his house. He told the operator that “they” needed to get someone to “give it a hand as it appeared to need assistance”. According to Mr Maberly, the operator’s response was to the effect of, “We are aware of that” or “We will take care of it”²².

Mr Maberly was still concerned so he attempted to contact Mr Riley, the Commander of the Volunteer Marine Rescue Service. He was unable to initially get through to Mr Riley and rang Special Constable Shane Adams. Mr Maberly also attempted to contact the Island Administrator, Brian Lacey.

Mr Maberly was asked at the inquest whether he considered it would have been helpful if he had been provided with a leaflet or some other information advising him as to what should be done in the event that he saw a SIEV in danger to which he responded, “Absolutely. It should be provided to every resident on the Island”²³.

In the case of the occupants of 6 Triadic Crescent, Amy Luetich and Brendan Tiernan, their response to seeing SIEV



²² Para 15 Statement of Alan Mabely 4 January 2011 Annexure 2.4
²³ t.1225

221 was similar to that of Mr Maberly. Ms Luetich rang 000 while their neighbour, Alan Thornton from number 8, ran down on the lawn and called out to the people on the boat, calling to them and signalling for them to go in the other direction, to the east.

Ms Luetich was put through by the 000 operator to a police officer to whom she explained her concerns. Ms Luetich then obtained ambulance equipment as she and Mr Tiernan were the on-call ambulance officers and they travelled in Mr Tiernan's work vehicle down to Rocky Point Road and then to the Golden Bosun Tavern where they saw the disaster unfolding.

Other witnesses saw the boat travel to Rocky Point and then to the south to the Golden Bosun Tavern where the disaster occurred.

It is clear from the above that SIEV 221 was first observed to approach Christmas Island at between about 5:20am and 5:40am, the disastrous decision to turn to the west, presumably made by the crew, took place at about 5:55am and the boat then travelled to Rocky Point where it was later seen by Mr Lacy. While SIEV 221 was initially under power, it was obvious to those observing from the Island that in the weather conditions existing at the time and with SIEV 221 travelling as close to the dangerous rocky shore as it was, it was in great danger and a disaster was likely. It would also have been obvious to those who observed from the island that there was no remotely safe harbour for SIEV



221 in the direction it was travelling. It was in that context that a number of emergency calls to 000 were made prior to 6am and shortly afterwards.

EMERGENCY CALLS FROM SIEV 221 TO 000

Investigations conducted by WA Police revealed that there appear to have been six calls made from SEIV 221 to the emergency number 911 which were directed to 000. These calls were made by asylum seekers using mobile telephones.

Unfortunately it appears that most of the mobile telephones which had been in the possession of asylum seekers had been thrown into the sea during the course of the voyage at the suggestion of the crew along with most identifying documentation etc.

Of the six calls, two were not transferred to the WA Police 000 Calls Centre in Perth as they were terminated prior to connection being effective. One call was successfully transferred to the Call Centre but the caller terminated the call prior to it being answered by the Call Centre officer.

The remaining three calls were successfully transferred to the WA Police call centre and were answered by officers,



Senior Constable Moore and Senior Constable Thomson. The first of these calls was logged at 5:50:59am, the second successful call was logged at 5:58:33am and the final successful call was logged at 6:05:20am.

I agree with the submissions on behalf of survivors and relatives of the deceased to the effect playing recordings of those calls is harrowing. I do not, however, agree with the contention in those submissions that, "... the only conclusion you could come to is that the Western Australian Police Officers concerned should feel ashamed of their conduct and attitude".

It is clear that the makers of the calls were extremely distressed and that their grasp of the English language was limited. It is also clear that the police officers who took the calls struggled to understand what was being said and experienced difficulty in obtaining information which could be acted upon.

Usually when a 000 telephone call is received at the Police Operations Centre information, such as the telephone number, telephone account holder's name and address, is displayed on the computer monitor in front of the call taker and this greatly assists in progressing matters relating to the calls. In respect of these calls, however, the display recorded



that the call had come from a default number and none of the usual information was displayed.

It was in that context that the officers concerned asked questions with a view to understanding precisely what was happening. It became clear during the calls that the callers were on a boat near Christmas Island that the boat was in serious difficulty.

The first call was taken by Senior Constable Moore who had only recently commenced duties at the Police Operations Centre and was relatively inexperienced in such matters. The calls, however, was monitored by Acting Sergeant Kaye and Senior Constable Thompson.

When the first call was terminated Acting Sergeant Kaye and Senior Constable Thompson replayed the call, using the available recording system, when the second call came through which was answered by Senior Constable Thompson.

During this call Acting Sergeant Kaye left the 000 emergency call area and walked into the Duty Inspector's office where he advised the Inspector of what was taking place.

Between the second and third call answered by the Call Centre, Sergeant Kaye contacted WA Water Police at about



6:04am and then the Australian Maritime Safety Authority (AMSA) Rescue Co-ordination Centre (RCC) in Canberra at about 6:05am. Sergeant Kaye advised of the details of the two emergency calls which had then been received.

AMSA, RCC then contacted AMSOC with this information at about 6:10am. By that time AMSOC was already aware of a sighting of SIEV 221 and had been in contact with ACV Triton.

In my view criticism of the response of the call centre officers was not justified. While it is understandable that listening to the repeated asking of questions may be frustrating for those who have full knowledge of the circumstances in which the calls were being made, the officers in Perth were clearly struggling to determine precisely what was taking place.

While a suggestion was made to the effect that call centres should make greater use of interpreter services, in this case I do not consider that even if there had been relatively ready access to interpreter services, that would have been a realistic option to take in the context. The police officers who answered the calls were clearly concerned to find out as much as they could as quickly as possible and any delay involved in obtaining interpreter services would have been unhelpful.



It appears that passengers on SIEV 221 generally spoke Farsi or Arabic, but not all used the same dialects. How the police officers could have quickly identified an appropriate interpreter to use in this context is not clear.

In the context of the present case, while the immediate response made by Senior Constable Moore may have demonstrated his inexperience in handling such calls, senior officers at the Police Operations Centre became involved quickly and appropriate responses were made within a short period of time.

In the context of the present case it is noted that the emergency calls were not made sufficiently early in the course of events to have significantly advantaged those involved in the subsequent rescue operation. If the calls had been made an hour earlier, for example, they may have resulted in an earlier response from HMAS Pirie or ACV Triton. At the time when these calls were made Mr Martin had already called through to Mr Jardine his observations of the boat and residents on Christmas Island made emergency calls at 5:57:57am, 5:58:56am, 5:59:34am, 6:00:06am, 6:07:04am and 6:09:04am. These calls went through to the AFP On-call officer on the Island who advised the officer in charge, Sergeant Peter Swann, of the calls at about 6:07am.



The emergency calls from SIEV 221, therefore, took place at about the same time as the calls of the residents of the Island who were well able to express their concerns as to the safety of the boat.

THE INVOLVEMENT OF BORDER PROTECTION COMMAND

On the early morning of 15 December 2010 there was almost no surveillance being conducted of the northern approaches to Christmas Island for SIEVs.

The responsibility for intercepting SIEVs entering any of Australia's contiguous zones rested with Border Protection Command.

Border Protection Command was established by the Australian government in October 2006, "... to co-ordinate national awareness and response efforts to protect Australia's interests against non military threats in the Australian maritime domain".²⁴

Border Protection Command was comprised of consolidated assets and resources from the Australian Customs Service (Customs) and Defence. It was not established as a statutory



²⁴ Statement of Timothy William Barrett 17 May 2011, annexure 8, 8.5 at para 4

organisation, but was created “... as an authority to enact law enforcement effort on behalf of other agencies”.²⁵

In general at any one time Border Protection Command had access to 11 customs vessels and seven RAN patrol boats assigned to perform surveillance and response activities. These assets could be increased in the event of particular need from the resources of Customs and Defence.

The Commander of Border Protection Command at the time was Rear Admiral Timothy Barrett.

At the time Border Protection Command regularly deployed an asset to Christmas Island. At the time of the incident HMAS Pirie was the Christmas Island response vessel. This was usually the only surveillance asset at Christmas Island.

At the time of the incident there were two assets allocated to Border Protection Command at Christmas Island, HMAS Pirie and ACV Triton, but these were to the east of Christmas Island for reasons discussed later herein and could not provide effective surveillance of the north and north-west of Christmas Island²⁶.

As the SIEVs arriving at Christmas Island were coming from Indonesia, to the north of the island, this meant that there was no surveillance of the path likely to be taken by most of these vessels



²⁵ Statement of Timothy William Barrett (supra) at para 4

²⁶ The surveillance capability of HMAS Pirie at the time is discussed later herein

although some vessels did arrive from different directions, presumably as a result of poor navigation.

At the time of the tragedy there was no land based radar surveillance being conducted and no arrangements were in place for spotters or other coordinated visual observation although on occasions residents on the island would report the arrival of SIEVs to the AFP or other authorities.

Evidence at the inquest revealed that on occasions HMAS Pirie was not available for surveillance activities for a number of reasons, such as taking apprehended SIEVs away from the island for destruction, and when this occurred there was no organised surveillance in place at all for SIEVs arriving at the island.

While it was accepted by Rear Admiral Barrett that Border Protection Command was responsible for surveillance for SIEVs, he expressed the view that –

I am unaware of any government policy that requires BPC to conduct surveillance in any part of the Australian search and rescue region for the purpose of providing safety monitoring of vessels during sea passage.²⁷

In the context of the priority allocated to intercepting vessels such as SIEV 221 Rear Admiral Barrett made the following observation –



²⁷ Statement of Timothy William BARRETT dated 17 May 2011 at para 19

The reality is that in the event of a SIEV landing without being intercepted, the consequences from a border security perspective, and the difficulty in recovering the situation, are significantly less for a Christmas Island arrival than for a mainland arrival²⁸.

This observation was clearly correct. As Christmas Island is a small island surrounded by large areas of ocean there would be no possibility that asylum seekers from a SIEV, if they landed without being intercepted, would avoid detection. In addition it is obvious that asylum seekers intending to travel to Christmas Island would not be wishing to avoid detection, but rather would welcome apprehension at the island by Australian authorities.

This approach to allocating priorities, did not take into account the potential for a disaster to occur in the event that a SIEV was not intercepted and arrived at Christmas Island in heavy seas.

In respect of a potential search and rescue response, Rear Admiral Barrett pointed out that the responsibility for such a response within the territorial seas around Christmas Island, out to 12 nautical miles, lies with the AFP. He also stated that neither the Australian Maritime Safety Authority (AMSA), which does have search and rescue obligations, nor the AFP have, “a responsibility for the provision of surveillance for the purpose of safety monitoring of vessels in the territory or seas around Christmas Island, or in any other part of the Australian maritime domain”.²⁹

²⁸ Supra at para 22

²⁹ Statement of Timothy Barrett para 34



In closing submissions on behalf of the Commonwealth of Australia it was contended that 23.2 –

There is no domestic or international expectation or obligation that BPC (Border Protection Command) or other Australian assets will be postured for the purpose of saving SIEVs that may place themselves in dangerous situations.

This point was again made in the submissions at para 121 –

But, as stated in paragraph 23 above, it is plain that Australia does not have and cannot have any legal, moral or other obligation to ensure safe passage for vessels illegally entering Australian waters.

While it is not the purpose of this inquest to determine whether Australia has any legal obligation to mitigate potential disasters occurring within Australian waters and it is accepted that Australia does not have an obligation to ensure safe passage for vessels illegally entering Australian waters, in my view it is clear that right thinking Australian people will act to save human life in the event that a major tragedy is otherwise likely to occur.

This is, however, a very different concept and necessarily involves lesser expectations from the situation where there is a duty to act. It is also more difficult to determine when such an expectation exists or the extent of any such expectation.

In the present context, it would clearly have been preferable if action had been taken to intercept SIEV 221 prior to the stage when its engines failed and disaster was inevitable. If there had been in place an effective system of surveillance and SIEV 221 had been detected even minutes earlier, that would have had a significant impact on the response and ultimately the rescue



effort and it is likely more people would have been saved. In addition earlier intervention might also have avoided or reduced the extent to which naval and customs officers risked their lives.

While it was suggested at the inquest that the various options for surveillance such as land based radar and visual surveillance, even using visual aids, all have limitations in adverse weather conditions, I cannot accept that it would be beyond the capability of Border Protection Command to put in place a surveillance capability which would be more effective than island residents coincidentally looking out to sea.

I am confident that if, for example, the purpose of surveillance had been to detect hostile forces intent on invasion, the quality of surveillance provided would have been vastly superior to that which was in place on 15 December 2010.

As indicated earlier in these reasons, the disaster in this case was generally foreseeable and indeed it was foreseeable that those involved in a rescue attempt may have also died. It was, however, not known that the particular vessel was likely to arrive at Christmas Island and there was no information available to Border Protection Command that any vessel was going to arrive on the morning of 15 December 2010.

On 15 December 2010 Border Protection Command, had assets at Christmas Island which were capable of performing a



vital function in mitigating or avoiding a tragedy. These were the only assets at the island which could realistically have been involved in intercepting SIEV 221 or in any subsequent rescue attempts. In fact those assets were used in the rescue attempts and were responsible for the saving of 41 persons.

On 15 December 2010 Border Protection Command had no staff or assets on Christmas Island itself, available assets at Christmas Island comprised HMAS Pirie and ACV Triton.

At the time when SIEV 221 arrived at Christmas Island both of these vessels were to the east of the Island, unable to detect its arrival.

For reasons discussed later herein it was reasonable that those assets were to the east of Christmas Island at the time and there were good reasons for their being at that location.

These reasons resulted from their performance of the core functions of Border Protection Command.

In that context, although I accept that it is a matter of judgement, I do not consider that any criticism of the decision making which resulted in their being to the east of the Island was merited. Border Protection Command had received no information which would suggest that an immediate response was required to prevent a possible tragedy on that morning or at all



and so it was to be expected that its staff and assets would be directed to its core functions.

While the tragedy of 15 December 2010 has heightened awareness of the potential risks associated with SIEVs arriving at Christmas Island undetected, prior to that time it is understandable that the focus of Border Protection Command was on addressing problems associated with illegal entry into Australian territory and little, if any, consideration was given to the possibility that failure to intercept these vessels could have serious consequences going far beyond border security concerns.

AVAILABLE INTELLIGENCE AND THREAT LEVEL

The threat level for arrivals in the vicinity of Christmas Island based on available intelligence for the evening of 14 December 2010 into the morning of 15 December 2010 was described as “medium”. There was no direct information to the effect that an imminent arrival of a suspected irregular entry vessel was expected during that period. On 14 December 2010 there was evidence available that suggested preparations may have been under way for the departure of a passenger vessel from Indonesia with a likely arrival date between 18 and 20 December 2010, but there was no available intelligence suggesting that SIEV 221 was likely to arrive at Christmas Island on the morning of 15 December 2010.



While this was a factor in decision making relating to the positioning of HMAS Pirie and ACV Triton, available intelligence was certainly not determinative of the issue in relation to whether or not a vessel was likely to arrive at the island.

In my view had there been available intelligence to the effect that a vessel had departed or was definitely about to depart, that would have been a matter to be taken into account in decision making, but lack of available intelligence could not be relied upon as a basis for concluding that such a vessel would not be likely to arrive. As indicated earlier in these reasons the number of SIEVs making the journey to Christmas Island had greatly increased in the period prior to the arrival of SIEV 221 and it would have been reckless to proceed on the basis that a SIEV would definitely not arrive on that day. It is presumably for that reason that the threat level for an arrival at that time was considered to be “medium”.

THE ACCOUNT OF SONJA RADOVANOVIC

The fact that there was an apprehension that a SIEV could arrive at any time on 14 or 15 December 2010 was effectively confirmed by the evidence of Sonja Radovanovic, Immigration Officer with the Department of Immigration and Citizenship. Ms Radovanovic, in a statement dated 27 March 2011 and in her evidence at the inquest, stated that on 14 December 2010 although weather conditions were poor



naval officers from the HMAS Pirie were eager to off-load asylum seekers who had come from SIEV 220 as quickly as possible so that it would be available to continue its ongoing surveillance and interception duties.

While the evidence of those present in relation to what was said at that time was not consistent it is clear from Ms Radovanovic's evidence and the circumstances as they took place that there was a sense of urgency because there was a concern that another SIEV could arrive at Christmas Island, even if there was in fact no specific information to the effect that a SIEV could be expected on the morning of 15 December 2010³⁰.

This evidence does indicate that the naval officers working for Border Protection Command were eager to resume surveillance duties and is supportive of the suggestion that it was only because of what was perceived as performance of other pressing functions that effective surveillance to the north of Christmas Island was not taking place on the morning of 15 December 2010.

ACV TRITON

ACV Triton is a vessel chartered by Australian Customs and Border Protection Service to patrol Australia's northern waters.



³⁰ Statement of Sonja Radonanovic Annexure 16.9

The vessel is owned by Guardline Shipping UK and the Master of the vessel was Andrew George Stammers. Guardline Australia provided the marine crew for the vessel.

The vessel also contained a compliment of Australian Customs and Border Protection personnel. The Enforcement Commander on the vessel was Matthew David Saunders, an enforcement commander with the Australian Customs Marine Unit.

On 15 December 2010 it was only by coincidence that ACV Triton was at Christmas Island. At the time ACV Triton had onboard 108 persons who were being transported from the vicinity of Ashmore Islands to Christmas Island. Those 108 persons comprised 41 asylum seekers and 3 crew from SIEV 218 and 61 asylum seekers and 3 crew from SIEV 219.

The ACV Triton had arrived at Christmas Island at approximately 8am on 13 December but due to prevailing weather conditions had been unable to offload the persons being transported to Christmas Island at the time of the incident.

The authorised carrying capacity of the ACV Triton was 63 persons in addition to crew and Customs and Border Protection officers; necessary exemption had been obtained from AMSA to carry the 108 people to Christmas Island.



On 14 December 2010 ACV Triton had assisted HMAS Pirie with the interception of SIEV 220 in the vicinity of Flying Fish Cove. ACV Triton had then returned to the east side of the Island.

At the time of the incident ACV Triton was taking shelter to the east of the Island, a decision having been made that the 108 detainees onboard should not be offloaded until the weather conditions improved.

HMAS PIRIE

At the time of the incident HMAS Pirie had been allocated to Border Protection Command and was the Christmas Island response vessel.

HMAS Pirie is an Armadale class patrol boat and is one of 14 similar vessels which were constructed for use by the Royal Australian Navy.

HMAS Pirie had departed Darwin on 5 December 2010 with 23 crew and 4 transit security element personnel onboard. It had arrived at Christmas Island on 9 December and on completion of refuelling had assumed the duties associated with being the Christmas Island operational response vessel.

The commanding officer of HMAS Pirie was Lieutenant Commander Mitchell Livingstone.



Lieutenant Commander Livingstone stated that in respect of SIEV 220, the arrival of that vessel had been reported to the HMAS Pirie by Christmas Island based Customs officers at about 10.22 am on 14 December. At that time the HMAS Pirie was to the north-east of Christmas Island.

It appears that SIEV 220 had not been detected until it was approximately 400 metres from the island when it had been seen from the shore.

SIEV 220 was escorted to the east of Christmas Island by HMAS Pirie and ACV Triton.

The occupants of SIEV 220, 8 asylum seekers and 3 crew, were transferred directly from the SIEV to Ethel Beach boat ramp at about 6pm on 14 December 2010 using the HMAS Pirie's RHIBs.

Throughout the night of 14 December and the early morning of 15 December 2010 HMAS Pirie was monitoring SIEV 220 on which there were 4 members from the HMAS Pirie (a steaming party). The plan was to wait for conditions to ease so that SIEV 220 could be destroyed at sea.

There was no available mooring so the boarding party from the HMAS Pirie on SIEV 220 were endeavouring to keep it from crashing on the island or drifting out to sea



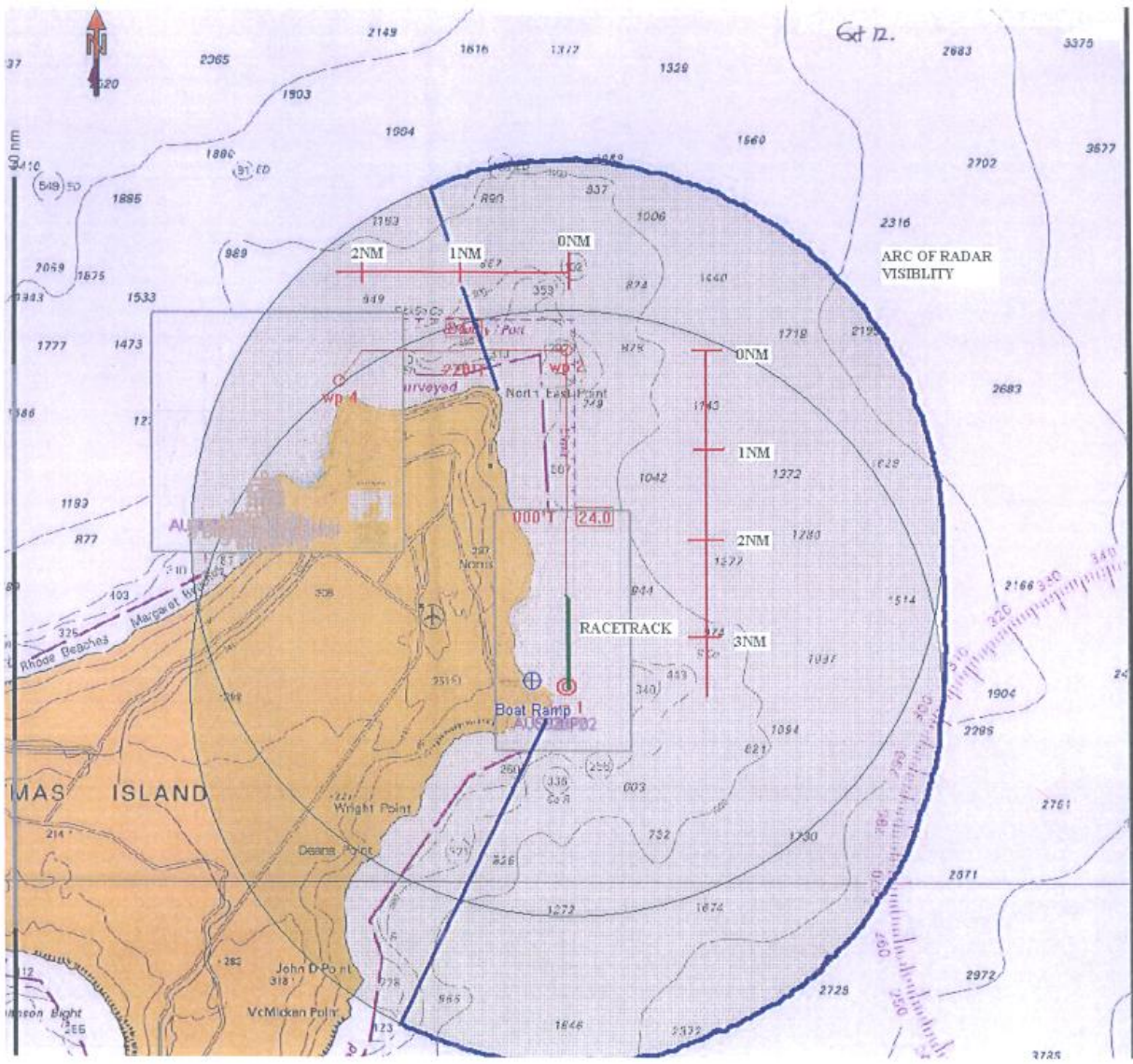
In the early hours of the morning of 15 December 2010 HMAS Pirie was travelling in a north-south direction, altering course each ten minutes, over a distance of approximately 1 mile (described as a racetrack), at a distance of approximately 1 mile from the coast of Christmas Island in the vicinity of Ethel Beach.

The ACV Triton was also to the lee of Christmas Island, further to the south, so that the two vessels would be a safe distance apart.

The HMAS Pirie had two types of navigation radars fitted, the S band long-range search radar and the X band close-in navigation radar. Under the prevailing conditions both were very limited in their ability to track a small wooden boat.

There is a hill approximately 237 metres high on Christmas Island between Rocky Point and the location where HMAS Pirie was located on the morning of 15 December and that landform obscured any visual and radar coverage of the area where SIEV 221 arrived.





The above chart (exhibit 12) shows the racetrack taken by HMAS Pirie and the dark blue lines show its maximum radar coverage. The chart shows that the coverage to the north of the island was minimal

There were no aerial surveillance flights over the Christmas Island region on 15 December and there was no land based surveillance being conducted.



RADAR SURVEILLANCE

There was no effective radar surveillance being conducted north of Christmas Island at the time when SIEV 221 arrived.

The Jindalee Operational Radar Network (JORN) was not turned on at the time when SIEV 221 was wrecked. JORN is an Over-The-Horizon-Radar (OTHR) network and provides surveillance for Australia's northern approaches.

Wing Commander Peter Davies of the Radar Surveillance Unit, JORN Co-ordination Centre, advised in a statement³¹ that JORN was never designed as a surveillance tool for detecting small wooden boats such as SIEV 221. According to Wing Commander Davies JORN was funded and purchased with the knowledge that the smallest size object it was designed to detect on the surface of the water is equivalent in size to an Armadale class patrol boat. It appears that the JORN system is effective in monitoring aircraft targets but is much less effective in identifying small surface targets including boats.

In August 2010 Border Protection Command asked the Defence Science and Technology Organisation (DSTO) to provide a feasibility report on the effectiveness of using a



³¹ Annexure 15.3

microwave radar to detect small boats off Christmas Island. It was considered cost effective to conduct a trial using two radars already available to DSTO in Adelaide. After a relatively long process which involved obtaining approval from the Shire of Christmas Island for installation of radars, it was not until 4 January 2011 that footings to provide bases for radar masts were in place and power poles were installed on 28 January 2011.

On 1 February 2011 the radars commenced operation with the data obtained being remotely accessed. As at 21 April 2011 the radars had not identified any otherwise not discovered suspected illegal entry vessels.

The radars being trialled are what is known as incoherent radars. There are radars known as coherent radars but according to Hugh Barkley, of the Joint Operation Division of DSTO, they do not in DSTO have any understanding of the performance of those types of radars³².

According to Mr Barkley a coherent radar has the benefit of providing a much more uniform reflection from a solid object than an incoherent radar and so may provide better detection capability. Mr Barkley, however, advised that there may be issues in relation to the type of software system



³² t.5666

necessary to identify relevant objects using a coherent radar³³.

Mr Barkley stated that his organisation wished to explore the differences between a coherent radar system and an incoherent radar system.

Professor Donald Sinnot, an Electrical Engineer with past experience working with DSTO, advised that an effective land based radar system capable of detecting wooden strips would have to be a military radar system, similar to ones used on navy ships.

Rear Admiral Barrett stated in his evidence that he understood a military radar system would be similar to a commercially available radar system, but more powerful.

He stated that he made a judgment not to suggest that a military surveillance radar be used on Christmas Island because he was concerned that, "... there would be some sensitivity in placing something of that nature which would be long range within close proximity to the Indonesian mainland³⁴".

Rear Admiral Barrett was questioned about the issue but did not provide any clear evidence as to precisely what a



³³ t.566-567

³⁴ t.681

military radar would do and he appeared uncertain as to whether or not such a radar would identify relatively small boats such as SIEV 221³⁵.

In the circumstance where HMAS Pirie is operating to the north of Christmas Island on a regular basis and uses its radar systems, it is difficult to understand why there would be any particular concern in Indonesia if a similar form of radar was on shore and able to assist with radar detection. Clearly the matter has never been raised with Indonesian officials by the Commonwealth.

THE FAILURE TO CONDUCT SURVEILLANCE

As noted earlier in these reasons there was no effective surveillance being conducted to the north of Christmas Island on 15 December 2010 and in that context it is not surprising that no one on the island was aware of the pending arrival of that boat until it was seen by Mrs Orchard and Mr Martin quite close to the island.

In my view it would have been possible to detect SIEV 221 at an earlier stage had there been effective surveillance in place. I am confident that if there had been concern that, for example, a hostile force was proposing an invasion of the island, effective



³⁵ t.682

surveillance would have been in place and a similar size vessel would almost certainly have been detected earlier.

Clearly it would have been possible to have more effective visual surveillance in place than that which resulted from island residents coincidentally looking out to sea. Effective visual surveillance would have required the placing of those involved in the surveillance at a number of locations on the island as, for example, a person attempting to view from the AFP building on the island would have been unlikely to have seen a vessel taking the course taken by SIEV 221 because of the structure of the island. For effective visual surveillance it would have been important to place spotters at different locations on the island, preferably provided with binoculars or superior technological aids to sight.

In respect of radar surveillance, clearly it would have been possible to have in place on the island some form of radar coverage.

Had surveillance been considered an extremely high priority, another option would have been to have a second response vessel allocated to Christmas Island which could continue with surveillance while HMAS Pirie was otherwise occupied.



While accepting that an effective system of surveillance could have been put in place, the question arises whether it would have been reasonable or appropriate to do so.

As noted earlier in these reasons I accept the observation made by Rear Admiral Barrett to the effect that from the point of view of Border Protection Command, from a border security perspective the arrival of a SIEV at Christmas Island without being intercepted would not be a matter of great concern. I also accept that Border Protection Command does not have any special responsibility for saving SIEVs that might place themselves in dangerous situations.

In my view it was reasonable in the circumstances for there not to have been in place a system of visual surveillance. Effective visual surveillance would have required significant resources, particularly if a 24 hour surveillance was required. In a context where Border Protection Command did not even have an ongoing presence on the island, this would have been difficult to achieve.

In the context of the possibility of radar surveillance from Christmas Island, it is clear that Border Protection Command had taken steps prior to 15 December 2010 to commence a trial using radars already available to DTSO in Adelaide. While those radars were not in place at the time of the tragedy, it is very



doubtful whether those radars would have identified SIEV 221 prior to its arrival at the island in any event.

While it is possible that more effective forms of radar could have been in place at the time of the tragedy, in the context of the limited security concerns that Border Protection Command had, the steps taken to commence a trial were reasonable.

If there had been a very high priority allocated to intercepting SIEVs, clearly Border Protection Command could have provided a second response vessel which could have performed surveillance activities at the times when HMAS Pirie was not able to do so effectively. Again, however, in a context where there was no great security concern about vessels arriving undetected, the failure to provide a second response vessel was understandable.

While there is clearly now a heightened awareness as to the potential for a tragedy occurring in the event that vessels arrive undetected at Christmas Island and encounter difficulties, from the Border Protection Command perspective on 15 December 2010, it is understandable that at the time surveillance to the north of Christmas Island was not considered to be a matter warranting the very high priority, which would have been necessary for continuous effective surveillance to have been put in place.



Surveillance to the north of Christmas Island, however, clearly was a priority of Border Protection Command and significant resources in the form of a response vessel had been allocated to the island which performed surveillance duties for vessels approaching the Island when not otherwise engaged.

THE RESPONSE TO THE EMERGENCY

Although Mr Martin had seen SIEV221 arriving at Christmas Island at about 5.40am and had advised the Customs on-call officer, Les Jardine, of that fact at about 5.46am, there was a delay in providing comprehensive information to those on board HMAS Pirie and ACV Triton.

Mr Jardine made a number of attempts to contact the ACV Triton without success and did not get through until about 6:14am.

At about 6am Andrew Stammers, Master of the ACV Triton, received a call from AMSOC advising that a SIEV had been sighted at Rocky Point.

At about 6:05am Lieutenant Commander Livingstone answered a radio call from ACV Triton enquiring whether or not he had heard anything about another SIEV in the vicinity of Flying Fish Cove. At that time the HMAS Pirie was lowering one of its two RHIBs to attend to matters on SIEV220.



At about 6:10am Lieutenant Commander Livingstone made a pipe to the ship's company to wake them up to prepare them for on imminent boarding.

At about 6:21 the HMAS Pirie was underway heading north at 18 knots when Lieutenant Commander Livingstone received a call from the Headquarters Northern Command (NORCOM) Operations Officer who asked him if he was aware of a SIEV north of Rocky Point, close to the coast. Lieutenant Commander Livingstone was advised that he would need both HMAS Pirie's RHIBs as there were "approximately 50 to 60 people" on the SIEV.³⁶.

As a result of that advice at about 6:23am HMAS Pirie reversed course to the south to provide a lee to recover the RHIB which had been previously lowered. Having recovered the second RHIB, the HMAS Pirie resumed a northerly course at 24 knots by about 6:32am.

At about that time Lieutenant Commander Livingstone was advised that the SIEV 221 had "lost engines" and was heading towards the coast. He was advised to, "proceed with all dispatch to assist"³⁷.



³⁶ Statement of Mitchell Robert Livingstone dated 31 December 2010 para 18
³⁷ Supra para 20

This appears to have been the first occasion on which those on the HMAS Pirie or ACV Triton were alerted to the concern that the SIEV might be in serious danger. The content of the many emergency calls to 000 or the AFP which had been made between about 5:50am and 6:05am were not communicated to those on HMAS Pirie and ACV Triton.

At about 6.35am HMAS Pirie suffered an emergency stop on her port main engine which initially limited speed to approximately 11 knots as the standing operating procedure, which was implemented, was to immediately bring the other main engine back in order to avoid damaging both engines.

Action was taken to address the problem which could not be identified at that stage and the starboard main engine power was increased to compensate for the port engine, by which time the vessel was making 16 knots.

At about 6:38am both HMAS Pirie's RHIBs were launched.

The most direct route to Rocky Point, around North East Point, involved crossing unsurveyed waters and as a result HMAS Pirie had to undertake a more circuitous route (about one nautical mile longer) to reach the scene. The RHIB's, however, because of their shallow draft were able to go over the unsurveyed waters safely.



ACV Triton was also travelling towards the Rocky Point area and at about 6:49am, after assessing that they were unable to launch rescue boats in the conditions to the north-east of Christmas Island, travelled back to the south to attempt this.

At about 6:50am Lieutenant Commander Livingstone advised that he had assumed the role of On Scene Commander for the incident.

At about 7am both RHIBs from the HMAS Pirie had arrived at the scene and at about 7:05am the HMAS Pirie had sufficiently rounded north-east point so that the RHIBs could be seen using HMAS Pirie's Electro Optical Device.

Unfortunately shortly before the RHIBs arrived at the scene SIEV 221 had been dashed against the cliffs and many people were already in the water. It sank completely very soon afterwards.

A short time later the tenders from ACV Triton arrived at the scene and the ACV Triton was standing off to the east of the HMAS Pirie.

The two RHIBs from the HMAS Pirie, assisted by the two tenders from the ACV Triton, travelled close to the cliffs and rescued 41 persons from the ocean, which at that location was particularly rough.



Video footage of the recovery using HMAS Pirie's Electro Optical Device recorded considerable heroism on the part of naval and customs officers in their efforts to rescue those in the water.

In addition a very large number of photographs were taken by a number of residents from the shore and these provided an excellent record of the events as they unfolded. In many ways these photographs provide a more detailed and comprehensive record of the events than the video footage taken from HMAS Pirie. Many of these were taken from very close to the location where SIEV 221 crashed on the rocks and sank and the rescues were effected.

Throughout the water based rescue members of the public, customs and police officers on shore assisted the rescue efforts by acting as spotters on the cliff top, guiding the RHIBs and tenders to possible survivors.

Those on shore also risked their own lives throwing lifejackets to survivors in the ocean from the cliffs which were regularly covered by sea water.

The cliffs at that location are very low and had there been a particularly high swell or unusually high waves many of those people could have been washed into the ocean where many would almost certainly have perished



At 8:58am HMAS Pirie advised that 41 survivors had been recovered. 27 people were recovered on HMAS Pirie with 14 people on board ACV Triton. Later that morning the ACV Triton transferred 1 seriously injured survivor to the HMAS Pirie.

Survivors were offloaded at Ethel Beach and a search commenced for the bodies of deceased persons in the ocean.

Both HMAS Pirie and ACV Triton continued searching the area until last light with the surface search formally suspended at 7.50pm. The search continued at first light on 16 December 2010.

Ultimately 30 bodies were located, 28 on the day of the disaster and the last two, the bodies of a deceased adult male and a deceased juvenile male, were recovered from a cave at the base of the cliffs close to where SIEV 221 sank on 16 December 2010 by recreational dive operator Teruki Hamanaka.

THE EMERGENCY RESPONSE : CONCLUSIONS

In reviewing the response to the emergency it is important to note the fact that 41 persons were saved from the ocean by Naval and Customs officers who all risked their lives in doing so.



It is also important to recognise the very considerable contribution of the Christmas Island residents who threw life jackets to persons in the water and acted as spotters, pointing out to those on the rescue boats the location of survivors in the water. Those persons risked their lives on low cliffs which were often awash with water, particularly as a high swell and waves could have swept those on the cliffs into the water.

There was no guarantee at the time that the response vessels, HMAS Pirie and ACV Triton, would have been available and able to assist.

In the case of ACV Triton, that vessel was only at Christmas Island at the time as a result of unforeseen events described herein. If ACV Triton had not been at Christmas Island, there would have been more deaths.

There were a number of delays in the response from 5:46am when the Customs on-call officer was advised of the arrival of SIEV 221, until about 7am when the RHIBs from the HMAS Pirie arrived at the scene. The reasons for those delays are explained herein and in the case of HMAS Pirie in part resulted from the fact that when SIEV 221 arrived at the island it was monitoring SIEV 220 on which there were four members from the HMAS Pirie.



I am satisfied that Lieutenant Commander Livingstone on HMAS Pirie and Andrew Stammers, Master of the ACV Triton, acted as promptly and efficiently as they could in the circumstances. The officers on their RHIBs and tenders demonstrated great courage and resourcefulness in the circumstances and I have nothing but praise for them.

In respect of those on the island, particularly members of the VMRS, similarly I have nothing but praise for their brave efforts and commitment. These people responded immediately to the emergency and placed their own lives at risk.

From the positions in which they were located at the time when the tragedy occurred, all concerned acted promptly and efficiently.

It is unfortunate that there was no mooring at Christmas Island which could have enabled SIEV 220 to be moored and enabled HMAS Pirie to resume surveillance activities. It is also unfortunate that Lieutenant Commander Livingstone was not made aware earlier of the emergency situation which was unfolding, but given the position as it presented itself on the day I am satisfied that the response was of a very high calibre.

There were a number of criticisms of the HMAS Pirie response contained in the submissions on behalf of family members and survivors, such as a contention that the RHIBs had



initially been filled with too many crew members which limited the number of people who could be saved. In my view those criticisms were generally without merit. While with hindsight it could be said that at the time of the immediate response less crew members could have been placed in the rescue boats, in the context of the emergency as it unfolded decisions had to be made quickly, based on limited information, and the response was in the circumstances very reasonable.

In any event it can be seen from the photographs taken from shore that it was often necessary for a number of crew members to be involved to pull survivors onto the RHIBS.

In respect of a criticism that Lieutenant Commander Livingstone should have made further enquiries in the context of his early limited knowledge, this is a contention which is easy to make with the benefit of hindsight, but in the context of the circumstances as Lieutenant Commander Livingstone found them, there was no reason for him to suppose that further enquiries would have provided him with better information than he was receiving and it is clear that he was relying on the regular information channels of NORCOM and AMSA.



THE FAILURE OF THE COMMONWEALTH TO PROVIDE SUITABLE VESSELS FOR AN EMERGENCY AT SEA RESPONSE TO TAKE PLACE FROM CHRISTMAS ISLAND

On 15 December 2010 there were no vessels from the island involved in the rescue efforts, all of the rescue vessels involved came from HMAS Pirie and ACV Triton. In the circumstances as they existed at the time there was no realistic possibility that any vessels from the island could have participated in the rescue efforts. This was because of two factors:

- (a) the sea state at the time, which was extreme, and
- (b) the fact that there were no vessels on the island capable of a rescue response in bad weather.

Apart from the response of those on shore who threw lifejackets to survivors of SIEV 221 after the vessel sank and who acted as spotters assisting the navy RHIBs and the customs tenders to locate and pick-up survivors, there was no effective response capability for an emergency at sea on Christmas Island.

This was relevant to the inquest as had more boats been available and able to assist with the rescue efforts, it may have been possible to save more lives.

Christmas Island is a small island off Indonesia and had until recent times a small population. With the increased numbers of SIEVs arriving at Christmas Island, staffing at the detention centre and the onflow effect on the Christmas Island



community, the population of Christmas Island had expanded and the potential need for an emergency response at sea had dramatically increased in 2009 and 2010.

As indicated earlier in these reasons, in the six months prior to 15 December 2010 36 SIEVs had arrived at Christmas Island from Indonesia and, in addition, the Christmas Island Detention Centre was being used to accommodate large numbers of asylum seekers who had been apprehended in the Ashmore Reef area and elsewhere.

The Rescue Coordination Centre (RCC) in Canberra is responsible for the coordination of both maritime and aviation search and rescue. The RCC is part of the Australian Maritime Safety Authority (AMSA)

The agency with primary responsibility for a search and rescue response in the area of the tragedy, which was within the designated Port of Christmas Island, was the Australian Federal Police (AFP)³⁸. This is because police are the search and rescue authority responsible for all non military vessels within port limits.

In addition RCC can be expected to pass coordination to the appropriate regional police organisation (in this case the AFP) to conduct search and rescue operations within their jurisdiction in appropriate cases. In the context of Christmas Island being so far



³⁸ See National Search and Rescue Manual, Appendix B

from Canberra, the reasonable expectation of those concerned would have been that this would be likely to occur in respect of many search and rescue operations in the Christmas Island coastal sea.

Also on the island there was a Volunteer Marine Rescue Service (VMRS) provided by local volunteers, the Commander of which at the time was Greg Riley.

It is clear from the evidence at the inquest that these volunteers were dedicated and committed people. I have great admiration for the contribution to marine safety provided by VMRS volunteers.

Responsibility for providing vessels for use by the AFP and the local VMRS rested with the Commonwealth. At the time of the disaster neither organisation had access to a suitable vessel which could be used for rescue operations in bad weather.

Other vessels on the island were too small and unsuitable for an emergency response in difficult seas.

(a) The vessel for the VMRS

In respect of the VMRS, this had been set up by the Fire and Emergency Services Authority of Western Australia (FESA). The



State Manager of the Volunteer Marine Services Division was Paul Kimber.

In 2001 Mr Kimber commenced attempting to engage the Christmas Island community with a view to provision of a voluntary rescue service and after some negotiation the Christmas Island Volunteer Marine Rescue Service was duly formed and constituted in the 2007-08 period³⁹.

Although funding for necessary assets was to be provided by the Commonwealth, it was intended that the group would be structured so as to operate in a similar manner to volunteer marine service rescue groups in Western Australia.

It was obviously necessary for the Volunteer Marine Rescue Service to have access to a suitable vessel and to that end Mr Kimber appears to have assisted staff of the then Department of Transport and Regional Services to prepare a bid for capital funding for the 2005-06 year which sought funding for a search and rescue vessel. The preferred vessels specified were NAIAD rescue vessels which were trailerable and described as being able to safely handle extremely rough offshore conditions, giving an exceptionally safe and soft ride. The bid document⁴⁰ recorded that the advice of FESA representatives had been sought and they had recommended three options, being three different NAIAD rescue vessels.

³⁹ Statement of Paul Kimber, Annexure 11, tab 11.1

⁴⁰ Exhibit 26



Interestingly in the context of this disaster the bid contained the following observation in respect to defence assets-

In practical terms the current presence in the waters of Christmas Island of an Australian navy frigate or similar on border protection duties under the auspices of Operation Relex II provides additional capability, indeed the RAN has assisted AMSA on a number of occasions in recent years by assisting stricken yachts and commercial vessels. The Department of Defence however insist that their presence and capability should not be factored into any marine safety plans or other arrangements as they can never guarantee where they will be at any particular time, and their assets may be required for other duties at very short notice.

Mr Kimber had ongoing email contact about provision of a suitable rescue vessel with a Ben Smith, who was then working at the Perth office of what became the Department of Regional Australia.

It appears that Mr Kimber's recommendations were rejected or somehow overlooked by the Department of Regional Australia and by 1 May 2007 a decision had effectively been made that the vessel to be purchased for the Volunteer Marine Sea Rescue Service would be a LeisureCat, the same as the AFP vessels to be purchased for Christmas Island and the Cocos (Keeling) Islands. This was stated by Senior Constable Kia Davis of the AFP in an email to Mr Kimber dated 1 May 2007 which advised⁴¹ –

This vessel will be the same as the AFP's new vessel which arrives in October. The vessels are ATM FRP LeisureCats with twin 175HP 4 stroke Suzukis and surveyed to 2C.

Amazingly in the context of the purchase of a vessel for over \$200,000 for use by the VMRS Grant Barons, who was the Director of the Territories Office Perth with the Department of Regional Australia, claimed-



⁴¹ Exhibit 27

It appears that when the purchase of a vessel for the CI VMRS was being considered by Regional in 2007/2008, the earlier documentation from 2005 regarding the possible purchase of the NAIAD's was not considered.

While Mr Barons went on to question why Mr Kimber did not raise with the Department his previous advice when he became aware of the Department's consideration of purchasing LeisureCats, in my view it is not surprising that Mr Kimber assumed the Department was aware of its own earlier interactions with him on the issue.

(b) The acquisition of the vessels

According to Mr Yates, the First Assistant Secretary, Territories Division in the Department of Regional Australia, the final decision to purchase the LeisureCats was not made until July 2008 and it was decided that the funding would be provided under an existing contract which the AFP had with LeisureCat Australia Pty Ltd which would avoid the need for the purchase to go to government tender.

The vessels were to be purchased by the AFP with funding provided by the Department of Regional Australia.

According to Mr Yates if there was an existing contract which was not to be substantially varied, further items could be purchased using the same contract unless there were substantial changes.



There were in fact a number of existing contracts for the purchase of LeisureCat vessels and in total 11 similar boats were built for the AFP.

On 14 January 2008 the Commonwealth of Australia represented by the AFP, entered into a contract with “LeisureCat Australia Pty Ltd” to provide 3 vessels, being AFP vessels for Cocos (Keeling) Islands, Christmas Island and the Volunteer Sea Rescue vessel for Christmas Island. The contract price for the 2 vessels for Christmas Island was \$237,343.43 and \$236,162.03.

This was a very considerable increase in price over the price contained in the original contract on which this contract was based which was for \$135,514.50 and \$137,253.60 for different vessels and it is difficult to see why that alone was not considered sufficient reason to consider adoption of a new tender process for acquisition of the vessels.

Although Mr Yates claimed that the decision to select LeisureCat vessels was based on advice provided by Alan Le Lievre, Federal Agent with AFP, in evidence Mr Le Lievre stated that he had provided no advice as to the suitability for such a vessel as a volunteer rescue vessel and had only given advice in respect to the suitability the LeisureCats which were to be used as police patrol boats⁴².



⁴² t.953

Mr Yates claimed that he believed that Mr Kimber supported the choice of LeisureCat vessels because of a memorandum from Mr Kimber dated 7 May 2008 which contained the following⁴³ –

LeisureCat's search and rescue (SAR) vessels already exist within the mainland VMRS Search and Rescue (SAR) fleet and continue to provide an excellent platform for search and rescue operations. I cannot stress however that these VMRS vessels and their 'general arrangements' are SAR 'fit for purpose' built with specifications and engineering solutions that differ quite significantly from the proposed vessels being purchased by DOTARS for the IOT's.

On its plain reading, however, the memorandum did not give support for the purchase of the proposed LeisureCat vessels and the remainder of the document contained suggested “practical solutions” to perceived deficiencies. Mr Kimber was very clear in his views and I do not accept that he ever preferred the LeisureCats over other vessels such as the NAIADs. Even the most perfunctory questioning of Mr Kimber about the issue would have ascertained his strongly held views in that regard.

In my view it is clear that Mr Kimber's views were not taken into account in the selection of the VMRS vessel.

It was clear from the evidence of VMRS representatives that their views also were not taken into account in the selection of the vessel.

It was most unsatisfactory that the vessel acquired for use by the VMRS was selected without appropriate input from Mr Kimber or from representatives of the VMRS



⁴³ Attachment Jay-1 to Statement of Julian Yates, Annexure 23.2

In fact LeisureCat Australia Pty Ltd, the name on the contract documents, was not even the name of the relevant company at the time of any of the contracts as that name had been changed on 28 August 2000 to LeisureCat Enterprises Pty Ltd.

LeisureCat Enterprises Pty Ltd was deregistered on 11 October 2009. According to Kevin Horsley, a Director of LeisureCat Enterprises Pty Ltd and a shareholder of Catamaran Investments Pty Ltd, this was because Catamaran Investments Pty Ltd “purchased LeisureCat Australia”⁴⁴.

(c) Problems with the LeisureCat Vessels

Virtually from the outset serious problems were experienced with attempts to use the LeisureCat vessels sent to Christmas Island.

It was the view of both Mr Kimber and Mr Riley, the Commander of the VMRS, that the LeisureCat vessels were inferior to the NAIAD vessels originally recommended by FESA in a number of important respects.

It is not necessary for the purposes of these reasons to determine whether these views were justified or not (as some or all of the reasons given were disputed by other witnesses), what is



⁴⁴ t.1066

significant is the fact that the intended users of the vessel considered that the LeisureCat vessels were inferior for their purposes.

Importantly from a volunteer service point of view, where volunteers were subject to a regular turnover, serious difficulties were encountered in providing adequate training, particularly as most volunteers were unfamiliar with catamaran vessels and only had experience with monohull vessels so more training was required and for reasons discussed later herein the vessel provided was not available over extended periods for training.

The volunteers on Christmas Island had use of a vehicle which was not powerful enough to tow the “Sea Eye” and serious difficulties were encountered launching it. According to Mr Kimber it was often necessary to use two vehicles to manoeuvre the vessel down the ramp.

These points were clearly made by Mr Riley in his evidence⁴⁵ –

One of the weaknesses of the rescue unit on Christmas Island is the itinerant nature of its members and most members who have joined the unit in the past have had mono hull experience. I am not aware of any of our members having had Cat experience and the two vessels handle completely differently. So there is a lot of training or a lot of experience on the Cat needed before one could be deemed competent to drive at anything above, you know, a few knots, maybe 10 knots. So that is my main concern with the vessel. The second concern, and I don't know whether this is one that could have been overcome, was the weight of the vessel. The vehicle that we had to tow the Sea Eye was a donated landcruiser troopie that had some issues in terms of its upkeep. It was a very old vehicle and having spoken to a few people over my time as commander, I had no confidence in our



⁴⁵ t.1017

troopie being able to tow the Sea Eye to Ethel Beach. I was afraid that the Sea Eye would make it down the hill before the car would.

The vessel provided to the Volunteer Marine Rescue Service on Christmas Island, the “Sea Eye” and the AFP vessel, the “Colin Winchester” arrived in Christmas Island in about July 2008.

On their arrival the Harbour Master, David Robertson, immediately identified problems with the vessels.

Mr Robertson placed the “Sea Eye” into quarantine immediately.

Mr Robertson was concerned that the vessels had not been built according to the United Shipping Laws (USL) Code.

On arrival the “Sea Eye” was damaged and relevant documentation was not available.

When enquiries were made to obtain necessary documentation, Mr Robertson was advised by email on 28 October 2008 that the company LeisureCat Australia Pty Ltd had been taken over by Catamaran Investments Pty Ltd on 1 August 2008 and relevant papers might not be available.

That had not in fact happened, according to ASIC records as at 28 October 2008 LeisureCat Enterprises Pty Ltd, the only



company with which the contracts could have been entered into, was still registered.

Why there could have been a problem obtaining the documentation is difficult to understand. The two companies had, according to the ASIC records, shared the same registered office from 28 August 2008.

According to Mr Horsley “people who had administered the shutting down of the company” had retained relevant documents, but these could presumably have been produced⁴⁶.

On or about 25 September 2008 Mr Robertson allowed the “Sea Eye” to be used in Flying Fish Cove for the official launch of both vessels but did not allow the vessel to leave the confines of the cove.

On 14 November 2008 the Western Australian Department for Planning and Infrastructure (DPI) issued certificates for survey for the two vessels, the “Colin Winchester” and the “Sea Eye”. The certificate for survey was back dated to be valid for the period 7 July 2008 until 31 October 2009, unless revoked or cancelled.



⁴⁶ t.1067



The above photograph depicts the LeisureCat vessels the "Sea Eye" and the "Colin Winchester"
Photograph taken by WA Police officers, part of Exhibit "9"

As both vessels were Commonwealth vessels it was necessary for there to be a certificate of survey provided by the Australian Maritime Safety Authority (AMSA). Certificates of survey were provided in respect of both vessels on 15 July 2009 issued by AMSA based on the WA DPI survey and certification.

On 11 August 2010 the "Colin Winchester" was comprehensively inspected by an AMSA inspector and a significant number of deficiencies were noted in a marine surveyor's report of that date.



An almost identical marine surveyor's report of deficiency was also provided by AMSA in respect of the "Sea Eye" dated 12 August 2010 following inspection of that vessel.

The reports required the defects to be addressed by 11 November 2010 and 12 November 2010 respectively.

No effective action was taken by the AFP or any other Commonwealth government agency to have the deficiencies on either vessel remedied prior to 15 December 2010 or to have them replaced.

This was a particularly unsatisfactory and unsafe situation as the monsoon season was approaching and it was important that there should be an emergency response capability on Christmas Island for potential emergencies at sea.

Of particular concern, issues relating to the buoyancy of the vessels arose following the inspection of the two vessels. The AFP undertook verification of the weight of the "Colin Winchester", as well as other LeisureCat vessels including the vessels stationed at Thursday Island and Cocos (Keeling) Islands and all vessels were found to be overweight.

On 1 December 2010 Mr Riley, Commander of the VMRS, wrote to Sergeant Peter Swann, the AFP Officer in



Charge of the Christmas Island Police Station, in the following terms⁴⁷ –

Sea Eye is now out of survey with none of the major works having been commenced (as of today). With the vessel out of survey, I am unable to authorise any of our boat crews conducting on water training. Whilst I am aware that in the event of a major sea search and rescue operation I have the authority (force majeure) to use Sea Eye, I also have an obligation to the safety of the boat crews. If they are unable to train on the vessel, I limit my confidence in sending them to sea. Furthermore, there is an unanswered question relating to the stability of the vessel – identified at time of survey inspection – which brings further into question the safety of the boat crews.

Until such time the issues outstanding with Sea Eye are resolved and our rescue crews can re-commence training, the CI VMR group is unable to provide a dedicated, viable marine rescue service.

A review of the sister vessel, the “Mick Palmer” was conducted by the internationally recognised classification society, DET Norske Veritas (DNV) which first issued a report on 1 December 2010. That assessment found areas of non-compliance and significant concerns with the vessel’s stability.

The AFP advised AMSA by email of the assessment on 5 January 2011 and as a result of this assessment it formally withdrew the “Colin Winchester” and the sister vessels based on Cocos (Keeling) Islands and Thursday Island from service on the basis that tests revealed that the vessels might not be safe in conditions that could be expected in the open sea.

While there was a considerable amount of dispute at the inquest in respect of the significance of a number of perceived deficiencies, it is clear that the identified deficiencies were not



⁴⁷ Annexure D to Statement of Paul Kimber, at annexure 11.1.4

corrected and the survey certificates for the vessels in question were deemed to be suspended. It is also clear that efforts to weigh the AFP LeisureCats at both Christmas and Cocos (Keeling) Islands revealed that they were significantly overweight which raised a concern that the provided stability data for the vessels was not reliable and they were unsafe.

The position in relation to any possible AFP response using the “Colin Winchester” was summarised by Sergeant Swann in his statement⁴⁸ –

The vessel is subject to AMSA survey when in use as an AFP vessel. AMSA withdrew the survey of the vessel in September 2010 and therefore on 15 December 2010 it was not in survey. In September 2010 I was instructed by AFP Management that I was not to use the vessel.

There was conflicting evidence as to whether or not Leisurecats generally were appropriate for use as search and rescue vessels at Christmas Island. Sergeant Le Lievre expressed the view that they were usually good quality vessels and Kevin Horsley, the General Manager of Catamaran Investments Pty Ltd and former Director and Part owner the company which constructed the Leisurecats, claimed that they were excellent vessels.

There was, however, evidence at the inquest which suggested even if LeisureCat vessels generally were good vessels, that the vessels in question, the “Sea Eye” and “Colin Winchester”, were defective and unsafe. The evidence



⁴⁸ Annexure 3.37 para 39

indicated that they were both overweight, as discussed above, and the evidence of Special Constable Adams, who was both an officer with the AFP and a member of the VMRS, about their handling was⁴⁹ –

CORONER: Did you take the Colin Winchester out yourself on occasions?---Yes, on numerous occasions.

How did you find it?---A difficult boat to drive.

Why was that?---It had a tendency with the starboard hull to drop with a following sea, which is quite awkward to keep the boat up from rolling over.

Have you driven catamarans on other occasions?---Yes. I was sent down through the VMR FESA to Perth for training.

Yes?---I drove a Shark Cat in Mandurah and a LeisureCat in Jurien Bay.

How did the Colin Winchester compare with those two catamaran vessels?---They're a difficult boat to drive. The LeisureCat in Jurien Bay was a great boat to drive. It drove very well. Canning Way has a lot of experience behind it and it's a good boat. The current vessels Winchester and Sea Eye are very awkward boats to drive.

Yes.

Remarkably the Department of Regional Australia and the AFP took no action, and have still taken no action, to investigate these problems. An expert could have been retained to inspect the interior of the hulls to determine the reason for the vessels being overweight but this did not and has not happened. At the time of the inquest visiting Christmas Island in July 2011 the two vessels were located beside the police station exposed to the weather.

This apparent lack of interest in identifying and correcting the defects in these, and at least one other of their



⁴⁹ t.1424

LeisureCat vessels, is particularly difficult to understand as not only were the vessels valuable (the three vessels had cost about \$700,000) and had powerful engines which had not been the subject of any deficiency reports, in the event that a SOLAS situation developed and they were used, there was a great risk that the defects could result in the vessels sinking with loss of life in the event that those defects turned out to have significant safety implications in difficult conditions.

The fact that neither the AFP nor the VMRS had access to a suitable vessel which could be used in rescue operations in bad weather and that there was no viable marine rescue service on the island was extremely unsatisfactory and unsafe. That this situation was allowed to exist for over four months leading up to the tragedy and afterwards at a time when the monsoon season was approaching and then during the monsoon season was particularly unsatisfactory and unsafe.

**THE CONTENTION ON BEHALF OF THE
COMMONWEALTH THAT THE EVIDENCE THAT THERE
WAS NO CAPABILITY ON CHRISTMAS ISLAND TO
RESPOND TO AN EMERGENCY OCCURRING IN THE
CHRISTMAS ISLAND COASTAL SEA IN ADVERSE
WEATHER CONDITIONS WAS IRRELEVANT AND SHOULD
NOT HAVE BEEN CONSIDERED BY THE INQUEST**

It was the contention on behalf of the Commonwealth that the above issue should not have been explored at all at



the inquest and in particular issues relating to the evidence that the vessels provided to respond to any emergencies occurring in the coastal sea, the LeisureCat vessels, were out of survey and believed to be unsafe, were not relevant and had no bearing on the circumstances surrounding the deaths.

The Commonwealth's submissions in this regard commenced as follows –

- 273. The lack of relevance of the Leisurecat issues to the cause of death of those aboard SIEV 221, if not immediately apparent, can readily be appreciated having regard to clear evidence throughout the Inquest that –
 - 273.1 no vessels were launched or attempted to be launched from Christmas Island to assist in the rescue operation because the extreme weather conditions made it unsafe to do so;
 - 273.2 even if it had been possible to launch a vessel from Christmas Island (Leisurecat or otherwise) on 15 December 2010, it would have taken 45 minutes to get a vessel to Ethel Beach and at least a further 20 minutes to proceed to the scene, all of this from the time when the SOLAS situation first developed at about 6.20am.

In respect to the submissions, it would clearly be an unusual and unsatisfactory investigation into the circumstances surrounding 50 deaths occurring in sea adjacent to the territory if there was no inquiry into the capability of a rescue response from the resources of the territory itself.

In respect to submission 273.1 above it is accepted that no vessels were launched or attempted to be launched from Christmas Island to assist in the rescue operation, in my view this was because of -



- (a) the extreme weather conditions; *and*
- (b) the fact that there were no vessels on the island capable of taking part in a rescue operation in bad weather.

In my view the decision not to launch any vessels from Christmas Island was the only appropriate decision in the circumstances and had a vessel been launched it is likely that the inquest would have been reviewing even more deaths. That does not mean, however, that had suitable vessels been provided in circumstances where there could have been appropriate training a response from the shore could not have been effective.

The submissions on behalf of the Commonwealth in this context rely heavily on the evidence of a number of witnesses that because of the extreme weather conditions a response from an island vessel would have been impossible or unsafe. While I accept the force of those observations, they should be taken in the context of the circumstances as they existed on 15 December 2010. In my view it clearly was possible for there to have been a response from rescue vessels located at or near the island.

To use an extreme example, had the AFP been provided with an Armidale class patrol boat as a search and rescue vessel, that vessel could clearly have assisted in the rescue



operation. Similarly if the AFP had been provided with a navy RHIB and crew, that vessel could have assisted with the rescue operation in the same way that RHIBs from HMAS Pirie assisted on the day.

The Commonwealth submission does not identify why it is contended that it was impossible for a rescue vessel to have assisted on 15 December 2010. For an island based rescue vessel to have taken part it would have been necessary for it to be able to be –

- (a) launched; *and*
- (b) taken to the scene and be able to take part in some way in the rescue operation.

(a) Whether a suitable vessel could have been launched

At the time the only realistic option for launching a rescue vessel would have been for it to be launched at the Ethel Beach boat ramp.

In respect of the question whether or not it would have been possible to launch a vessel on that morning at Ethel Beach, the most significant evidence was that of Teruki Hamanaka, recreational dive operator, who on the early morning of 15 December 2010 drove to Ethel Beach to have a look at the condition of the sea as he planned to take out a



group of people diving later that day. Mr Hamanaka examined the conditions in the area of Ethel Beach at about 5:30am and concluded that at that location conditions were sufficiently calm to enable him to launch his vessel. He planned to go ahead with his dive tour.

There was no evidence of any sudden deterioration in conditions between about 5:30am and later that morning. Certainly later in the day a number of the people saved from SIEV 221 were offloaded successfully at Ethel Beach.

In my view it would have certainly been possible to launch an appropriate search and rescue at Ethel beach on that morning.

It is, however, clear that the Ethel Beach boat ramp as it was on 15 December 2010 was a far from ideal location to launch a rescue vessel in bad weather. The need for improvements to be made to the Ethel Beach boat ramp is a matter discussed in comments herein.

(b) Whether it would have been possible for a rescue vessel to have travelled to the scene and assisted

While conditions were certainly extremely unsafe, it is the fact that both navy and customs officers did save a considerable number of people on that morning using small



boats and it was, therefore, possible for small boats to be used in a rescue operation.

The Navy RHIBs and the Customs tenders were of a comparable size to a suitable rescue vessel if one had been available and they travelled the most difficult part of the course which a rescue vessel, launched from Ethel Beach, would have taken so it was possible for a rescue vessel to go from Ethel Beach to the area where the tragedy occurred.

In this context it is noted that SIEV 221, which was on all accounts an unsafe wooden fishing boat with a defective motor operated by three crew with very limited relevant experience, travelled the most difficult part of that journey successfully, even though it was taken too close to the cliffs where the swell was worst, until its engine failed and it was only then it was smashed against the rocks. In that context I cannot accept that it would have been impossible for a well equipped modern vessel designed for rescue operations with a powerful motor and well trained crew to travel the same journey.

In my view it was the responsibility of the Commonwealth to ensure that there was such a vessel and crew on the island.



In respect of the submission at 273.2, that submission proceeds on the basis of a number of assumptions which are not supported by the evidence.

The submission assumes that nothing at all would be done until a SOLAS situation was recognised and it is contended that this first developed at about 6:20am.

In my view there was no reason why, if the Island had been suitably equipped for there to have been an effective response, preparations could not have started as soon as it became obvious that SIEV 221 was in serious difficulty, prior to 6am when concerned island residents started calling 000.

The primary responsibility for an immediate emergency response rested with the AFP and if there had been available suitably trained AFP officers with ready access to a suitable vessel there was no reason why a response could not have been commenced by them well before 6:20am. It was the account of Sergeant Swann that at 6:05am he was alert to the fact that SIEV 221 was in the ocean in the vicinity of Rocky Point and at that stage he was “immediately concerned for the safety of the persons on board”⁵⁰.

In the case of the AFP vessel, it was the evidence of Sergeant Swann that it would have taken at least 30 minutes



⁵⁰ Annexure 3.37 para 3

to reach Ethel Beach with the boat on a trailer. If that process had started before or not long after 6am, allowing approximately 20 minutes for travel by sea from Ethel Beach to the scene, a rescue vessel could have been contributing to the rescue efforts by 7am.

In the case of the VMRS vessel, that vessel was in a compound and according to Mr Riley it would have taken at least 45 minutes to take the vessel to Ethel Beach. Even if that delay was necessary and allowing for at least 20 minutes to reach the scene, it would have been possible for a VMRS rescue vessel to be contributing to the emergency response not long after 7am, particularly if action to remove the vessel from the compound had commenced as soon as the emergency situation had been identified i.e. before 6am.

I do, however, have reservations about whether it would ever be appropriate for volunteers to be involved in a rescue operation in such dangerous conditions as those which existed on 15 December 2010.

It appears that SIEV 221 sank between about 6:50am and 7am and that a number of survivors were still alive in the water for about an hour after that time. In that context in the different circumstances postulated above, an emergency response from the Island could have been effective in saving lives.



Ethel Beach boat ramp is only about a 10 minute drive from the Settlement, where SIEV 221 crashed on the rocks and the AFP and VMRS vessels were being kept, so in a context where emergency calls were made before 6am I do not accept the contention that there was not enough time for an emergency response to take place.

In my view if there is a problem with delay in responding such that it would take over an hour to provide an emergency response at the Settlement, that is a issue which should be addressed by the AFP and consideration be given to storing the vessels at a location or in a manner which would allow for a quicker response.

I reject the submission that the failure of the Commonwealth to provide suitable vessels for an emergency at sea response was wholly irrelevant for the purposes of the inquest.

THE FAILURE OF THE COMMONWEALTH TO PROVIDE SUITABLE VESSELS FOR AN EMERGENCY AT SEA RESPONSE - CONCLUSIONS

Christmas Island is an isolated location which is, particularly in bad weather, an unsafe destination for vessels and can also be an unsafe location for recreational fishers and boaters.



While at the time of the tragedy there was usually a naval vessel close to the island conducting surveillance and other activities on behalf of Border Protection Command, that vessel could at any time be unavailable for an emergency response at sea for a number of reasons and could not be relied upon as part of the island's emergency at sea response plan.

It was the responsibility of the Commonwealth in the form of the Department of Regional Australia and the AFP, to ensure that there were suitable vessels on the island for an emergency at sea response at all times.

The agency with primary responsibility for a search and rescue response was the AFP and that agency did not have access to a suitable vessel.

The volunteers comprising the VMRS were a group of dedicated residents who were willing to provide assistance in the event of an emergency at sea occurring. Unfortunately their organisation was also not provided with a suitable vessel.

This failure on the part of the Commonwealth meant that there was no effective capability on the island to respond to an emergency at sea. For such an isolated island posing



significant dangers for visiting vessels, this was a major failure.

It was extremely fortunate in this context that HMAS Pirie and ACV Triton were in a position to respond to the emergency on 15 December 2010, if they had not been able to respond it appears clear that there would have been 91 deaths, not 50.

THE ACCOUNT OF OTF018

The detainee whose DIAC number is OTF018 claimed that he had told a guard at the Christmas Island Detention Centre of the impending arrival of a boat (SIEV 221) hours before it arrived and crashed onto the rocky cliffs of the island.

The Coroner's Court first became aware of this claim in June 2011 as a result of newspaper reports. The claim was then thoroughly investigated by police and explored at the inquest.

OTF018 was detained at the Aqua Compound at the North West Point Immigration Detention Centre at the time of the crash of SEIV 221. His wife and two young children were aboard that vessel and they perished in the disaster.

OTF018 made three statements to police.



In his first statement dated 16 January 2011 OTF018 described how he came to Australia and his reasons for doing so. He described the events leading up to and following the crash of SEIV 221, but made no mention of obtaining relevant information described above or of attempting to convey that information to any persons in authority.

In the first statement made by OTF018 he referred to speaking to his wife by telephone after he had arrived in Christmas Island and stated that she told him that she intended to travel to Australia with the children and that he tried to dissuade her because the trip was too dangerous. In that statement he claimed that he last spoke to her just before she left Iran⁵¹.

At paragraph 44 of this statement OTF018 is recorded as having stated that he saw that there had been a “boat accident” one morning while checking the internet. He stated that he knew that the boat had asylum seekers on it but he did not know that his wife was on the boat. He then goes on to say⁵² that he spoke to an Immigration Officer whose name he did not know, showed the officer pictures of his wife and children and was told that they were not on the boat, but if they were that the officer would come back and tell him.



⁵¹ Para 39

⁵² Para 45

OTF018 made no mention in his first statement of the events which he later alleged happened in the hours before the boat crash or of having been in telephone contact with his brother or the people smuggler during the journey of SIEV 221.

In his second statement dated 4 July 011 OTF018 claimed that he had been in regular contact with the people smuggler. He also claimed that his brother, who had been travelling on SIEV 221, had a mobile telephone which he had called to speak with his wife. He said that he had spoken to his wife.

He claimed that he used the public telephones available within the Aqua compound to call his wife and that he was in regular contact with the people smuggler.

Of particular significance OTF018 claimed that he had made two telephone calls on the early morning of 15 December 2010 to the people smuggler using the Aqua compound phones. The first he said took place at 2am. He claimed that during his conversation he said, "It's really windy here and I am really worried about my wife and kids"⁵³.

He claimed that the people smuggler asked him to call back and that he did so at 2:30am. He said that on that occasion the people smuggler told him, "They have satellite phones and GPS



⁵³ Para 40 of Statement of 4 July 2011

and they will find the Island, because they have all this equipment and the Australians and the police will detect the boat easily”⁵⁴.

He claimed that the smuggler told him that he had spoken to people on the boat and that they could see some lights, which he took to be the lights of Christmas Island. He claimed that the people smuggler had said that his wife and children would be on the Island in two to three hours.

In evidence at the inquest OTF018 gave a similar account of these incidents. As to the timing of the calls he said that he had seen the times of 2am and 2:30am on clocks situated above the public telephones and was sure that the person on the telephone had said that the boat would be in Christmas Island in three to four hours⁵⁵.

He claimed that after the telephone call he was concerned about his wife and children’s safety and saw his friend whose DIAC number is ZUC001.

He said that they went to a Serco guard called Michael at the Manager’s Office and on his way he obtained a razor blade from his room. He stated that he did this to impress on Michael his desperation to save his wife and children.



⁵⁴ Para 43 of Statement of 4 July 2011
⁵⁵ t.24-25

He said that he did not know Michael's last name, but described him as fat and tall with two earrings, blond hair and a cowboy style hat.

He said that he approached Michael with ZUC001 who was to be a translator. He stated that he said to Michael, "I'm worried about my wife and kids they are on a boat in these terrible weather conditions and they are going to be arriving in 2 to 3 hours. I know that because I just spoke to the people smuggler"⁵⁶.

He claimed that he told Michael, "I just spoke with the smuggler and I am sure they are on this boat just get some help"⁵⁷.

He claimed that he took his notebook with the telephone number of the people smuggler and showed that to Michael. He stated that he was confident that ZUC001 was getting the message across to Michael.

He claimed that Michael went into the office and locked the door behind him, following which he came back out after one or two minutes. He claimed that Michael spoke on his mobile telephone and later said, "I can't do anything I have to talk to my boss"⁵⁸.

⁵⁶ Para 76 of Statement of 4 July 2011

⁵⁷ Para 79 of Statement of 4 July 2011

⁵⁸ Para 87 of Statement of 4 July 2011



He further claimed that Michael said through ZUC001, “At this stage we can’t do anything for you. You will have to wait until morning”⁵⁹.

OTF018 claimed that he then took out the razor blade from his pocket and this was witnessed by detainee OTF016. He said that a number of people stopped him from hurting himself.

OTF018 stated that through ZUC001 he said, “I can’t wait that long, they are near the Island and are about 2 hours away, just do something, you guys have got phones please call the police, call the Navy, someone should go and help them”⁶⁰.

OTF018 claimed that these events all took place at around 2:30am following which Michael advised him that he should attend the medical centre. He stated that he went to the medical centre where he was given a yellow tablet with a Z on it. He said that he was then taken back to his room where he slept until around 6am.

He claimed that he found out about the crash the following morning from a fellow detainee GEO012.

In his third statement dated 27 August 2011 OTF018 confirmed that his earlier statements were true and correct. In this statement OTF018 provided information about the people



⁵⁹ Para 91 of Statement of 4 July 2011

⁶⁰ Para 96 of Statement of 4 July 2011

smuggler and the arrangements which had been made. He provided a detailed account about the number he used to contact the people smuggler. He claimed that he was 99% sure that the number he used was one of two identified numbers⁶¹.

THE SIGNIFICANCE OF OTF 018'S ACCOUNT

If what OTF018 had stated was true and the information had been passed onto the AFP, Navy or Border Protection Command immediately or shortly after being received and was regarded as being potentially reliable and had been acted upon, it is possible that HMAS Pirie and/or ACV Triton would have been able to intercept SIEV 221 before it got close enough to Christmas Island to have crashed and the tragedy avoided.

In this context it was important to examine whether the events described by OTF018 actually happened.

THE RELIABILITY OF THE ACCOUNT OF OTF 018

Investigation of the account given by OTF018 involved police speaking to approximately 50 potential witnesses, 13 of whom gave evidence at the inquest. In addition a considerable amount of documentary material was seized or produced by Serco.



⁶¹ Para 38 of Statement of 27 August 2011

Following the review of all that material I have no doubt that the account given by OTF018 detailed above contained in his second and third witness statements was false.

Fundamental to the claim of OTF018, particularly as contained in his statement of 4 July 2011, was his assertion that he was in telephone contact with the people smuggler on two occasions during the early morning of 15 December 2010. He claimed that the calls took place at 2am and 2:30am approximately.

Call records obtained and produced to the inquest annexed to the statement of Kylie Rose Pratt, dated 13 September 2011, show that neither of the numbers identified as the numbers of the people smuggler by OTF018 received any call from any Australian telephone service, including any call from Christmas Island, between midnight and 6am on 15 December 2010.

Those two calls, therefore, did not take place.

A further fundamental aspect of the account of OTF018 was that he spoke to a Serco guard named Michael. He said that guard wore a blue shirt and described him.

While the description provided by OTF018 did not exactly match the appearance of Michael Pucher, it is obvious



from other evidence that this is the guard to whom OTF018 was referring. There was no other person named Michael working for Serco on duty at about the relevant time at the Aqua Compound. The description given by OTF018 in a number of respects fitted Michael Pucher and at the time Michael Pucher was usually the Client Services Manager on duty at the compound at night.

Extensive records provided to the inquest, witness statements and oral evidence, however, established to my complete satisfaction that the Client Services Manager who was on duty during the early hours of the morning of 15 December 2010 was Mitchell Renouf, not Michael Pucher.

Michael Pucher, Mitchell Renouf and all Client Service Officers on duty on the night in question denied that any such incident ever occurred to their knowledge.

This is a matter which will be discussed in more detail later in these reasons, but in my view the evidence established that –

- ✚ OTF018 was not in contact with the people smuggler on the morning of 15 December 2010; *and*
- ✚ OTF018 did not communicate any information about SIEV 221 to any Serco officer in the morning prior to the tragic incident.



In my view, therefore, the essence of this account was a fabrication, inconsistent with the objective evidence.

THE EVIDENCE OF FELLOW DETAINEES

In his statements OTF018 claimed that a number of fellow detainees were involved in reporting the imminent arrival of the boat to a SERCO employee. The most prominent among these were ZUC001 (the alleged translator of OTF018's account) and OTF016 (OTF018's room mate).

ZUC001 gave evidence by video link and his evidence was interpreted although it was obvious that he spoke and understood some English. He made two relevant statements to investigators.

In his first statement dated 3 July 2011 ZUC001⁶² gave a detailed account of events which in many ways supported the account given by OTF018 in his second statement. While there were a number of discrepancies, the account was broadly similar.

He claimed that he was in Aqua Compound at about 2:30am on 15 December 2011 when OTF018 approached him and told him that his family would be arriving in two hours.



⁶² Annexure 16.46

ZUC001 claimed that he asked OTF018 how he knew that and was told that he had been speaking to the people smuggler.

ZUC001 stated that he went with OTF018 to speak to a Serco guard. He claimed that the guard was Michael Pucher. He said that he knew his full name because about three weeks before making the statement of 3 July 2011 he had put in a complaint about Mr Pucher. At the time of the complaint ZUC001 was housed at the Villawood Detention Centre and Mr Pucher was a guard at that centre.

He said that he had communicated OTF018's concerns to Mr Pucher and told him that the boat would be at Christmas Island in the next two hours. He said that he made it clear that OTF018's wife and two children were on the boat.

He claimed that Mr Pucher went and spoke with his manager on his mobile telephone following which Mr Pucher said, "I cannot do anything now because it is night time and wait until the morning. It is not us who is responsible but Immigration and they will inform the army"⁶³.

ZUC001 then claimed that OTF018 went to get a razor to cut himself.



⁶³ Para 7 of Statement of ZUC001 dated 3 July 2011

In this regard the account of ZUC001 differed from the account of OTF018 who claimed that he already had a razor at that stage.

He claimed that, “We all had to hold him back and stop him from hurting himself”⁶⁴. He stated this happened in OTF018’s room⁶⁵.

He claimed that the people attempting to stop OTF018 were himself and OTF016.

He said that subsequently he saw Mr Pucher drive OTF018 to the medical centre and that when OTF018 returned he was a “different person”⁶⁶.

In this statement he claimed that he was 100% certain that the Serco guard with whom they spoke was Michael Pucher⁶⁷.

In a subsequent statement dated 5 September 2011 ZUC001 gave a different account. In this account he claimed that he was not 100% sure that it was Michael who they had spoken with, he said, “I am on tablets and I am very stressed

⁶⁴ Para 50 of Statement of ZUC001 dated 3 July 2011

⁶⁵ Para 52

⁶⁶ Para 62

⁶⁷ Para 86



and I am very depressed. I am not 100% sure that I have a clear memory”⁶⁸.

He went on to say that he was now not sure if the person was Michael but he was, “1 million per cent sure that the incident was still reported”⁶⁹.

In evidence at the inquest ZUC001 said that he was told by police that Michael Pucher was not working on the night of 14 December 2010⁷⁰. He said that it was after this happened that he started thinking about whether his recollection was accurate in that respect, but claimed that he did not change his statement because of what the police had told him.

ZUC001 ultimately in his evidence made the claim in respect of OTF018’s contact with a SERCO officer that he could have gone to a guard named Michael or to two or three guards, possibly one of whom might have been Michael. When asked whether there had been not just one person but two or three approached, he stated, “Yeah, maybe two or three. I’m not sure.”⁷¹

ZUC001 also gave a different account in his evidence in respect of the contention that OTF018 had gone to his room and it was there that he attempted to self-harm. In evidence

⁶⁸ Paras 8 and 9 of Statement of 5 September 2011

⁶⁹ Para 12 of Statement of 5 September 2011

⁷⁰ t.2380

⁷¹ t.2396



he stated that he had not followed OTF018 to his room. He claimed that he had subsequently been told that OTF018 had been trying to harm himself. When specifically asked about these different accounts he responded, “I’ve said that a few times now and I’m going to say it again. I do not recall my own details or simple, little details.”⁷²

CONCLUSION IN RESPECT OF THE ACCOUNTS OF ZUC 001

I was not impressed with the evidence of ZUC001. In my view he was not a witness of the truth.

It appears clear that ZUC001 falsely claimed in his statement of 30 July 2011 that Serco employee Michael Pucher had received actionable information in respect of SIEV 221 and there had not been an appropriate response. That contention was false and Mr Pucher was not even on duty at the time in question.

The account of ZUC001 in evidence differed significantly from the account given in his initial statement of 3 July 2011 and I did not accept that either version was truthful.



⁷² t.2397

OTF 016

OTF016 provided a statement dated 2 July 2011⁷³ which essentially supported the account of OFT018.

OTF016 described himself as a friend of OTF018 and stated that he had come to Australia with him.

OTF016 was a room mate of OTF018 at the time of the tragedy.

In his statement he claimed that between about 2am and 3am on 15 December 2010 OTF018 had left their room and returned after about half an hour or one hour at which time he told OTF016, “My family is already almost here” and, “They would be here in the morning”⁷⁴.

He claimed that about an hour after that incident OTF018 left to find a security officer to advise that his family was coming. He said that OTF018 was anxious and cried because the weather was getting bad and he was worried for his family.

His statement continued with a claim that they found Michael who was one of the Serco Managers. He claimed to have been present when OTF018, through an interpreter, was

⁷³ Annexure 16.54

⁷⁴ Para 9 of Statement of OTF016 dated 2 July 2011



telling Michael that his family was in a boat very close to the Island and that he wanted “Michael to tell Immigration so that they could go and get them”⁷⁵.

He further described Michael leaving and then advising that he, “could not do much”⁷⁶.

It is clear that OTF016 was referring to Michael Pucher and for the reasons discussed earlier, the event as described could not have occurred.

In his evidence OTF016 departed dramatically from this account and claimed that on the night in question he was asleep until 7am.

His earlier statement was put to him and he responded that he could not remember any of the events described. He said that he was taking a pain killer for his teeth and sleeping tablets.

The following exchange took place between Ms O’Connor and the witness –

Are you worried that if you tell the coroner about what happened before the boat crashed that it will affect your migration status? - - - It makes no difference to me. I feel death right now. I’m pretty frustrated.



⁷⁵ Para 17

⁷⁶ Para 18

When questioned about his statement taken by police on 2 July 2011 he stated that at the time he, “Wasn’t really in proper good order”. The following exchange took place between Ms O’Connor and the witness⁷⁷ –

No, but you did make a statement which you read through didn’t you? - - - It said a few things, but I wasn’t at it. I was very tired.

COMMENT IN RESPECT OF OTF 016

I do not accept that the dramatic difference in account between his evidence at the inquest and his statement of 2 July 2011 can be explained by claim that the witness was “tired” at the time when he made his statement or a claim that he had been taking pain killers or sleeping tablets.

The statement of OTF016 dated 2 July 2011 was very much consistent with the account provided by OTF018 and falsely identified Michael Pucher in respect of the claim which was being made.

I do not consider that OTF016 was a witness of truth.

OTF 050

Another detainee witness who provided a statement in support of the account of OTF018 was OTF050. In a witness



⁷⁷ t.2428

statement dated 5 July 2011⁷⁸ he claimed that on the morning of the boat crash he could remember speaking with OTF018 in the early morning. He said that OTF018 came over to a group of detainees and said that his family was coming on a boat that morning. He stated that he did not know that the boat was coming before OTF018 told him.

He stated that OTF018 said that he had already spoken to an officer and told “them” that his family was coming on a boat that morning⁷⁹.

In evidence OTF050 gave a somewhat different account.

He claimed that approximately one or two days before the tragedy OTF018 had told him that his family was coming.

He said that he thought at some stage (which was unclear from his evidence) OTF018 had said, “My family has arrived”⁸⁰.

When asked if he could remember exactly what he was told OTF050’s evidence was, “He said that, “My wife and children, they’re on the way, departed and they are on the way getting here””⁸¹.

⁷⁸ Annexure 16.55

⁷⁹ Para 9 of Statement of OTF050 dated 5 July 2011

⁸⁰ t.2437

⁸¹ t.2338



Questioned further about the conversations he said, “The first approximately around 12 to 2, midnight. That was the time he got sort of nice clothing on. I said, “What’s happening?” he said, “My wife (own language). Then he said that they arrived”⁸².

The following exchange took place⁸³ –

So, in this conversation you say he told you that they had already got here? - - - Yes. He said that they arrived.

How did he seem when he said that? Did he seem happy, sad, neither? - - - Yes. He was happy. As I said that he had a nice outfit and also looks quite good. Then he was happy and cheering.

CONCLUSION IN RESPECT OF THE ACCOUNT OF OTF 050

This account is inconsistent with the account of OTF018 in a number of respects, particularly in respect of his claim that OTF018 was saying that his wife and family had “arrived”.

The account that OTF018 appeared happy was also inconsistent with OTF018’s account. It was the thrust of OTF018’s account was that he was extremely distressed on that early morning.

I did not accept OTF050 as a witness of truth.



⁸² t.2439

⁸³ t.2439

THE MEDICAL RECORDS

The complete medical records for OTF018 as a detainee were produced by International Health and Medical Services (Australia) Pty Ltd. The file consists of 182 pages and contained information covering the period from 17 July 2010 to 28 June 2011 inclusive.

While there are a number of entries in the records relating to OTF018 in the period after the boat crash, there are no records which would support the claim by OTF018 that he was taken to the medical centre early on 15 December 2010. It does appear that at 12:03pm on that day he attended the medical centre with two friends and according to the records this was “to ascertain the safety of his two brothers, wife and two children (who) were on the boat wreck this am”.

The medical records, therefore, do not support OTF018’s account of being taken to the medical centre during the 14-15 December 2010 nightshift.

SERCO EMPLOYEES WORKING IN AQUA AND LILIAC ON 14 DECEMBER 2010

Statements were taken from a large number of Serco employees and contractors employed by the security company MSS.



The evidence received was to the effect that Serco operated two shifts of twelve and a quarter hours each which overlapped. The nightshift started at 6:15pm and finished at 6:30am and the dayshift started at 6:15am and finished at 6:30pm. Employees typically worked 6 days a week and had the 7th day rostered off, although occasionally staff would work on their days off.

Some difficulties were encountered in determining conclusively who was working in the Aqua and Liliac compounds on the nightshift of 14-15 December 2010. This was because Serco's records were not entirely consistent or complete. Records obtained from Serco included Occurrence Logs for Aqua and Liliac compounds, an Equipment Register covering both compounds and what was referred to as a Communications Log. Also provided was a disk containing the payslips of all Serco employees at Christmas Island during the relevant period, whether they were based at the Island or seconded from elsewhere in the immigration detention network.

Those records, in combination with the accounts of the witnesses contained in statements and oral evidence, established that the following people were working as Client Service Officers in the Aqua and Liliac Compounds on the night of 14-15 December 2010 –



Jason Zaiton
Darren Folland
John Mills (Lilac only)
Peter Deng
Kenny Junaidi

The records, witness statements and oral evidence established that the Client Services Manager overseeing the officers during the nightshift and covering both Aqua and Liliac Compounds was Mitchell Renouf, not Michael Pucher.

While there were a number of witnesses who believed that Michael Pucher may have been working on the night in question, the evidence clearly established that he had a rostered day off and did not work.

Both Mr Pucher and Mr Renouf confirmed this in their evidence and their accounts were corroborated by the payslips and the Liliac Compound Occurrence Log for the night shift, signed off by Mr Renouf as Client Services Manager.

In evidence Mr Pucher stated that he was the permanent night shift Client Services Manager in Aqua and Liliac Compounds at the time but his day off was Tuesday so that 14 December 2010 was a rostered day off for him. He said that he had only ever worked two rostered days off, those being 21 and 28 December 2010.



Without going through the detail of the evidence relating to this issue, which was competently described in the submissions of counsel assisting, I accept the evidence of Michael Pucher to the effect that he was not on duty on the night in question.

Mr Pucher stated in his evidence that he did not go to the Aqua or Lilac compounds on the night in question and I accept this account as being accurate, particularly as he was not on duty that night and had no reason to visit either compound on his rostered night off.

THE ACCOUNT OF OTF 18 : CONCLUSIONS

It is clear from the above that the account of OTF018 and the accounts of those who gave evidence or provided information in support of that account, were false and the account was a fabrication, inconsistent with the objective evidence.

A considerable amount of time at the inquest was occupied with exploring the reliability of this account which, if true, would have had significant ramifications.

Not only was the account fabricated, but it had the potential to cause considerable embarrassment and distress



to an innocent person and had the potential to take away from important matters which needed to be explored at the inquest.

In the case of Michael Pucher, the person against whom allegations were made, it was fortunate for him that he was not on duty on the early hours of the morning of 15 December 2010 and that his account in that regard could be verified by documentary records and other objective evidence. Mr Pucher had been on duty in the early hours of most mornings and it was only by coincidence that 15 December 2010 was his rostered night off.

If his account had not been capable of verification, Mr Pucher would have, at least, been the subject of intense questioning at the inquest as a result of the allegations made about his conduct.

At best the account of OTF018 contained a number of mischievous false allegations, at worst it amounted to criminal conduct.

While I have sympathy for the position of OTF018 who lost family members as a result of the tragedy, I have no sympathy for the fellow detainees who provided accounts supporting OTF018. There could be no excuse for their



involvement in giving this false and potentially damaging account.

THE ACCOUNT OF KINGSLEY KENNEWELL

The only account by any person in authority provided to the inquest which would suggest that advance warning had been received of the arrival of SIEV 221 was provided by Kingsley Kennewell. Kingsley Kennewell was an employee of MSS from 13 October to 24 December 2010 and for that period he was employed as a fly-in, fly-out contractor to Serco on Christmas Island. It appears that Mr Kennewell was forced to resign for reasons which were not explored at the inquest. He was employed as a Client Services Officer primarily employed in the main reception and control room areas of the North West Point Detention Centre. He was on night shift on the evening of 14-15 December 2010.

He provided a statement dated 30 June 2011⁸⁴. In that statement he made the following relevant claim⁸⁵ –

...at about 4:45am I received a phone call at the front desk from one of the detainees.

I know it was around this time as it wasn't long before I finish for the evening.

He wanted to know if his family had arrived at the detention centre yet.

I said, "What do you mean, have they arrived yet?"

He said, "The boat that has arrived".



⁸⁴ Annexure 16, Tab 31

⁸⁵ Paras 30-37

I said, "No boat has arrived".

He told me that he had spoken to the boat smuggler and that they should be here.

He informed me the boat was a couple of hours away.

Mr Kennewell claimed that the caller then terminated the call and Mr Kennewell did not know his identity as the person had been "unable to speak clear English and I had trouble understanding him"⁸⁶.

Mr Kennewell stated that he noted the details of the call on a sheet of paper but not in the log book. He claimed that he later attempted to call his supervisor for the evening, Martin Ailoupotea and advise him of the telephone call but was unable to contact him. He claimed that he tried to contact Mr Ailoupotea using a telephone once and tried three times using the radio but had no success in contacting him.

He claimed that on handing over at the end of his shift he advised the officer who was to relieve him, Brian Mcphedran, of the telephone call but stated that Mr Mcphedran did not seem too concerned about the information which had been given to him.

He claimed that at about 7pm on 15 December 2010 he received another telephone call from the same detainee asking about whether his family had survived the boat crash.



⁸⁶ Para 39 of Statement of Kingsley John Kennewell dated 30 June 2011

That telephone call, if it took place, clearly would not have been relevant to any possible action which could have been taken to avoid the tragedy.

The account of Mr Kennewell when he gave evidence at the inquest was significantly different from the account given in his statement.

In the context of paragraphs 30 and 31 referred to above, Mr Kennewell claimed in evidence that the call was at about 3:45 to 4am and at one stage stated that the call could not possibly have been as late as 4:45am⁸⁷.

In the context of paragraph 36 of his statement it is significant to note that in his evidence Mr Kennewell claimed that the caller had told him that his wife, not the “boat smuggler”, had rung him to say that a boat was there. He was asked whether the caller had mentioned speaking to the ‘people smuggler’ and he stated that he had not⁸⁸.

In the context of paragraph 37 of Mr Kennewell’s statement it is noted that in his evidence he was asked if the caller had told him that the boat was two hours away and he stated that he had not been told that⁸⁹.

⁸⁷ t.2670

⁸⁸ t.2696-2698

⁸⁹ t.2696



In respect of Mr Kennewell's claim that he had attempted to contact Mr Ailoupotea unsuccessfully on a number of occasions this matter was raised with Mr Ailoupotea and he stated that his radio was his "life line" when he was on shift. He said that it would be very rare for him to miss three attempts at radio contact, particularly on a quiet night (which it appeared the night of 14 December 2010 was for him). He stated that if he did not answer a radio call, one of the other Client Services Managers who shared the same radio frequency would be likely to answer and relay any message to him.

COMMENTS ON THE CLAIMS OF MR KENNEWELL

Mr Kennewell's account in his evidence was to the effect that an unknown person had contacted him by telephone asking, "Has the boat arrived yet?"⁹⁰, that he had asked, "What boat?" to which the person had said, "...that his wife had rung him and the boat was here" to which he responded that no boat had arrived⁹¹. This account on its face was unclear and unspecific. The context of the alleged conversation does not make it clear that this was a reference to SIEV 221 and the information does not appear to have been explained in a way which would suggest that it was appropriate for immediate action to be taken.

⁹⁰ t.2648

⁹¹ t.2649



There was, for example, no information as to how this person's wife would have known that a boat had arrived or was about to arrive, who the person and his wife were and how they could have obtained the information.

The account of Mr Kennewell in evidence was significantly different to the account given in his statement, particularly in his repeated denial of his earlier claim that the caller had said that he had spoken to a people smuggler during the first call⁹².

In my view the account of Mr Kennewell is not credible. I do not accept that he made any attempt to contact Mr Ailoupotea about the arrival of a boat and it is particularly significant that there was no documentary evidence available to support Mr Kennewell's claim. In any event, even if Mr Kennewell had received the information which he said he received at the inquest, that information could not be described as credible information which ought to have been passed on or would have been likely to have been acted upon.

ALLEGATIONS OF MS 1

On 5 September 2011 the solicitors representing various detainee witnesses notified counsel assisting that they had received information from a young woman who had been a



⁹² t.2692, t.2696-97

detainee at Christmas Island at the time of the wreck of SIEV 221. This information was to the effect that the detainee had told employees of Serco and DIAC that SIEV 221 was on the way from Indonesia before it arrived and specifically that she had done so on the night before the wreck.

This person was referred to at the inquest as MS1 and was an Iranian national who had arrived on Christmas Island on 13 October 2010. She was detained in Charlie Compound of the Phosphate Hill Immigration Detention Centre at Christmas Island in the days immediately before 15 December 2010, having initially been in the construction camp section of that detention centre. Seven members of her family, including her parents and brother, were aboard SIEV 221, and tragically only her father and sister-in-law survived the disaster.

MS1 made two statements dated 8 September 2011 and 29 September 2011. Investigations into the allegations she made in her statements began soon after the first statement was provided to counsel assisting and those investigations involved the provision and examination of documentary records held by Serco and DIAC, the obtaining of telephone records and taking statements from a considerable number of witnesses.



I do not propose to deal in detail with the allegations of MS1 or to refer to all of the evidence obtained, much of which refuted her claims, as I have formed the view that the significant claims which were made by MS1 were wholly without merit.

The account of MS1 was supported in varying degrees by the accounts of two other detainee witnesses, one her sister and the other her cousin, and in documents described as interview notes provided in relation to two other persons who were also detainees.

MS1 claimed that she used a mobile telephone which was provided to her to find out about the journey her family members were undertaking. She referred to two telephone calls, the first to her mother some days before the boat arrived, and the second to a person, referred to by numerous witnesses as the people smuggler who organised the trip, on the night before the wreck of SIEV 221.

She stated that the first telephone call was made at about 7:30-8pm on what she believed was the Sunday night before the crash (it appears that this was 12 December 2010).



She said that in that call her mother told her that she was due to get on a boat “in the next couple of hours” that would take her to Australia.

MS1 stated that the second telephone call was made by a family friend at about 9:30-10pm on the night before the crash (the evening of 14 December 2010). In her first statement she did not name that friend but in the second statement she identified the person.

MS1 claimed that during this telephone call the smuggler had advised that the boat was close to Christmas Island and “just needed to be picked up by the Navy”⁹³.

In her second statement she claimed that she could hear the voice of the people smuggler over the telephone when her friend was talking to him and she heard him say that the boat was close to Christmas Island and “they just needed to be picked up by the Navy”⁹⁴.

Following the first call MS1 claimed that she told a number of Serco and DIAC staff that the boat was coming. In both statements she claimed that the first people she told, very soon after the telephone call, were two Serco employees she identified as an Anglo-Saxon male named “Chad” and an Asian female called “something like Lewsha”.

⁹³ Para 33 of statement of 8 September 2011 Annexure 16.108

⁹⁴ Para 84 of statement of 28 September 2011 Annexure 16.108



In her second statement MS1 gave physical descriptions of these people, which it is not necessary to detail in these reasons.

It appears clear from other evidence that the persons she identified were an MSS employee named Chad Coupland, who was seconded to Serco at Christmas Island, and Lucia Tia, a Serco employee. Statements were taken from these persons.

In the statement provided by Chad Coupland he advised that neither MS1 nor any other detainee ever told him anything about the imminent arrival of a boat. Importantly he stated that he was not on Christmas Island at the time (12 December 2010). Documentary records corroborated the account of Mr Coupland including the sign on sheets used by MSS employees which indicate that he was not working between 7 and 14 December 2010 inclusive.

In addition Serco solicitors provided Mr Coupland's travel itinerary which indicate that he left Christmas Island on 7 December 2010 and returned on the late afternoon of 14 December 2010. His next working shift was the night shift of the 15 December 2010, which was corroborated by a sign on sheet provided by Serco before MS1's first statement was obtained. No other employee named "Chad" has been identified.



It appears that the person described as “Lewsha” was Lucia Tia. In her statement provided to police she advised that she was working in the Construction Camp area of the detention centre and did not meet MS1 until after the crash as she was housed in a different compound.

Ms Tia’s timesheets reveal that she was not working nightshift on the night when MS1 claims that she spoke to her about the arrival of SIEV 221.

MS1 identified Danielle Prestie as the Serco officer she first told about the second telephone call. Ms Prestie was a Serco employee from 2009 until April 2011.

In her statement dated 1 October 2011⁹⁵ Ms Prestie claimed that she was never told about the imminent arrival of a boat by MS1 or her sister.

Ms Prestie’s timesheets show that she worked dayshift at Construction Camp from 11-16 December 2010 inclusive, having worked nightshift on 7-9 December 2010 and having had a day off on 10 December 2010. The account of MS1 unequivocally claimed that she spoke to Ms Prestie at night, both soon after the telephone call (which on her account was between 9:30-10pm and on some other accounts around midnight or after), and again at 2:30-3am when MS1 was



⁹⁵ Annexure 16.112

unable to sleep and had been pacing around the compound because she was worried about her family⁹⁶.

The fact that Ms Prestie's timesheets show that she was working dayshift on 14-15 December 2010 supports her evidence that the conversations MS1 says she had with her did not happen.

In her accounts MS1 claimed that she spoke to a counsellor who she referred to as Katherine Parell (who in fact appears to have been Kathryn Parle).

She claimed that she told Ms Parle during counselling sessions that her family were coming to Australia by boat and that about a week before the boat left Indonesia she told her that her family was coming by boat.

In her statement Ms Parle states that if she had been given any advice about MS1's family coming to Australia, it would only have been general information. Importantly, however, in this context Ms Parle's notes of the attendance for 16 December 2010 includes recorded advice from MS1 –

MS1 did not know until this morning that the family was on yesterday's boat.

There is no reason to doubt the accuracy of the note. The account recorded in this note is inconsistent with MS1's



⁹⁶ Para 90 of Statement of MS1 dated 28 September 2011 Annexure 16.109

claim that she was advised on the evening before the tragedy that the boat on which her family were passengers was already in the vicinity of Christmas Island.

Without reviewing all of the other statements obtained, it is noted that none of MS1's claims were supported by any of the Serco or DIAC staff to whom she stated she spoke about the boats impending arrival and the objective records which have been obtained support the accounts of Serco and DIAC employees rather than the accounts of MS1 or those who provided accounts in support of hers.

THE ACCOUNT OF MS 1 : CONCLUSIONS

In the above context oral evidence was not called at the inquest in relation to the matters raised by MS1 and no party at the inquest submitted that it would have been helpful to receive oral evidence in relation to these issues. It appears abundantly clear from the considerable amount of evidence which was obtained by police investigators in relation to these claims that they were unfounded.

CONCLUSIONS

The 50 deceased persons the subject of this inquest died on 15 December 2010 when the vessel in which they



were passengers, SIEV 221, crashed on the rocky shoreline of Christmas Island.

The 50 persons died in the coastal sea of the Territory of Christmas Island

At the time of the tragedy it was the monsoon season and sea conditions were very rough, particularly near the coast.

On board at the time there were 89 passengers and 3 crew.

The passengers were mainly from Iran and Iraq and were seeking to enter Australia.

Of the 50 who died, the bodies of 30 of those persons were recovered and subsequently those persons were all identified. In each case based on the account of forensic pathologists I am satisfied that the cause of death was consistent with immersion (drowning).

In respect of the other 20 persons who died but whose bodies have not been located, in each case the evidence has established beyond all reasonable doubt the identity of those persons and the fact that they are deceased. In respect of those persons as the bodies have not been located it has not



been possible to determine with any precision the causes of death but I am satisfied that the deaths resulted from drowning or injuries suffered as a result of impact with the shore or debris in the ocean.

At the time of the tragedy although there were an increasing number of unsafe illegal entry vessels making the journey from Indonesia to Christmas Island, there was no effective surveillance being conducted to the north of the island.

Border Protection Command, the organisation responsible for providing surveillance for the purpose of intercepting illegal entry vessels, did not have a role which required monitoring vessels for safety reasons.

There was no land based radar providing surveillance at Christmas Island and there was no organised system in place for visual surveillance. Border Protection Command had access to a number of Admiral class patrol boats and one of these was at the time normally located near Christmas Island as the Christmas Island response vessel. On 15 December 2010 HMAS Pirie was the Christmas Island response vessel but for operational reasons it was to the east of the island where it was unable to provide surveillance of the approach of SIEV 221.



At the time coincidentally another Border Protection Command asset, ACV Triton, was also at Christmas Island, but at the time of the arrival it was also to the east of the Island, unable to conduct any surveillance of the approach of SIEV 221.

SIEV 221 appears to have been first seen between about 5:20 and 5:40am close to Christmas Island by resident Mrs Orchard, who was at her home, and Mr Martin, a customs officer, who was on the balcony of his room at the Mango Tree Lodge.

When SIEV 221 arrived at Christmas Island it turned west and travelled along the shoreline into the prevailing weather conditions and away from the relatively sheltered east of the island.

SIEV 221 continued round Rocky Point to a location close to the Golden Bosun Tavern where its engine failed and it was forced onto the rocks and later sank.

The emergency response to the vessel's arrival was provided by the naval vessel, HMAS Pirie, and the customs vessel, ACV Triton. Small boats from those vessels saved 41 lives.



The efforts of naval officers in RHIBs and custom officers in tenders were considerably assisted by Christmas Island residents who threw life jackets to persons in the water and who acted as spotters, pointing out to those on the rescue boats the location of survivors in the water.

The life jackets thrown by residents played an important function as there were insufficient life jackets on SIEV 221 and those which were on the vessel appear to have been of poor quality. Many of those in the water could not swim and the life jackets kept those persons afloat until those that could be saved were rescued from the sea.

No vessels were launched or attempted to be launched from Christmas Island to assist in the rescue operation because of the extreme weather conditions and the fact that at the time there were no vessels on the island capable of taking part in a rescue operation in bad weather.

Two vessels had been provided by the Commonwealth to provide a search and rescue response, one for use by the AFP (the “Colin Winchester”) and the other for use by the VMRS (the “Sea Eye”). The vessels had been purchased by the AFP with funding provided by the Department of Regional Australia.



On 11 August 2010 the “Colin Winchester” was inspected by AMSA and was found to have a number of deficiencies. A deficiency notice was issued that day requiring the defects to be addressed by 11 November 2010. These defects were not remedied and on 15 December 2010 the vessel was out of survey.

On 12 August 2010 the “Sea Eye” was inspected by AMSA and was found to have a number of similar deficiencies to those found in the “Colin Winchester”. A deficiency notice was issued that day requiring the defects be addressed by 12 November 2010. These defects were not remedied and on 15 December 2010 the vessel was out of survey.

In addition for a number of reasons discussed herein there was good reason to suspect that both vessels were unsafe for use in bad weather.

No replacement vessels had been provided and no repairs had been completed or were planned.

In September 2010 AFP Management had advised Sergeant Swann that he was not to use their vessel, the “Colin Winchester”. As at 15 December 2010 that situation had not changed. The AFP had no other vessels reasonably capable of performing a search and rescue role in heavy seas.



In respect of the VMRS on 1 December 2010 Mr Riley, Commander of the VMRS, wrote to Sergeant Swann advising that the vessel provided to them was out of survey with none of the required major works having been commenced, he advised that his boat crews had been unable to train on the vessel, limiting his confidence in sending them to sea, and that there was an unanswered question relating to the stability of the vessel, identified at the time of survey inspection in August 2010. He advised that the group was unable to provide a dedicated, viable marine rescue service.

The fact that this issue had not been addressed and the Commonwealth had neither caused the vessels to be repaired nor provided replacement vessels in the context was unsatisfactory and unsafe.

Neither the AFP nor the VMRS could have provided an emergency response on 15 December 2010 with unsafe vessels which were out of survey.

I am unable to exclude the possibility that had the Commonwealth ensured that there were well equipped modern vessels on the island designed for rescue operations with powerful motors and well trained crews those vessels could have been involved in the rescue operation and more lives may have been saved.



Undoubtedly, as stated at the commencement of these reasons, the various individuals who have been categorised at the inquest as “people smugglers” or as “organisers of the venture” contributed to the deaths. These persons provided passengers with a vessel, SEIV 221, which was not suitable for the journey across open seas in the monsoon season to Christmas Island. They did not provide enough life jackets or other emergency safety equipment. The boat was overloaded, a person who appears to have been acting as the captain left part of the way through the voyage and the crew were inadequately trained or qualified for such a journey. These are just a few of the many safety deficiencies in the approach taken by these persons to the safety of the passengers and crew.

The passengers on SIEV 221 appear to have been lied to by a person or persons involved in organising the journey about the quality of the boat which was to be used, the number of life jackets which would be available and other matters bearing on the hazards associated with the journey.

To a lesser extent it appears that the members of the crew also contributed to the deaths as they took the passengers of SIEV 221 to Christmas Island in the unsafe circumstances described above, although the state of knowledge of the individual crew members and the extent of their involvement in decision making may have varied and was



not explored at the inquest. In respect of the three crew members who were on SIEV 221 at the time it sank, I note that their lives were also at risk.

In these reasons I have been mindful of concerns expressed by the Commonwealth Director of Public Prosecutions to the effect that possible publication of findings against the alleged organisers and crew could impact adversely on possible future prosecutions and in that context I have not reviewed in any detail the actions of the individuals concerned and have avoided any reference to possible criminal conduct.

In the context of pending criminal prosecutions it is not appropriate for me to consider whether a verdict of unlawful homicide or a verdict of accident would be appropriate and in those circumstances I have made an Open Finding as to how the deaths arose.



COMMENTS ON MATTERS CONNECTED WITH THE DEATHS INCLUDING PUBLIC HEALTH OR SAFETY OR THE ADMINISTRATION OF JUSTICE

COMMENTS ON MATTERS CONNECTED WITH THE DEATHS

The Legal Position

Section 25(2) provides that –

- (2) A coroner may comment on any matter connected with the death including public health or safety or the administration of justice.

Submissions made on behalf of the Commonwealth of Australia were to the effect that a relatively restricted approach should be taken to determining which matters could be the subject of comments in this case. Implicit in a number of the Commonwealth submissions was the proposition that unless a matter was causative of death, it could not be the subject of comment. I do not accept that proposition.

While I accept that conferral of the power to make comments does not enlarge the scope of the Coroner's jurisdiction to conduct an inquiry, in my view it is clear that comments may extend beyond the scope of findings as to how the death occurred and the cause of death. In *R v Doogan; ex parte Lucas-Smith* [2005] ACTSC 74 (8 August 2005) the Full Court of the Australian Capital Territory made the following observation –



41. Subsection 52(4) also provides that a coroner “may comment on any matter connected with the death, fire or disaster including public health or safety or the administration of justice.” Comments may obviously extend beyond the scope of “findings”. The latter term refers to judicial satisfaction that facts have been proven to the requisite standard or that legal principles have been established. The former refers to observations about the relevant issues, and may extend to recommendations intended to reduce the risk of similar fires, deaths or disasters occurring in the future.

In **Harmsworth v State Coroner [1989] VicRp 87; [1989] VR 989** Nathan J was concerned about the limits of the Victorian Coroner’s jurisdiction to consider the circumstances of the deaths of a number of deceased persons and particularly how the deaths occurred following a fire at a goal in Victoria where a number of inmates had died.

His Honour made the following observation in respect of the power to comment at 996 –

A comment on the particular deaths may be pertinent, especially so if the prison facilities were found to be inadequate. It could even be that a comment could have general application, and so much is envisaged by the Act which gives commentary and recommendatory powers in matters of public safety.

I make the observation that in the context of the relevant provision, the power to comment relates to “any matter” connected with the death and is not limited to matters directly causative of death. In addition I note that, as observed by Nathan J. in *Harmsworth* (supra), the Act clearly contemplates that comments may relate to “public health or safety or the administration of justice” and so will go well beyond matters directly causative of death.



In my view, therefore, while the power to comment is incidental and subordinate to the mandatory power to make findings relating to how the deaths occurred and their causes, where the evidence properly before the court reveals important safety issues, it is important for comments to be made addressing those issues with a view to prevention of deaths occurring in similar circumstances in the future.

In *Commissioner of Police v Clements & Ors* [2006] 1QdR 210 at 216-217 this point was made by Wilson J in the context of similar Queensland legislation –

[15] While the Coroners Court is not bound by the rules of evidence, the touchstone of the evidence and submissions it may receive must be of relevance to the matters the coroner is empowered to investigate, the questions on which he or she must make findings and the matters on which he or she may comment. The primary function of a coroner is to investigate a particular death, in this case that of Mulrunji. The findings which must be made under s.45 all relate to a particular death. The comments a coroner may make under s.46 must be connected with the particular death under investigation but are necessarily directed at wider issues – public health or safety, the administration of justice, or ways to prevent deaths from happening in similar circumstances in the future. Allowing for such comments promotes one of the objects of the Act.

A number of witnesses at the inquest provided suggested recommendations for improvement based on their understanding of the events which took place on 15 December 2010.

In the following comments and recommendations I have drawn on the evidence of a number of witnesses.



SURVIELLANCE CAPABILITY AROUND CHRISTMAS ISLAND

While it may not be a current role of Border Protection Command or the AFP to have a safety at sea function which would involve monitoring of approaching SIEVs to Christmas Island with a view to avoiding or responding to shipwrecks, this case has highlighted the fact that there is an ongoing risk while these boats continue to travel to Christmas Island, particularly during the monsoon season, that there will be shipwrecks and other emergencies at sea which will require a response from both organisations.

While it is important to ensure that there is on Christmas Island a capability to respond to emergencies at sea, every reasonable practicable measure should be taken to avoid such emergencies from occurring. There is clearly a danger that in a future similar incident not only asylum seekers, but also rescuers, could be at risk of death in carrying out a rescue operation close to the cliffs of Christmas Island.

Also at risk in the event that a future emergency occurs would be any members of the VMRS who take part in a rescue operation at sea close to the cliffs of Christmas Island. It would be particularly tragic if dedicated volunteers were to die in such rescue efforts.



At the time when SIEV 221 arrived at Christmas Island there was no effective surveillance to the north of the island for a number of reasons discussed herein.

This was an issue reviewed by Detective Superintendent Graham Castlehowe in his report on the incident dated 27 April 2011 and in that report he recommended that Border Protection Command should continue to examine ways of improving its surveillance capability around Christmas Island so that the risk of SIEVs arriving undetected should be reduced.

He also recommended that Border Protection Command should implement a surveillance strategy which heightens its coverage at times when the weather and sea conditions are rough.

While I endorse those recommendations as being appropriate to the circumstances, in my view the responsibility rests with the Commonwealth, not just Border Protection Command, and that, if necessary, all available Commonwealth resources at Christmas Island should be used to assist.

It may, for example, be important for Border Protection Command to work closely with the AFP at times when visual



surveillance is considered appropriate to ensure that there is a reasonable coverage to the north of the island.

The mechanisms involved in providing an effective surveillance strategy need not be explored in detail herein, these may change in different circumstances and from time to time. Clearly the most effective surveillance strategy would involve use of various different resources when these are available. In the event that the Christmas Island Border Protection Command response vessel is not available for any reason, for example, other means of providing surveillance may become more important.

Clearly effective surveillance could include use of a suitable radar system capable of detecting wooden vessels at sea. While it is recognised that many radar systems may experience difficulties in providing such surveillance, investigations need to be conducted to ensure that the optimal system is in use.

It appears that steps are currently being taken to test an incoherent radar system and if this system is not effective, consideration should clearly be given to using a coherent radar system.



Consideration should also be given to the best mechanism for ensuring that the Christmas Island response vessel is able to conduct surveillance whenever possible and that when it is not possible for that vessel to conduct surveillance, there is a fall back position.

It is extremely important to avoid a disaster similar to that which occurred on 15 December 2010 taking place again.

RECOMMENDATION No. 1

I RECOMMEND THAT BORDER PROTECTION COMMAND CONTINUES TO EXAMINE WAYS OF IMPROVING ITS SURVEILLANCE CAPABILITY AROUND CHRISTMAS ISLAND SO THAT THE RISK OF SIEVs ARRIVING UNDETECTED IS REDUCED.

RECOMMENDATION No. 2

I RECOMMEND THAT BORDER PROTECTION COMMAND IMPLEMENT A SURVEILLANCE STRATEGY, POSSIBLY WITH THE ASSISTANCE OF OTHER COMMONWEALTH AUTHORITIES AND ORGANISATIONS ON THE ISLAND SUCH AS THE AFP, WHICH HEIGHTENS ITS COVERAGE AT TIMES WHEN THE WEATHER AND SEA CONDITIONS ARE ROUGH.



THE NEED TO INCREASE THE SEARCH AND RESCUE CAPABILITY ON CHRISTMAS ISLAND

The following comments and recommendations are based on the recommendations of Sergeant Mack of the WA Water Police who gave evidence at the inquest and provided a helpful report.

In my view WA Water Police is a professional organisation with considerable relevant experience and all of the recommendations coming from that source merited careful consideration. I also note that a number of these recommendations were supported by Detective Superintendent Graham Castlehowe in his report to the coroner dated 27 April 2011 and by Detective Senior Sergeant Stephen Foley in his excellent coronial report of 28 April 2011. The recommendations were also consistent with the comments of a number of witnesses who were on Christmas Island at the time of the disaster.

SEARCH AND RESCUE MODEL AND RESPONSE SYSTEM (SARMAP)

The use of the search and rescue model and response system SARMAP in searches of the type involved in the present case was supported by Sergeant Mack of the WA Water Police who in his report made the following observation –



Search program SARMAP is a search software program owned by WA Police and used by many SAR [search and rescue] Authorities globally. The endorsement of SARMAP as a viable search program, and the benefits of interoperability across SAR authorities were noted in the minutes of the meeting of The National Search and Rescue Council 2010.

SARMAP allows for the live determination of a projected SAR area using live data from tidal and wind models in the area. It also allows input of data based on information from people on site. The software calculates drift patterns allowing for topographical changes and eddy's (small local currents caused as they ebb and flow against or around obstructions).

The SAR operator is then presented a user friendly digital image. The digital images are of high quality and immense value in briefings, de-briefings and post event reports. The software also allows for the electronic deployment of SAR assets so as the quality of the search can be evaluated by the SARMC. This allows for the most effective deployment of resources and continual review of the search strategy.

In this instance SARMAP would have helped facilitate the coordination of the SAR incident however it is not licensed by the AFP or available through WA Police due to licensing agreements and the search area did not fall into the WAPOL policing jurisdiction.

Sergeant Mack and counsel assisting made recommendations to the effect that steps should be taken to ensure that the AFP on Christmas Island should have access to the National Search and Rescue Council endorsed SARMAP program covering the Australian search and rescue region.

The making of a recommendation to this or to similar effect was, however, opposed by the Commonwealth and the submissions on behalf of the Commonwealth (in this context the AFP) included the contention that –

There is a great deal of evidence missing, which would be required before findings and recommendations could be made. For example:

- 539.1 what the acronym "SARMAP" stands for;
- 529.2 importantly, whether the absence of SARMAP access made any difference on 15 December 2010, in a way which enlivens jurisdiction; Sergeant Mack says only that it "would have helped facilitate the coordination of the [search and



- rescue] incident"; it is not possible to glean how in the circumstances on the day;
- 539.3 to whom access should be provided;
 - 539.4 what the cost is (Sergeant Mack could provide only a global guess for the State of Western Australia);
 - 539.5 how training may be provided and by whom; and
 - 539.6 who would have responsibility for funding access and ensuring systems are in place should the system be needed (presumably the State of Western Australia, WAPOL or FESA).

In respect of these submissions I make the observation that Sergeant Mack is a highly professional police officer committed to saving human lives. His recommendations were not made lightly.

It was most unfortunate that the Commonwealth should take such a dismissive approach to his carefully made and thoughtful recommendations. Even if the Commonwealth had considered that recommendations relating to such a highly regarded software system were not strictly within the province of the inquest, it is difficult to understand why action had not been taken prior to the conclusion of the inquest to at least explore the possibility of using the system.

In respect of the suggestion that this proposal is outside the scope of the inquest, I make the observation that in this tragedy 50 people died and 20 bodies were never recovered. It is not known how long some of the people who ultimately died lived for or whether they could have been saved if they



had been found sooner or at all. In respect of the missing persons believed dead, a system which would have enabled a better targeted search may have resulted in at least the discovery of more bodies which would have significantly advanced the ability of the Coroner's Court to make necessary findings in relation to the deaths pursuant to section 25 of the Act.

The inquest was, therefore, very much about search and rescue issues.

In my view improvement in the quality of search and rescue is important for future safety, to hopefully reduce the number of deaths occurring in similar circumstances, and, in addition, to advance the administration of justice in the sense that if more bodies are located this will enable more extensive findings to be made by a coroner.

In respect of concerns expressed by the Commonwealth as to what the acronym "SARMAP" stands for (submission 539.1), if that was a concern of the Commonwealth standing in the way of taking potentially life saving measures, it should have been a simple matter to make brief investigations or to question Sergeant Mack at the inquest.

Sergeant Mack's report was provided to the Commonwealth before he gave evidence on 13 July 2011.



The letters “SAR” are commonly used to stand for search and rescue. The AFP is a party to the Inter-governmental Agreement on National Search and Rescue Response Arrangements in which that acronym is used and so even assuming its ignorance of the system, the acronym should not have caused insurmountable difficulties for its understanding of Sergeant Mack’s report.

In any event, as I understand Sergeant Mack’s evidence, SARMAP is the name of the software system whatever the letters stand for.

In respect of the submission at 539.2 that Sergeant Mack’s evidence that the system, “Would have helped facilitate the coordination of the [search and rescue] incident” but, “It is not possible to glean how in the circumstances on the day”, had the Commonwealth not accepted Sergeant Mack’s evidence in that regard it would have been appropriate for Mr Livermore, who questioned him for the Commonwealth at the inquest, to put that proposition to him.

In the context of the description by Sergeant Mack as to how the system works in my view it is obvious that an efficient search software program would assist in searching for the living and dead following an incident such as occurred on 15 December 2010.



In this case search planning was done by pencil on a chart with overlays of search access transposed onto tracing paper. Had access to SARMAP been available the process would have been computerised and would have taken only about 10 minutes from being commenced. It would have had the download capabilities from CSIRO tidal web sites and the Bureau of Meteorology and would have derived other information from the internet⁹⁷.

In respect of the questions contained in the Commonwealth's submissions as to who access should be provided, the cost and how training might be provided, those were not matters for the inquest to explore. Those are practical issues in respect of which the AFP should have made enquiries as soon as Sergeant Mack's recommendations were made known to the Commonwealth. I would have expected that the AFP, on becoming aware of the recommendations of Sergeant Mack, would have taken appropriate steps to liaise with WA Water Police and others with a view to determining how access could be obtained to such a useful system.

It would be regrettable if another boat was to sink in the coastal sea of Christmas Island and survivors or bodies not be located because of a failure to make basic inquiries in relation to a software program in use in Western Australia.



⁹⁷ Annexure 24.1 at 27

RECOMMENDATION No. 3

I RECOMMEND THAT THE AFP TAKE STEPS TO DETERMINE WHETHER ACCESS CAN BE OBTAINED TO THE NATIONAL SEARCH AND RESCUE COUNCIL ENDORSED SARMAP PROGRAM COVERING THE AUSTRALIAN SEARCH AND RESCUE REGION AS WELL AS ADJOINING TILES FOR INDONESIA. STEPS SHOULD BE TAKEN TO ENSURE THAT IF POSSIBLE COVERAGE WOULD INCLUDE HIGH TRAFFIC AREAS WHERE SIEVs ENTER THE AUSTRALIAN SEARCH AND RESCUE REGION ALLOWING TIMELY SEARCH AND RESCUE PLANS TO BE DRAWN UP FOR ANY POTENTIAL INCIDENTS.

TRAINING IN SEARCH AND RESCUE MANAGEMENT

In his review of the search and rescue response in this case Sergeant Mack noted that there were no police in the Indian Ocean Territories who had completed the National Police Search and Rescue Manager's Course.

It is important that the AFP on Christmas Island should have suitable competency in search and rescue management.

As noted elsewhere in these reasons Christmas Island is a very inhospitable and potentially dangerous location for boats and so there is a very real risk that another incident could occur requiring search and rescue skills.



It is clear that the AFP cannot rely on Border Protection Command or the Navy to provide a response in every case and it would be unrealistic and unfair to expect the VMRS to take control in very serious cases. AMSA would be likely to pass coordination of at least the immediate response to search and rescue operations off Christmas Island to the AFP.

In the above context it is extremely important for the AFP to be appropriately prepared and that there should be adequately trained and skilled officers on the island, able to provide an immediate response and manage a search and rescue operation during the initial hours.

RECOMMENDATION No. 4

I RECOMMEND THAT THE AFP TAKES STEPS TO ENSURE THAT THERE ARE ON CHRISTMAS ISLAND AT ALL TIMES APPROPRIATELY TRAINED AFP OFFICERS WHO HAVE COMPLETED THE NATIONAL POLICE SEARCH AND RESCUE MANAGER'S COURSE AND THAT UPSKILLING SHOULD BE ONGOING TO ESTABLISH A CADRE OF TRAINED SEARCH AND RESCUE PERSONNEL.



THE PROVISION OF A SUITABLE SEARCH AND RESCUE VESSEL FOR THE AFP ON CHRISTMAS ISLAND

It is clearly important for the AFP to have access to a suitable search and rescue vessel on Christmas Island for it to be able to perform its search and rescue function adequately.

Christmas Island presents a number of safety issues in respect of the launch and recovery of search and rescue vessels, particularly during rough weather.

Unless some alternative launch site becomes available it appears that the Ethel Beach boat ramp will be used for launching rescue vessels in difficult weather. Any AFP search and rescue vessel, therefore, must be a vessel which can be launched in unfavourable weather conditions using the Ethel Beach boat ramp or any other suitable facility available on the Island from time to time.

In this case it was suggested by a number of witnesses that there are clear benefits in the use of rescue vessels with jet rather than propeller driven motors. This enables the rescue vessels to come close to persons in the water without there being a risk that a propeller could cause serious injury or death.



In the event that another vessel was to come to grief on the rocks of Christmas Island, there could be benefit in using a search and rescue vessel similar to the navy's RHIBS from the HMAS Pirie, using a similar system of jet propulsion.

It is also clearly important that if for any reason the search and rescue vessel provided to the AFP cannot be used for an extended period a replacement vessel is made available. The unsatisfactory situation which existed at Christmas Island in December 2010 should not be repeated.

RECOMMENDATION No. 5

I RECOMMEND THAT THE AFP BE PROVIDED WITH A SEARCH AND RESCUE VESSEL WHICH IS SUITABLE TO THE SPECIFIC CONDITIONS OF CHRISTMAS ISLAND.

I FURTHER RECOMMEND THAT STEPS BE TAKEN TO ENSURE THAT IF FOR ANY REASON THE SEARCH AND RESCUE VESSEL IS NOT AVAILABLE, THERE IS A REPLACEMENT VESSEL ON CHRISTMAS ISLAND CAPABLE OF PROVIDING AN EMERGENCY RESPONSE IN DIFFICULT SEA CONDITIONS.



THE POSSIBLE ACQUISITION OF PERSONAL WATER CRAFT (PWC) OR JET SKIS

It was the evidence of Sergeant Mack of the WA Water Police that search and rescue experience had shown that the use of personal water craft (PWC) or jet skis in surf zones and cliff areas for search and rescue of survivors is effective.

He stated that personal water craft are fast, highly manoeuvrable and very effective when in the hands of trained operators in surf zones. He stated that, “These assets could have been of value during the initial incident and during the proceeding days of the search”⁹⁸.

In evidence Sergeant Mack expanded on this observation ⁹⁹–

They can get very close in on cliff areas and I have used them on numerous occasions in four and five metre swell in the areas in the south-west of Western Australia where we look for rock fishermen.

Sergeant Mack also stated that they are extremely useful for deploying divers in search and rescue operations.

He stated that in respect of their launching, because they are light and fast they can be effectively driven off the back of a trailer and the operator with the engine running is at sea immediately¹⁰⁰. Sergeant Mack did express a concern

⁹⁸ Report of Sergeant Mack at p.22 Annexure 24.1

⁹⁹ t.1318

¹⁰⁰ t.1319



that prior to acquiring personal water craft he considered that an evaluation should be conducted as their ability to be launched in adverse conditions, but accepted that they could have been launched from, for example, Ethel Beach¹⁰¹.

It was in that context that Sergeant Mack made a recommendation to the effect that consideration should be given to acquiring personal water craft for deployment by appropriately trained and equipped staff.

Special Constable Adams, the most qualified AFP officer on Christmas Island in marine matters, agreed with the evidence of Sergeant Mack and the following exchange took place with him in relation to this issue¹⁰² –

CORONER : But you do recommend a surf jet ski similar to those used by the WA lifeguards? - - - Yes.

It is your view that one of those jet ski type vessels would be helpful? - - - Two of them would be very helpful.

Two? - - - Your Honour, we're looking at one a the moment. It's from Europe.

Yes? - - - It is designed for surf and rescue. It is not a pleasure toy like some other jet skis are. It's designed - it has a hook system on the back of it so it can be docked in with a crane if it has to be. If you go on Youtube you can actually see them dropping out of planes, and helicopters dropping them into place. They're designed for one thing; rescue only. They're kitted with radios. They have an Epad on board, a tow ramp similar to what Sergeant Mack was saying.

So you heard Sergeant Mack's evidence about that? - - - Yes.

Do you agree with his evidence? - - - I agree. Yes.



¹⁰¹ t.1320

¹⁰² t.1442-1443

This recommendation by Sergeant Mack was effectively adopted by counsel assisting in submissions, who recommended that jet skis be provided as soon as possible.

The Commonwealth, in submissions opposing the making of such recommendations, made a number of observations about the evidence and ultimately submitted, “There is no evidence that a lack of jet skis caused the deaths or was any way connected with the deaths”¹⁰³.

As noted above, however, Sergeant Mack gave unchallenged evidence to the effect that these assets could have been of value during the initial incident. Had the Commonwealth wished to challenge that proposition or to suggest that in some way Sergeant Mack’s experience or knowledge was inadequate, the opportunity was available as Sergeant Mack was called as a witness and was questioned by Mr Livermore on behalf of the Commonwealth.

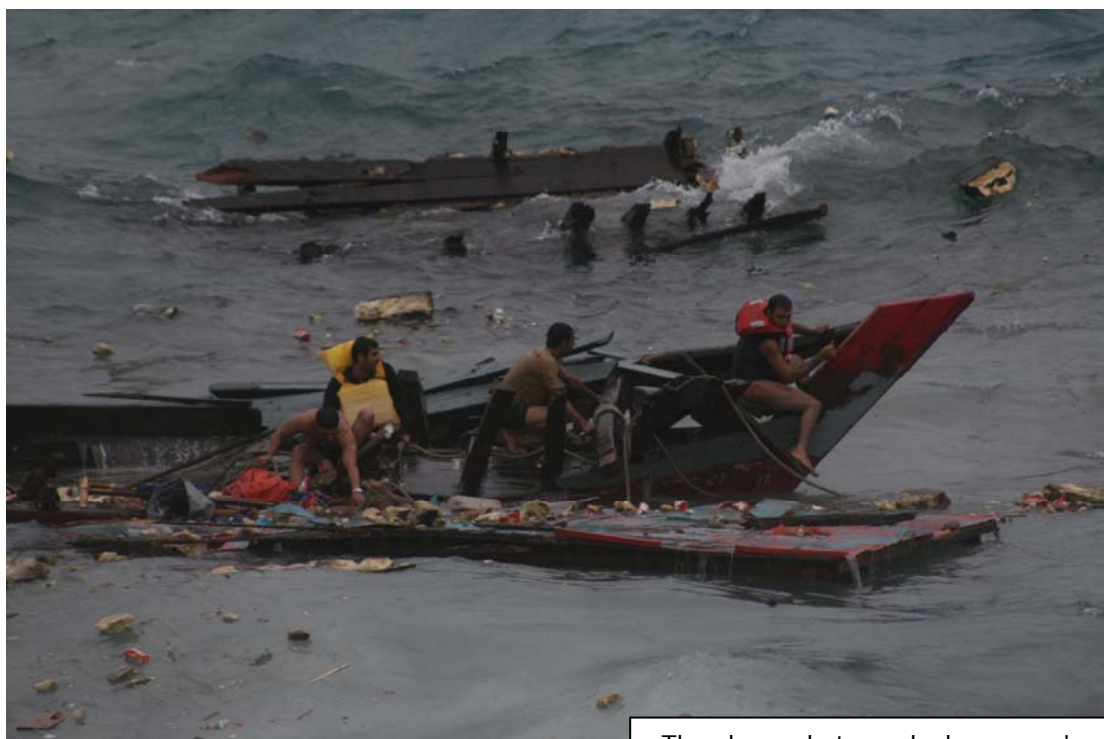
As it was Sergeant Mack’s evidence that these craft can, “get into a much closer position where you would not want to jeopardise the safety of a rescue boat or the rescue crew”¹⁰⁴, it appears that his unchallenged evidence was to the effect that they could have been of value in the rescue operation if operated by persons with appropriate training.



¹⁰³ Submissions on behalf of the Commonwealth of Australia, para 533.5
¹⁰⁴ t.1318-1319

It was a submission on behalf of the Commonwealth in this context that weather conditions were extreme and it was claimed that the video footage “shows backwash from the cliffs lifting the Navy and Customs RHIBs many storeys high”. If that is how the video appears it must be misleading as had the sea been of that height all of those on the low cliffs acting as spotters would have been washed out to sea.

The very large number of photographs taken from shore, close to the rescue operation, show very difficult conditions but certainly no backwash or waves “many storeys high”¹⁰⁵. These photographs speak for themselves, but they certainly show that there were times when the swells, waves and backwash were extremely severe and times when the sea was relatively calmer.



The above photograph shows survivors on the remains of SIEV 221 in relatively calmer seas, between sets of swells and waves



¹⁰⁵ Submission 533:4

The Commonwealth submission continues with the contention, “The evidence that the jet skis could safely be used in such conditions is scant and comes from people who were not present on 15 December 2010”. In my view this contention is without merit. Sergeant Mack is a person with particularly good qualifications to comment about the matter and, in addition, his views were supported by Special Constable Adams who not only was present on 15 December 2010, he was for extended periods on or close to the edge of the low cliffs overlooking the disaster assisting with the rescue effort and was one of the persons best placed to observe the backwash coming from the cliffs.

It is noted that in the submissions on behalf of the Commonwealth an observation is made that, “There is no evidence as to how such training [about the use of personal watercraft] would or could be provided and how safe operations in such conditions could be ensured given the volunteer nature of the VMRS”¹⁰⁶.

In respect of this submission I make the observation that Sergeant Mack did give evidence about the type of training which might be available. In any event, the primary search and rescue responder should be the AFP and it is for the AFP to make inquiries as to the type of training which would be



¹⁰⁶ Closing submissions on behalf of the Commonwealth of Australia para 533.2

required and the mechanism by which the training would be obtained.

It is noted that the Emergency Management Committee of Christmas Island made a similar recommendation to the Department of Regional Australia but it appears that this recommendation has been rejected after consultation with the AFP¹⁰⁷. In the context that this is a recommendation favoured by a person of the standing of Sergeant Mack as well as those on the Island concerned with emergency management it is my view that this issue should be revisited.

I further note that in the inquest into the suspected death of Azmie Bin Zaitu delivered on 3 March 2011 I noted that when that person was swept towards the open ocean after walking on a reef edge on South Island on the Cocos (Keeling) Islands, police and others involved in the search for him were unable to search the area between the beach and the reef because they did not have access to a shallow drafted vessel which could be easily launched and which could be used in a search in shallow water.

In that context I recommended that the AFP give consideration to acquiring a shallow drafted vessel for emergency responses in shallow water in the Cocos (Keeling) Islands.



¹⁰⁷ See exhibit 47

Clearly a personal water craft such as those recommended by Sergeant Mack for use on Christmas Island would be such a vessel. In that context it would appear that consideration should be given to acquiring personal water craft for both the Cocos (Keeling) Islands and Christmas Island.

RECOMMENDATION No. 6

I RECOMMEND THAT CONSIDERATION SHOULD BE GIVEN TO ACQUIRING TWO PERSONAL WATER CRAFT FOR DEPLOYMENT BY APPROPRIATELY TRAINED AND EQUIPPED STAFF OF THE AFP OR THE VMRS OR BOTH ON CHRISTMAS ISLAND

THE ETHEL BEACH BOAT RAMP

On 15 December 2010 weather conditions made the boat ramp at Flying Fish Cove an unsuitable location for launching rescue vessels.

In that context if a rescue vessel had been launched from the shore, it would have been necessary for it to be launched from the Ethel Beach boat ramp.



For a number of reasons the Ethel Beach boat ramp was a far from an ideal location to launch a rescue vessel in any but calm conditions.

While in the view of Special Constable Adams it would have been possible to safely launch a trailored boat at Ethel Beach on the morning of 15 December 2010¹⁰⁸ it is clear from his evidence that significant problems would have been encountered.

Special Constable Adams considered that in a number of respects the ramp at Ethel Beach is not safe. He stated that the ramp becomes slippery with algae growth and there can be a surge at the bottom of the ramp.

It was his view that a rock groyne should be constructed on the ocean side of the ramp to provide it with shelter from sea swells and that there should be work done to the ramp to enable access to the side of the ramp to take place.

While the court was advised of some minor improvements which have been effected to the Ethel Beach boat ramp since 15 December 2010 by the Shire of Christmas Island, these do not go far enough to enable the ramp to be used safely in difficult sea conditions.



It would appear unlikely that the Shire of Christmas Island would have access to sufficient resources to be able to adequately improve the ramp so that it would be safe for use in difficult conditions and in that context Commonwealth funding and support may be necessary.

RECOMMENDATION No. 7

**I RECOMMEND THAT THE COMMONWEALTH AND THE SHIRE OF CHRISTMAS ISLAND TAKE STEPS TO ENSURE THAT THE ETHEL BEACH BOAT RAMP IS SIGNIFICANTLY UPGRADED, THAT IT SHOULD BE PROVIDED WITH SHELTER IN THE FORM OF A ROCK GROUYNE OR SIMILAR BUFFER AND THAT PROVISION SHOULD BE MADE SO THAT A PERSON CAN WALK BESIDE THE RAMP ON A STABLE FOOTING; OR
IF THIS IS NOT CONSIDERED LIKELY TO BE EFFECTIVE IN PROVIDING AN APPROPRIATE MEANS OF DEPLOYING A RESCUE VESSEL IN ADVERSE CONDITIONS, SUCH OTHER ACTION BE TAKEN AS IS NECESSARY TO ENSURE THAT THERE IS A MEANS OF DEPLOYING A RESCUE VESSEL IN ADVERSE CONDITIONS.**



THE SUITABILITY OF THE VESSEL PROVIDED TO THE VMRS

In this case concerns were expressed by those involved in the VMRS who gave evidence at the inquest in respect of the vessel which was chosen for them by the AFP and the Department of Regional Australia, the “Sea Eye”. It is clear that the views of the Christmas Island VMRS were not sought on an ongoing basis prior to the decision being made to acquire a LeisureCat vessel for use by that organisation.

Special Constable Adams, Senior Master for the Christmas Island VMRS, Greg Riley, Christmas Island VMRS Commander, and Mr Kimber, Manager VMRS Division within FESA, all had reservations about the choice of vessel and would have preferred a different type of vessel to have been chosen.

Christmas Island is a unique location which calls for special considerations and the selection of a vessel suitable to the particular conditions. In addition, as explained by the VMRS representatives, as volunteers can be transient there is a need to obtain a vessel which would be of a type relatively familiar to most volunteers and which would require a minimum of additional specific training.



It was in this context that Sergeant Mack recommended that there should be placement of search and rescue specific vessels in Christmas Island, appropriate for their area of operation.

RECOMMENDATION No. 8

I RECOMMENDATION THAT THE COMMONWEALTH LIAISE CLOSELY WITH REPRESENTATIVES OF THE CHRISTMAS ISLAND VMRS PRIOR TO PURCHASING OR REPLACING ANY VESSELS FOR THE VMRS IN THE FUTURE.

REPAIR AND MAINTENANCE OF VMRS VESSELS ON CHRISTMAS ISLAND

Although the Christmas Island VMRS was expected to maintain operational readiness and to be able to use the vessel which was provided, the “Sea Eye”, they were not in a position to effect repairs when these were required.

As the vessel was a Commonwealth asset, requests for repairs had to be communicated through the Christmas Island Harbour Master to relevant government representatives.

The benefits associated with provision of a vessel for marine rescue purposes are considerably diminished if



arrangements are not in place to ensure that the vessel can be maintained and repaired so as to be in suitable condition for a response at all times.

It is important that there should be a marine emergency response capability on Christmas Island and this will of necessity involve ensuring that any rescue vessels are adequately maintained and repaired.

The following recommendation is based on a recommendation made by Sergeant Mack¹⁰⁹.

RECOMMENDATION No. 9

I RECOMMEND THAT THE CHRISTMAS ISLAND VMRS BE GIVEN AUTONOMY TO MAINTAIN OPERATIONAL READINESS FOR THE VMRS RESCUE VESSEL(S) AND AN APPROPRIATE BUDGET BE PROVIDED TO ALLOW THIS TO TAKE PLACE.

THE NEED FOR THE CHRISTMAS ISLAND VMRS VESSEL TO BE COMMERCIALY SURVEYED

It was a recommendation by both Mr Kimber, Manager of the Volunteer Marine Rescue Services Division within FESA, and Sergeant Mack, WA Water Police, that the Commonwealth



¹⁰⁹ Recommendation 2; Annexure 24.1 at 20

requirement for the Christmas Island VMRS Vessel to be commercially surveyed should be removed, in part as this would remove the requirement for the skippers of the vessel to hold a commercial certificate of competency.

According to Mr Kimber all state VMRs marine rescue vessels are not registered in commercial survey and this enables volunteers to operate the craft without the need to obtain commercial qualifications, (Restricted Coxswain or Master Class 5).

When the two LeisureCats arrived on Christmas Island in 2008 and one was delivered to the Christmas Island VMRS it sat for nine months until a volunteer was able to have his qualifications recognised as a Restricted Coxswain. According to Mr Kimber, this restriction on use of the vessel was quite devastating for the volunteers as they wanted to commence training and use the vessel to ensure that they were able to provide a response when called upon. The vessel was left deteriorating in the weather for that period, unable to be moved or operated¹¹⁰.

This is a factor which contributed to the lack of capability for an emergency response to take place from the island at the time of this disaster.



¹¹⁰ Para 46 of Statement of Paul Maxwell Kimber, Annexure 11.1

Sergeant Mack made the observation that VMRS vessels are normally registered as recreational vessels which removes the requirement of the master of the vessel to hold a commercial certificate of competency.

To obtain a commercial certificate of competency (coxswain) the candidate must complete written and oral examinations and provide evidence in the form of a sea log or statutory declaration that the candidate has accumulated a minimum of 365 days at sea. This is a long and time consuming task¹¹¹.

Members of sea rescue groups are volunteers and although they may be very skilled mariners, sea time is often accumulated over many years of private vessel use or volunteer hours on board VMRS vessels.

In Western Australia FESA provides governance over the training and issuing of qualifications for those who are deemed to be competent to skipper marine rescue vessels. According to Sergeant Mack volunteers abide by strict guidelines and policies and are usually tasked and under the control of WA Police. In his view the system is efficient and works well throughout the 35 FESA managed volunteer marine rescue groups in WA.



¹¹¹ Report of Sergeant mack, Annexure 24.1 at p.17; t.1307

It was the evidence of Mr Kimber that VMRS groups in Western Australia overcome problems in this regard which result from government ownership requirements by owning their own dedicated rescue vessels (even though these may be funded by government).

RECOMMENDATION No. 10

I RECOMMEND THAT ARRANGEMENTS BE PUT IN PLACE WHICH WOULD REMOVE THE REQUIREMENTS FOR MASTERS OF VOLUNTEER MARINE RESCUE VESSELS TO HOLD A COMMERCIAL CERTIFICATE OF COMPETENCY. OPERATORS COULD THEN BE QUALIFIED THROUGH THE FESA VOLUNTEER MARINE RESCUE TRAINING PATHWAY AS SKIPPERS AND CREW. THIS WOULD INCREASE THE NUMBER OF AVAILABLE SKIPPERS IN THE EVENT OF A SEARCH AND RESCUE INCIDENT AND WOULD MAKE APPROPRIATE TRAINING EASIER TO ARRANGE.



COMMENTS BASED ON RECOMMENDATIONS MADE BY LIEUTENANT COMMANDER LIVINGSTONE

Lieutenant Commander Livingstone was in command of HMAS Pirie at the time of the emergency response and was the Incident Controller responsible for the conduct of that response. In that context recommendations made by him merited the most serious consideration. In a document dated 11 February 2011 Lieutenant Commander Livingstone detailed a number of recommendations which he considered might improve future operations of the nature of those of 15 December 2010¹¹².

REINSTATING THE MILITARY LIAISON OFFICER POSITION AT CHRISTMAS ISLAND AND PROVIDING FACILITIES FOR A SHORE PARTY

Lieutenant Commander Livingstone recommended that a Military Liaison Officer position be reinstated at Christmas Island and that there be facilities for a shore party. He expressed the view that a uniformed person ashore would provide a point of contact to carry out the background work for an immediate response to an emergency crisis more efficiently.

He also expressed the view that a well supported and well equipped shore party would enable the maintenance of a



¹¹² Exhibit 11

lookout and response capability in the continuing likelihood that the Christmas Island response vessel might need to seek shelter in the lee of Christmas Island due to adverse weather, or be otherwise unavailable.

This matter was considered and rejected by the Commonwealth on the basis that it was thought that there would be limited operational utility in providing visual surveillance. It was submitted on behalf of the Commonwealth that there was no need for there to be a point of contact to “carry out background work or immediate response to emergency crisis” as it was not suggested that this caused a problem on 15 December 2010.

In my view there are clear benefits in Lieutenant Commander Livingstone’s proposal which should have been adopted by the Commonwealth.

It appears that for the foreseeable future there will continue to be SIEVs arriving at Christmas Island which will require a response by Border Protection Command. There will also continue to be potential risks of a further disaster.

In that context, in my view, it is important for there to be a representative of Border Protection Command, preferably a RAN representative, who could liaise directly with those on shore and facilitate an efficient response.



Had there been a naval representative at the Settlement on Christmas Island on 15 December 2010, that person would have been in a position to liaise with residents and could have communicated directly to HMAS Pirie, thus enabling those on HMAS Pirie to be accurately informed as to the development of the ongoing emergency.

While those on shore were aware that there was an emergency by about 5.50am, this was not known on HMAS Pirie for about 40 minutes and when information came through it was not as comprehensive as it could have been.

In addition a naval person on shore could have liaised directly with HMAS Pirie in respect to the response to the crisis as it unfolded. In emergencies such as the one which occurred, the more information which is available to the Incident Controller and other responders, the better.

In addition in circumstances when HMAS Pirie was not available, there could have been a presence on the island to assist or coordinate monitoring the arrival of otherwise undetected SIEVs.



This option would at least enable naval representatives to monitor what was happening on the island and to liaise in respect of SIEVs arriving undetected.

SIEV 221 arrived at Christmas Island undetected and a visual lookout could have resulted in its earlier detection if that lookout was more effective than island residents coincidentally looking out to sea. Other SIEVs have arrived at Christmas Island undetected, such as the SIEV 220, which was not detected until it was approximately 300 or 400 metres from shore. A shore based response party could have ensured that there was high quality visual surveillance taking place at times when other surveillance was not available.

Considering the fact that there has been for some time a Border Protection Command response vessel constantly at Christmas Island it is somewhat surprising that there is no shore based support for that vessel.

RECOMMENDATION NO. 11

I RECOMMEND THAT BORDER PROTECTION COMMAND ESTABLISH AN ONSHORE PRESENCE AS RECOMMENDED BY LIEUTENANT COMMANDER LIVINGSTONE.



ESTABLISHING A MOORING BUOY IN THE VICINITY OF ETHEL BEACH

Lieutenant Commander Livingstone recommended that a mooring buoy should be established in the vicinity of Ethel Beach which would allow for SIEV placement which would reduce fatigue levels of steaming parties and provide greater safety for asylum seekers until they could be landed. Ideally he suggested that such a buoy could allow for the response vessel to return to the northern approaches for ongoing surveillance.

The Commonwealth response to this recommendation was that the Christmas Island Harbour Master has commenced work to install a deep water mooring at Nui Nui Point and that other infrastructure options will be pursued.

The Commonwealth in submissions contended that while the recommendation has been adopted, the use of a mooring buoy would have made no difference.

I do not accept that submission.

The response of HMAS Pirie was to an extent impeded by the fact that when first news was received about the arrival of SIEV 221 one of its RHIBs was being launched with a view to relieving personnel who were on SIEV 220. HMAS Pirie was



effectively monitoring SIEV 220 at the time when the tragedy began to unfold. The purpose of HMAS Pirie staying with SIEV 220 was to prevent it from being driven onto the island or sinking prior to its being destroyed at a location out to sea.

Had a suitable mooring been available, SIEV 220 could have been left moored and HMAS Pirie could have continued with its ongoing surveillance activities. If that had occurred the entire sequence of events which resulted in the tragedy would have been different.

Evidence at the inquest revealed that SIEVs are often unseaworthy and they obviously often provide an extremely unhygienic and unpleasant environment for the naval officers who have to remain on them after their interception and prior to their being destroyed. It is most unfortunate that there is not already a suitable mooring which would keep to a minimum the amount of time those officers have to be on those boats.

Funding for a suitable mooring buoy and action necessary for its installation must, in the current context, come from the Commonwealth.



RECOMMENDATION No. 12

I RECOMMEND THAT THE COMMONWEALTH ENSURE THAT THERE IS A MOORING BUOY WHICH WILL ENABLE THE MOORING OF SIEVs TO TAKE PLACE AND FREE UP THE CHRISTMAS ISLAND RESPONSE VESSEL FOR ONGOING SURVEILLANCE DUTIES.

COMPLETE THE HYDROGRAPHIC SURVEY OF CHRISTMAS ISLAND

At the time of the disaster there still existed a considerable area of close proximity to the Christmas Island coastline which was unsurveyed, but where in the opinion of Lieutenant Commander Livingstone the likelihood of operations occurring was high. In particular it was a concern of Lieutenant Commander Livingstone that from the northern approaches to Flying Fish Cove and then east around to Ethel Beach there were usable tracts of water which were unsurveyed and therefore unavailable for use by Armidale class patrol boats. While RHIBs could transit through the areas with caution the bottom type and depths were unknown precluding, for example, the ability to anchor a SIEV in the vicinity of Ethel Beach.

In Lieutenant Commander Livingstone's opinion anchoring a SIEV while waiting for destruction approval would



reduce fatigue levels of steaming parties and reduce the danger of running the SIEV aground in reduced visibility or adverse weather. In addition in the event that a SIEV could be anchored, that could enable the Christmas Island response vessel to return to the northern approaches to Christmas Island with reduced concern for the welfare of SIEV steaming parties.

In that context Lieutenant Commander Livingstone recommended that the hydrographical survey of Christmas Island be completed.

The Commonwealth response to this recommendation was to the effect that work has commenced with a view to completing this task and is currently underway.

RECOMMENDATION NO. 13

I RECOMMEND THAT THE COMMONWEALTH PRIORITISE COMPLETION OF A HYDROGRAPHIC SURVEY OF CHRISTMAS ISLAND AND ENSURE THAT SUCH A SURVEY IS COMPLETED IN THE NEAR FUTURE.



JET INTAKE BLOCKAGE

During the SIEV 221 incident both RHIBs from HMAS Pirie suffered loss of power due to jet intake blockage. In one case the RHIB had to be returned to HMAS Pirie to enable the removal of a life jacket which was effectively blocking the impellor intake. There were several critical stages during the recovery process where a failed RHIB engine could have resulted in further injuries or deaths to asylum seekers or navy personnel. In that context Lieutenant Commander Livingstone recommended that steps should be taken to improve jet RHIB intake protection.

The Commonwealth response to the recommendation was to advise that suction risk is a recognised design issue although usually blockages can be effectively cleared. It was asserted that design changes which would involve reducing the grate size would be expected to make the situation worse by having an adverse impact on RHIB performance.

In my view this is too important an issue to be left unaddressed. It is clearly an engineering issue as to how best this problem can be minimised without compromising performance and in my view this case has highlighted the importance of resourcing relevant research.



In my view this is an issue of great importance which should be allocated a high priority. Investigations should take place to determine how best to minimise problems associated with jet intake blockage while not significantly adversely impacting on power. Whether this could be achieved by improved or different grates or filters or improved or different mechanisms for clearing the blockage should be left to experts in the area.

RECOMMENDATION No. 14

I RECOMMEND THAT THE ISSUE OF RHIB JET INTAKE PROTECTION BE ALLOCATED A HIGH PRIORITY AND THAT THERE BE ONGOING INVESTIGATION OF POSSIBLE SOLUTIONS TO REDUCE THE PROBLEM.

A N HOPE
STATE CORONER
23 February 2012



LIST OF RECOMMENDATIONS

SURVEILLANCE CAPABILITY AROUND CHRISTMAS ISLAND

RECOMMENDATION No. 1

I RECOMMEND THAT BORDER PROTECTION COMMAND CONTINUES TO EXAMINE WAYS OF IMPROVING ITS SURVEILLANCE CAPABILITY AROUND CHRISTMAS ISLAND SO THAT THE RISK OF SIEVs ARRIVING UNDETECTED IS REDUCED.

RECOMMENDATION No. 2

I RECOMMEND THAT BORDER PROTECTION COMMAND IMPLEMENT A SURVEILLANCE STRATEGY, POSSIBLY WITH THE ASSISTANCE OF OTHER COMMONWEALTH AUTHORITIES AND ORGANISATIONS ON THE ISLAND SUCH AS THE AFP, WHICH HEIGHTENS ITS COVERAGE AT TIMES WHEN THE WEATHER AND SEA CONDITIONS ARE ROUGH.

SEARCH AND RESCUE MODEL AND RESPONSE SYSTEM (SARMAP)

RECOMMENDATION No. 3

I RECOMMEND THAT THE AFP TAKE STEPS TO DETERMINE WHETHER ACCESS CAN BE OBTAINED TO THE NATIONAL SEARCH AND RESCUE COUNCIL ENDORSED SARMAP PROGRAM COVERING THE AUSTRALIAN SEARCH AND RESCUE REGION AS WELL AS ADJOINING TILES FOR INDONESIA. STEPS SHOULD BE TAKEN TO ENSURE THAT IF POSSIBLE COVERAGE WOULD INCLUDE HIGH TRAFFIC AREAS WHERE SIEVs ENTER THE AUSTRALIAN SEARCH AND RESCUE REGION ALLOWING TIMELY SEARCH AND RESCUE PLANS TO BE DRAWN UP FOR ANY POTENTIAL INCIDENTS.

TRAINING IN SEARCH AND RESCUE MANAGEMENT

RECOMMENDATION No. 4

I RECOMMEND THAT THE AFP TAKES STEPS TO ENSURE THAT THERE ARE ON CHRISTMAS ISLAND AT ALL TIMES APPROPRIATELY TRAINED AFP OFFICERS WHO HAVE COMPLETED THE NATIONAL POLICE SEARCH AND RESCUE MANAGER'S COURSE AND THAT UPSKILLING SHOULD BE ONGOING TO ESTABLISH A CADRE OF TRAINED SEARCH AND RESCUE PERSONNEL.



THE PROVISION OF A SUITABLE SEARCH AND RESCUE VESSEL FOR THE AFP ON CHRISTMAS ISLAND

RECOMMENDATION No. 5

I RECOMMEND THAT THE AFP BE PROVIDED WITH A SEARCH AND RESCUE VESSEL WHICH IS SUITABLE TO THE SPECIFIC CONDITIONS OF CHRISTMAS ISLAND.

I FURTHER RECOMMEND THAT STEPS BE TAKEN TO ENSURE THAT IF FOR ANY REASON THE SEARCH AND RESCUE VESSEL IS NOT AVAILABLE, THERE IS A REPLACEMENT VESSEL ON CHRISTMAS ISLAND CAPABLE OF PROVIDING AN EMERGENCY RESPONSE IN DIFFICULT SEA CONDITIONS.

THE POSSIBLE ACQUISITION OF PERSONAL WATER CRAFT (PWC) OR JET SKIS

RECOMMENDATION No. 6

I RECOMMEND THAT CONSIDERATION SHOULD BE GIVEN TO ACQUIRING TWO PERSONAL WATER CRAFT FOR DEPLOYMENT BY APPROPRIATELY TRAINED AND EQUIPPED STAFF OF THE AFP OR THE VMRS OR BOTH ON CHRISTMAS ISLAND

THE ETHEL BEACH BOAT RAMP

RECOMMENDATION No. 7

I RECOMMEND THAT THE COMMONWEALTH AND THE SHIRE OF CHRISTMAS ISLAND TAKE STEPS TO ENSURE THAT THE ETHEL BEACH BOAT RAMP IS SIGNIFICANTLY UPGRADED, THAT IT SHOULD BE PROVIDED WITH SHELTER IN THE FORM OF A ROCK GROUYNE OR SIMILAR BUFFER AND THAT PROVISION SHOULD BE MADE SO THAT A PERSON CAN WALK BESIDE THE RAMP ON A STABLE FOOTING; OR IF THIS IS NOT CONSIDERED LIKELY TO BE EFFECTIVE IN PROVIDING AN APPROPRIATE MEANS OF DEPLOYING A RESCUE VESSEL IN ADVERSE CONDITIONS, SUCH OTHER ACTION BE TAKEN AS IS NECESSARY TO ENSURE THAT THERE IS A MEANS OF DEPLOYING A RESCUE VESSEL IN ADVERSE CONDITIONS.



THE SUITABILITY OF THE VESSEL PROVIDED TO THE VMRS

RECOMMENDATION No. 8

I RECOMMEND THAT THE COMMONWEALTH LIAISE CLOSELY WITH REPRESENTATIVES OF THE CHRISTMAS ISLAND VMRS PRIOR TO PURCHASING OR REPLACING ANY VESSELS FOR THE VMRS IN THE FUTURE.

REPAIR AND MAINTENANCE OF VMRS VESSELS ON CHRISTMAS ISLAND

RECOMMENDATION No. 9

I RECOMMEND THAT THE CHRISTMAS ISLAND VMRS BE GIVEN AUTONOMY TO MAINTAIN OPERATIONAL READINESS FOR THE VMRS RESCUE VESSEL(S) AND AN APPROPRIATE BUDGET BE PROVIDED TO ALLOW THIS TO TAKE PLACE.

THE NEED FOR THE CHRISTMAS ISLAND VMRS VESSEL TO BE COMMERCIALY SURVEYED

RECOMMENDATION No. 10

I RECOMMEND THAT ARRANGEMENTS BE PUT IN PLACE WHICH WOULD REMOVE THE REQUIREMENTS FOR MASTERS OF VOLUNTEER MARINE RESCUE VESSELS TO HOLD A COMMERCIAL CERTIFICATE OF COMPETENCY. OPERATORS COULD THEN BE QUALIFIED THROUGH THE FESA VOLUNTEER MARINE RESCUE TRAINING PATHWAY AS SKIPPERS AND CREW. THIS WOULD INCREASE THE NUMBER OF AVAILABLE SKIPPERS IN THE EVENT OF A SEARCH AND RESCUE INCIDENT AND WOULD MAKE APPROPRIATE TRAINING EASIER TO ARRANGE.

REINSTATING THE MILITARY LIAISON OFFICER POSITION AT CHRISTMAS ISLAND AND PROVIDING FACILITIES FOR A SHORE PARTY

RECOMMENDATION No. 11

I RECOMMEND THAT BPC ESTABLISH AN ONSHORE PRESENCE AS RECOMMENDED BY LIEUTENANT COMMANDER LIVINGSTONE.



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RECOMMENDATION No. 12**

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**JET INTAKE BLOCKAGE
RECOMMENDATION No. 14**

I RECOMMEND THAT THE ISSUE OF RHIB JET INTAKE PROTECTION BE ALLOCATED A HIGH PRIORITY AND THAT THERE BE ONGOING INVESTIGATION OF POSSIBLE SOLUTIONS TO REDUCE THE PROBLEM.

