

## Senator John Faulkner Additional Comments

### Introduction

Recently the Federal Government has credited its people smuggling disruption programme as having significantly contributed to the decline in the numbers of people trying to get to Australia illegally.

Minister for Immigration, Philip Ruddock, cited the government's policy of "physically disrupting the work of people smugglers"<sup>1</sup> as one of the main reasons for the decline in asylum seeker boats coming to Australia.

Minister for Justice and Customs, Chris Ellison, also credited the Government's disruption programme as a significant reason why no boat had landed on the Australian mainland in almost 12 months.<sup>2</sup>

However, from the evidence the Government has given both the Certain Maritime Incident Committee and Senate Estimates hearings, it is unclear exactly what activities occur in Indonesia under the disruption programme.

Within a legal framework and properly administered, disruption is a legitimate tool of Government. However the Australian disruption programme in Indonesia does not appear to have this kind of framework.

The Government has recently provided insufficient answers to questions that go to the extent of the disruption programme in Indonesia and what exactly the programme entails.

Given that the disruption programme in Indonesia is undertaken by the Australian Government and funded by the Australian taxpayer, the Federal Government and Commonwealth agencies must not avoid Parliamentary scrutiny on this matter.

The Australian Government must answer these questions:

- What are the limits to the implementation of the disruption policy, if there are any?
- Precisely what disruption activities are undertaken at the behest of, or with the knowledge of, or even broadly authorised by, the Australian Government?
- What role have Ministers played in issuing Ministerial directions or authorisations covering these activities, and what knowledge do Ministers have about the methods employed, or the outcomes of those activities?

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<sup>1</sup> "New Legislation Next Step in Fighting People Smuggling", Immigration Minister Philip Ruddock Press Release, 21 March 2002

<sup>2</sup> Question Without Notice, Senator Ray question to Senator Ellison, Senate Hansard, 2.35pm, 26 September 2002

- What sort of mechanisms are in place to ensure that Australia is not breaching any laws, here in Australia or in other countries?
- How is the policy of disruption funded?
- How much does it cost to fund, and who actually receives this money?
- Who tasks the Indonesian officials or others to disrupt people smugglers or their clients?
- Are Australians involved in disruption activities in Indonesia?
- What accountability mechanisms are in place in relation to these activities, and what mechanisms ought to be put in place?

### **What is Disruption?**

The policy of disruption aims to disrupt the activities of people smugglers and their clients, asylum seekers wanting passage to Australia. The activities that occur under the disruption programme in Indonesia appear to be quite broad. They range from information campaigns to more direct activities such as preventing vessels from departing Indonesia.

Disruption, by way of an information campaign, includes informing people in Indonesia of the dangers or the risks associated with people smuggling. For example, telling asylum seekers of the dangers of sailing in vessels to Australia, or distributing T-Shirts to the local Indonesian fishermen that explain why they should not crew people smuggler boats.

Department of Foreign Affairs, Assistant Secretary, Geoff Raby, told Senate Estimates that disruption was “collecting information, collecting intelligence, meeting with local police in different areas and local governors, raising the profile of the issue and expressing concerns”.<sup>3</sup>

At the Senate Select Committee into a Certain Maritime Incident (or CMI Committee), representatives from the Department of Immigration said that the only disruption activity they were involved in was information campaigns, for example, pointing out some of the dangers in travel to potential passengers.<sup>4</sup>

However the policy of disruption is not only about information campaigns in Indonesia.

Disruption is also about physically disrupting the people smuggling syndicates and the asylum seekers who seek their assistance.

Minister Ruddock recently outlined in general terms the more active element of disruption. This includes the “detection and interception of the people smuggler’s

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<sup>3</sup> Geoff Raby, DFAT, Senate Estimates, FAD&T, 6 June 2002, p.556-557

<sup>4</sup> CMI Committee, 11<sup>th</sup> July 2002, p.1999

route” through regional cooperation ranging “from information exchange to joint collaborative action on illegal migration”. It also involves disruption at transit points<sup>5</sup>.

The Australian Federal Police (AFP) is also involved in active disruption in Indonesia.

AFP National General Manager, Federal Agent, Brendan McDevitt, told the CMI Committee that in broad terms the “primary objective” of disruption is to “prevent the departure of the vessel in the first instance, to deter or dissuade passengers from actually boarding vessels”.<sup>6</sup>

The AFP agreed that there were a whole series of methods that could be used to prevent the departure of the vessel and that it was the “discretion of the liaison officer in Jakarta as to the best method to apply”.<sup>7</sup> There may be disruption of the transport of the passengers to the embarkation point, for instance, or the movement of the boat to that embarkation point.

AFP Commissioner Mick Keelty confirmed the more active nature of the disruption activities, when he said that their purpose is to, “prevent the departure of a vessel ... either by the arrest of individuals or by the detention of individuals, or by ensuring that the individuals don’t reach the point of embarkation if that was known”.<sup>8</sup>

From the evidence received at the CMI Committee and Senate Estimates, it appears that there are no current guidelines on what is acceptable and what is not acceptable when disrupting people smugglers, asylum seekers and the people smuggler vessels. The Government has refused to confirm if the disruption programme in Indonesia ever extended to the physical interference of vessels and whether any consideration is given, in the planning and implementation of disruption, to questions of maritime safety – to the safety of lives at sea.

### **Kevin Ennis**

Channel Nine’s *Sunday* program has recently raised serious questions about the nature of disruption operations in Indonesia.

The most concerning of these allegations is that AFP informant Kevin Ennis admitted, indeed boasted, to reporter Ross Coulthart and two colleagues that he had paid Indonesian locals on four or five occasions to scuttle people smuggling boats with passengers aboard. Mr Ennis claimed the boats were sunk close to land so everyone got off safely.

The AFP recently issued a press statement indicating that “Kevin Ennis has been formally interviewed since the Nine Network’s *Sunday* Program alleged his involvement in the sabotaging of vessels. He emphatically denies any such

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<sup>5</sup> Philip Ruddock, “Border Protection; People Smuggling – Australia’s Experience and Policy Responses – a Background Paper”, DIMIA website, July 2002

<sup>6</sup> CMI Committee, 11 July 2002, p.1934

<sup>7</sup> CMI Committee, 11 July 2002, p.1934

<sup>8</sup> CMI Committee, 11 July 2002, p.1977

involvement”.<sup>9</sup> However the AFP did not indicate if Mr Enniss had told the *Sunday* crew that he had paid local Indonesians to scuttle four or five boats.

The AFP recently confirmed, as a result of the *Sunday* Program revelations in February, that Mr Enniss was paid at least \$25,000 by the AFP to be an informant. The AFP also admitted that they were aware that Mr Enniss purported to be a people smuggler and on at least one occasion took money from asylum seekers who thought they were buying a passage to Australia.<sup>10</sup> Commissioner Keelty told Senate Estimates: “...we knew he was involved in people smuggling activities because he was telling us what was going on”.<sup>11</sup>

The Enniss admissions are not consistent with statements by the AFP’s Director of International Operations, Dick Moses, earlier this year. When asked by the *Sunday* program “Has the Australian Federal Police ever authorised any informant to involve themselves in people-smuggling”, he answered “No that’s categorically no, the Australian Federal Police has not done so”.<sup>12</sup>

The *Sunday* program also put evidence on the record from a number of asylum-seekers that Mr Enniss claimed to be an Australian policeman, and that he had information about Royal Australian Navy ships which would ensure that their boats would slip the net and reach Australia.

These admissions contradict evidence given by Commissioner Keelty to the CMI Committee in which he claimed “we obtain information from informants, but informants do not disrupt. They have no power to disrupt”.<sup>13</sup>

Commissioner Keelty also told the CMI Committee that the AFP have no police powers beyond Australia’s borders. Furthermore the AFP could not direct Indonesian Police or other Indonesian authorities to disrupt people smugglers and asylum seekers. They could only seek their assistance and cooperation.<sup>14</sup>

But in the case of Mr Enniss this is clearly not what is occurring in Indonesia. The AFP have admitted Mr Enniss in conjunction with the Indonesian police agency POLDA “were engaged in strategies designed to interdict asylum seekers where possible before they could depart for Australia”.<sup>15</sup> This appears to be exactly what the policy of disruption sets out to do.

## **Active Disruption**

Most information about active disruption has come from AFP evidence at the CMI Committee and Senate Estimates. But the AFP is not the only agency involved in these disruption activities. The Department of Foreign Affairs (DFAT), the Australian

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<sup>9</sup> “Senator Faulkner Has Got It Wrong”, Australian Federal Police Press Release, 26 September 2002

<sup>10</sup> “AFP Investigation into Alleged People Smuggler Completed”, AFP Media Release, 24 August 2002

<sup>11</sup> Senate Additional Estimates, L&C, 18 February 2002, p.193

<sup>12</sup> AFP Director of International Operations Dick Moses, “The Australian People-Smuggler”, Channel Nine *Sunday* Program Cover story, 17 Feb 2002

<sup>13</sup> CMI Committee, 11 July 2002, p. 1938

<sup>14</sup> Keelty, CMI Committee, 11 July 2002, p.1924

<sup>15</sup> “AFP Investigation into Alleged People Smuggler Completed”, AFP Media Release, 24<sup>th</sup> August 2002

Secret Intelligence Service (ASIS), Defence, and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) also play a role in Australia's people smuggling disruption program. As Minister Ellison told the Senate: "[W]e have the Australian Federal Police and officials of the Department of Immigration and Multicultural Affairs and the Department of Foreign Affairs and Trade working in the region for upstream disturbance [disruption]. We have had some success with that. We are working at that end of the market".<sup>16</sup>

The evidence received by the AFP at the CMI Committee and Senate Estimates, regarding active disruption has been, at times, contradictory and misleading.

The AFP told the CMI Committee that they work closely with the Indonesian National Police, Indonesian Immigration, the Indonesian Navy and Indonesian Army and Marines when pursuing organised people smuggling activities.

According to the AFP, no payment is made to the Indonesian authorities for carrying out disruption activities.

Commissioner Keelty told the CMI Committee "We do not ask them to carry out a task and then pay for them to do the task. There is a level of cooperation that we have with them under the protocol".<sup>17</sup>

The AFP also indicated that they "paid no moneys to any government agency in Indonesia to have them disrupt the activities of people-smuggling organisers".<sup>18</sup>

However, Commissioner Keelty did confirm that the AFP provides equipment, training and costs in travel to those Indonesian authorities involved in disruption activities. For instance the AFP's Law Enforcement Cooperation Program provides training and equipment to the Indonesian National Police. Five teams of the Indonesian National Police have been established through this program and are directly involved in disruption activity.<sup>19</sup>

Commissioner Keelty also informed the CMI Committee that AFP informants are only paid to provide information about the location of passengers and the activities of organisers and that "no money has been paid to anybody specifically empowered to intervene"<sup>20</sup> in people smuggling.

But as a result of an investigation into the activities of Mr Enniss, the AFP confirmed they were aware Mr Enniss purported to be a people smuggler in Indonesia. The AFP also admitted to knowing that Mr Enniss had taken money from asylum seekers on at least one occasion.<sup>21</sup> According to the *Sunday* program, Mr Enniss has also confessed to paying Indonesians to scuttle people smuggling vessels.<sup>22</sup>

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<sup>16</sup> Senator Chris Ellison (Minister for Customs and Justice), Migration Amendment (Excision from Migration Zone) Bill 2001 Second Reading Debate, Senate Hansard, 25 September 2001

<sup>17</sup> CMI Committee, 11 July, p.1937

<sup>18</sup> CMI Committee, 11 July 02, p. 1946

<sup>19</sup> Keelty, CMI Committee, 11 July 2002, p.1941

<sup>20</sup> Keelty, CMI Committee, 11 July 2002, p. 1945

<sup>21</sup> "AFP Investigation into Alleged People Smuggler Completed", AFP Media Release, 24 August 2002

<sup>22</sup> "The Federal Police and People Smugglers", Channel Nine *Sunday* cover story, 1 September 2002

Commissioner Keelty has told the CMI Committee that it has not come to the AFP's attention that "they were doing anything unlawful or inhumane".<sup>23</sup>

However, both the summary of the AFP's investigation into Kevin Enniss, and the Sunday program's investigation, have clearly indicated that at least one Australian was involved in disruption activities of a highly dubious and possibly criminal nature.

Despite the assurance Commissioner Keelty gave to the Senate Select Committee that nothing unlawful or inhumane would occur as a result of the disruption programme, in the same day of evidence Commissioner Keelty could not categorically rule out whether illegal and inhumane disruption activities had occurred. These activities include encouraging fuel suppliers not to supply fuel to vessels, not providing food for the vessels to sail, and putting sugar in the fuel tank or sand in the engine of a vessel. When Commissioner Keelty was asked if he could categorically say whether any of these activities did not occur, he replied "I have no knowledge at all of these things occurring, but it is like anything else I have no knowledge about: I cannot deny that it exists".<sup>24</sup>

### **Legality and propriety**

Government agencies involved in the disruption programme have told the Senate Select Committee that they never sought legal advice on these activities.

Commissioner Keelty claimed that he was fully accountable for the disruption program<sup>25</sup>, but it appears that no procedures have been put in place to ensure nothing untoward or illegal is occurring or has occurred. There appear to be no accountability mechanisms in place at all, with most of this activity occurring outside Australian legal jurisdiction.

When Commissioner Keelty was asked at the CMI Committee "so what accountability controls and constraints are on those Indonesian agencies that are conducting this activity? How are you satisfied ... that those activities are conducted in an appropriate way?", Commissioner Keelty replied, "[T]hat is not for me to say. I don't have any power over the Indonesian authorities".<sup>26</sup>

Furthermore Commissioner Keelty indicated "The AFP, in tasking the Indonesian National Police to do anything that would disrupt the movement of people smugglers has never asked, nor would it ask them to do anything illegal. If we became aware that they were doing something illegal or something that was inhumanitarian (sic), then it would be brought to our notice and we would ask that they not do it that way. The difficulty is once we ask them to do it, we have to largely leave it in their hands as how they best do it".<sup>27</sup> It is instructive to note Commissioner Keelty's words here in regard to the broad tasking the AFP has requested of the INP: "in tasking the

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<sup>23</sup> CMI Committee, 11 July 2002, p.1981

<sup>24</sup> CMI Committee, 11 July 2002, p.1980-1981

<sup>25</sup> CMI Committee, 11 July 2002, p.1935

<sup>26</sup> CMI Committee, 11 July 2002, p.1938

<sup>27</sup> CMI Committee, 11 July 2002, p.1980-1981

Indonesian National Police to do anything that would disrupt the movement of people-smugglers”.

But in earlier evidence, Commissioner Keelty claimed that the AFP couldn't task the Indonesians to disrupt people smugglers stating “We are not tasking them [INP] to do it...we can seek their cooperation. We do not have a line of command over the Indonesian authorities”<sup>28</sup>. It is unclear if the AFP did in fact task the INP to disrupt people smugglers or whether they simply sought cooperation.

Commissioner Keelty has said that he has not sought legal advice about the disruption activities in Indonesia. It is therefore difficult to understand how Commissioner Keelty can claim to know definitively that none of the disruption activities in Indonesia are illegal or improper.

When the Department of Immigration was asked if they had concerns about the nature or legality of any disruption activities, Deputy Secretary Ed Killesteyn replied “None at all. DIMIA is not an agency that has a role or a function or a mandate to be involved in disruption activities that might invite some sort of question as to its legality. That is not our role. We are not a law enforcement agency”.<sup>29</sup>

Dr Raby from DFAT also indicated that his department had not sought any legal advice about people smuggling disruption activities.<sup>30</sup>

It is of concern that these disruption activities are occurring in Indonesia at the request of the Australian government and yet no legal advice has been sought nor are any mechanisms in place to ensure nothing illegal or untoward is occurring in Indonesia.

Legal advice given to the *Sunday* program indicated that the alleged behaviour of Mr Ennis in Indonesia is probably criminal, and that the AFP has possibly acted outside the law.

Highly respected legal expert Professor Mark Findlay said of Mr Ennis on Channel Nine's *Sunday* Program: “Well, under Australian law if he's a people smuggler it's a crime. If he's not a people smuggler but purporting to be one, that's a misrepresentation. And to obtain a financial advantage as a consequence, that's a crime – you can't have it both ways”.<sup>31</sup>

Professor Findlay also rejected Commissioner Keelty's claim at Senate Estimates that informants like Mr Ennis are protected by the controlled operations legislation.

Controlled Operations are defined as:

“an operation that: involves the participation of law enforcement officers; is carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious Commonwealth offence; and may involve a law enforcement officer or other person in acts, or omissions to act, that would, apart

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<sup>28</sup> CMI Committee, 11 July 2002, p.1938

<sup>29</sup> CMI Committee, 11 July 2002, p. 2003

<sup>30</sup> Senate Estimates, FAD&T, 6 June 2002, p.560

<sup>31</sup> “The Federal Police and People Smugglers”, Channel Nine *Sunday* cover story, 1 September 2002

from certain exemptions, constitute a Commonwealth offence or an offence against a law of a State or Territory”<sup>32</sup>.

Professor Findlay argued that there were possibly three reasons to suggest that Mr Ennis was not covered by the controlled operations legislation: firstly, the legislation does not cover controlled operations in Indonesia; secondly, informers are not covered by the legislation, and thirdly the legislation does not cover individuals who are involved in entrapment procedures which is the work that Mr Ennis appears to have been doing in Indonesia.<sup>33</sup>

The suggestion made by Commissioner Keelty means that there are grounds to suspect that the AFP itself may have been involved in, or may have authorised or condoned, activities outside of the law, or even in breach of Australian law.

In this regard it should be noted that amendments extending the controlled operations provisions of the *Crimes Act 1914* to cover people smuggling offences only entered into effect on 1 October 2001.

### **Role of Ministers**

Beyond the activities of AFP informant, Mr Ennis, there are serious questions about the disruption programme and the behaviour of certain Australian agencies in Indonesia.

It is unclear to what extent Immigration Minister Philip Ruddock, Foreign Affairs Minister Alexander Downer, Justice and Customs Minister Chris Ellison and Attorney General Daryl Williams, had authorised, or had knowledge of or involvement in the disruption activities in Indonesia.

At the CMI Committee, Assistant Secretary Nelly Siegmund from the Immigration Department indicated that she had specifically briefed Minister Ruddock about AFP reports relating to “Indonesian involvement in being able to stop certain vessels from departing”.<sup>34</sup>

However, generally Immigration officials at the CMI Committee were vague about their knowledge of disruption, mainly referring to information campaigns.<sup>35</sup>

For instance Ed Killesteyn described his knowledge of disruption activities on the ground as “only generalities...about information campaigns and providing an opportunity for people to be delivered to the IOM [International Organisation for Migration] processing areas”.<sup>36</sup>

This contrasts with Minister Ruddock’s Background Paper, released a few weeks after Immigration officials’ evidence to the CMI Committee, that outlined the policy of

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<sup>32</sup> Crimes Act 1914 Part 1AB Controlled Operations, Sixth Annual Report under Section 15T 2001-2002

<sup>33</sup> “The Federal Police and People Smugglers”, Channel Nine *Sunday* cover story, 1 September 2002

<sup>34</sup> CMI Committee, 11 July 2002, p. 2001

<sup>35</sup> CMI Committee, 11 July 2002, p.1999

<sup>36</sup> CMI Committee, 11 July 2002, p. 1999



disruption including “Disruption at Transit Points” which “can be either through apprehension of those unlawfully in a transit country prior to their onwards travel or by interception at the actual point of attempting to continue their journey, either by sea or air”.<sup>37</sup>

The CMI Committee’s work has found that the Prime Minister established the People Smuggling Taskforce, headed by PM&C, to share high-level information, and that this taskforce discussed disruption activities on a number of occasions. It is unclear, however, what briefings this taskforce provided the Prime Minister about the nature and extent of disruption activities undertaken by, or condoned by, Commonwealth agencies.

On 27 September 2000, the Minister for Justice and Customs, issued a ministerial direction that the AFP “give special emphasis to countering and otherwise investigating organised people smuggling. The AFP should also ensure that it provides an effective contribution to the implementation of the Government’s whole of government approach to unauthorised arrivals”.<sup>38</sup> Minister Ellison, who became the Minister for Justice and Customs in January 2001, has not indicated how this direction was put into operation.

Last year Minister Ellison told the Senate that Australia’s upstream disturbance program (or disruption programme) had successfully stopped 3,700 asylum seekers from embarking on voyages to Australia:

“[I]n the period February 2001 to June 2001, due to the efforts of the Australian Federal Police, Immigration and Foreign Affairs and, particularly, cooperation from the Indonesian authorities, we have prevented a potential 3,700 illegal entrants coming to Australia. That has been very good work that we have done overseas in attempting to avoid this problem reaching Australia, and I want to place on record our appreciation to the Indonesian authorities...What they have to look at are the facts, because the facts demonstrate successes in relation to upstream disturbance. We have set up a people smuggling Taskforce made up of the Australian Federal Police and Immigration officials...We have tasked and resourced the Australian Federal Police to work with Indonesian authorities in relation to upstream disturbance in relation to people smuggling”.<sup>39</sup>

Foreign Affairs Minister, Alexander Downer, has also not confirmed whether he authorised the Australian Secret Intelligence Service (ASIS), either prior to or following the commencement of the Intelligence Services Act, to engage in disruption activities. If such authorisation occurred, the Minister should explain what sort of disruption activities took place in Indonesia as a result of any such Ministerial authorisation.

Section 6(1)(e) of the Intelligence Services Act, which commenced on 29 October 2001, requires the Foreign Minister to put into writing any ministerial direction authorising ASIS to engage in so-called “other activities”, that is any activities relating to people or organisations outside Australia other than intelligence collection.

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<sup>37</sup> Philip Ruddock, “Border Protection; People Smuggling – Australia’s Experience and Policy Responses – a Background Paper”, DIMIA website, July 2002

<sup>38</sup> Keelty, CMI Committee, 11 July 2002, p.1924

<sup>39</sup> Questions Without Notice, Senate Hansard, 2.19pm, 30 August 2001

Disruption activities would be categorised as “other activities” for ASIS under the provisions of the Intelligence Services Act.

The question of provision for the authorisation of “other activities” was a government priority when the Intelligence Services Bill was before the Parliament last year.

Direct Parliamentary scrutiny of the role of ASIS is not possible. Nor is it possible for the Joint Committee on ASIO, ASIS and DSD to examine these matters as they may be current operational matters. It is also possible that such an examination falls outside the powers of the Inspector General of Intelligence and Security.

If ASIS has been involved, the critical aspect would be the behaviour of its agents not its intelligence officers. Ultimately supervision in this area, and responsibility in this area lies with the Foreign Minister. If ASIS has been involved, then Minister Downer should brief the Leader of the Opposition on this subject.

### **Response from Ministers**

Australian Ministers who have been questioned about the disruption programme have so far provided unsatisfactory responses. It is not enough for Ministers to dismiss the suggestion that illegal activities might be occurring, as a result of the disruption programme, when there is obviously no system in place to ensure that this is not occurring.

When Minister Ellison was recently asked on ABC’s Radio’s AM programme if any Australian agents or their informants had been involved at all in the sabotaging vessels, he replied “Well it's not the policy of the Australian Government”. Again, when reporter Matt Brown asked “But what about individuals? Has that happened?” Minister Ellison replied “Well I can only speak for the Australian Federal Police and they have said to me that the Australian Federal Police has never been involved in sabotaging vessels”.<sup>40</sup>

Furthermore, Minister Downer has not ruled out the possibility that someone may have sabotaged vessels in Indonesia as a result of Australia’s disruption programme:

“The Australian Government certainly did not sabotage any boats. Did anyone every sabotage a boat, I've no idea, but did the Australian Government ever sabotage a boat, or was a boat sabotaged and sunk on the instructions of the Australian Government, if I may say so, anybody would know that no Australian Government would do that”.<sup>41</sup>

When recently asked if anyone in Indonesia had sabotaged people smuggling vessels as a result of the disruption programme, would the Government want to know, Defence Minister, Robert Hill, replied: “Well, if I'm confident that no law authority, no Australian institutional body would act in this way, it's inappropriate to therefore speculate and hypothetically ask me the next question”.<sup>42</sup>

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<sup>40</sup> ABC Radio, AM Program, 26 September 2002

<sup>41</sup> ABC Radio, PM program, 26 September 2002

<sup>42</sup> Sunday Program, Laurie Oakes interview with Robert Hill – Defence Minister, 29 September 2002

Minister Ruddock's response to questions about Australia's disruption programme is also unsatisfactory:

“Ministers and public servants are entitled to be angry about the way in which those sorts of imputations are drawn when there is no evidence for them to be drawn in that way”.<sup>43</sup>

So far none of the Ministers involved in the people smuggling disruption programme has categorically ruled out if the disruption programme in Indonesia ever involved anyone sabotaging a people smuggling vessel.

### **Australian Embassy in Jakarta**

Questions also remain about how much direction regarding disruption activities comes from the Australian Embassy in Jakarta, and what sort of direction the Embassy is receiving from officials or Ministers in Canberra.

DIMIA has three Compliance Officers working out of the Jakarta Embassy. Two of these positions were created in the last two years. Their major priority is to work on people smuggling issues.

Two AFP agents also work from the Embassy in Jakarta. These agents work closely with the Indonesian National Police, Indonesian Immigration, Indonesian Navy and Indonesian Army and Marines.<sup>44</sup> They report directly to the Director of International Operations – Mr Dick Moses and the General Manager of International Operations – Mr Shane Castles.<sup>45</sup>

Both Mr Moses and Mr Castles were regular attendees of the Prime Minister's People Smuggling Taskforce last year. They would inform the Taskforce of the criminal aspects of people smuggling - involvement with the people smuggling teams and disruption activities.<sup>46</sup>

At the Australian Embassy in Jakarta an Inter-Agency Co-ordination Group on People Smuggling has also been established. The portfolios represented at these meetings are DFAT, DIMIA, AFP and Defence. The purpose is to share information and assessments and to represent the agencies' view in relation to people smuggling matters.<sup>47</sup> Geoff Raby from DFAT has indicated disruption activities are a key focus of this group.<sup>48</sup>

Australia's Indonesian Ambassador Ric Smith recently wrote a letter to the *Canberra Times* ruling out the possibility that any official of the Embassy was engaged “in any

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<sup>43</sup> “Fed: Government and AFP slam sabotage suggestions”, AAP Wire, Thursday, 26 Sep 2002 at 6:29pm

<sup>44</sup> Keelty's Answers to Questions on Notice, Senate Estimates, L&C, Question On Notice 129

<sup>45</sup> Senate Estimates, L&C, 28 May 2002, p.257

<sup>46</sup> John Davies, Senate Additional Estimates, L&C, 19 Feb 2002, p. 209.

<sup>47</sup> Raby, DFAT, Senate Estimates, FAD&T, 6 June 2002, p. 553

<sup>48</sup> Senate Estimates, FAD&T, 6 June 2002, p.557

activity to disable or attempt to disable any vessel on which potential illegal immigrants were embarked”.<sup>49</sup>

However, it is unclear what directions were given from the Australian Embassy to Indonesian or Australian authorities involved in disruption activities and whether these directions came from Canberra officials or Ministers and furthermore how any such directions were interpreted.

On the 13 June 2001 the Minister for Immigration Philip Ruddock travelled to Jakarta. He had meetings with the Australian Ambassador Ric Smith and the Inter-Agency People Smuggling Group. He also met with the Indonesian Minister for Justice and Human Rights and the Indonesian Minister for Foreign Affairs.<sup>50</sup>

By September 2001 something concerned the Indonesian Foreign Affairs Department enough to request the protocol between the AFP and the Indonesian National Police be set aside.

### **Protocol – Memorandum of Understanding**

AFP Commissioner Keelty told the CMI Committee that on the 15<sup>th</sup> September 2000 a “specific protocol under the MOU [Memorandum of Understanding] to target people smuggling syndicates operating out of Indonesia” was agreed to by the AFP and their counterparts the Indonesian National Police.<sup>51</sup> The CMI Committee requested the Protocol and MOU but so far the AFP has not provided a copy.

Under this protocol the AFP provides equipment and training to the Indonesian National Police.<sup>52</sup>

At the CMI Committee Commissioner Keelty revealed that the Protocol under the MOU was set aside by the Indonesian government in September 2001 – due to concerns the Indonesian Foreign Affairs Department (DEPLU) had in relation to disruption.<sup>53</sup>

Commissioner Keelty could not or would not tell the committee why the Protocol was cancelled by the Indonesian Government.

Despite the Protocol being set aside, probably due to concern about the disruption activities that were conducted by the AFP and the Indonesian National Police, Commissioner Keelty told the CMI Committee he was not aware of the full detail of the Indonesian complaints.<sup>54</sup>

Repeatedly Commissioner Keelty was asked at the CMI Committee the reasons behind the Indonesian authorities cancelling the protocol.

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<sup>49</sup> Ric Smith letter to the Canberra Times, 4 October 2002

<sup>50</sup> Senator Cook to Senator Hill, Question Without Notice, 26 September 2002

<sup>51</sup> CMI Committee, 11 July 2002, p.1924

<sup>52</sup> CMI Committee, 11 July 2002, p.1937

<sup>53</sup> CMI Committee, 11 July 2002, p.1938

<sup>54</sup> CMI Committee, 11 July 2002, p.1939

Faulkner: What concerns did the Indonesians express in relation to the disruption operation?

Keelty: I do not have a briefing on that and I do not know that anyone in the AFP does.

Faulkner: I would be surprised—very surprised—if the AFP was not informed of what these concerns might have been.

Keelty: It was a decision by the Indonesian government in their DEPLU, so I would not necessarily expect them to tell me why.<sup>55</sup>

Later at the CMI Committee, Commissioner Keelty was asked:

Faulkner: Commissioner, did you ask why the protocol was cancelled?

Keelty: I do not specifically recall.

Faulkner: You do not know if you asked why?

Keelty: I answered you. I do not specifically recall.<sup>56</sup>

Despite the concerns the Indonesian Foreign Affairs Department had about the Protocol, the AFP says it continued to cooperate with the Indonesian National Police until June 2002.

The breakdown in the Protocol doesn't appear to have stopped disruption activities from occurring in Indonesia. Between September 2001 and June 2002 the activities continued on a case-by-case arrangement between the AFP and the INP.<sup>57</sup>

In October 2001 the High Level PM&C People Smuggling Taskforce notes indicate that disruption activities were discussed on a number of occasions. For example on the 10<sup>th</sup> October 2001 the Taskforce notes state “Discussion on the ‘architecture’ – disruption, regional conference proposal, UNHCR positions”<sup>58</sup> and on the 12<sup>th</sup> October the Taskforce notes state “Discussion of disruption activity, and scope for beefing up”.<sup>59</sup>

At the CMI Committee the Head of the People Smuggling Taskforce, Ms Jane Halton, indicated there were a “couple of discussions” regarding disruption at the Taskforce meetings, however she would not or could not elaborate further. Ms Halton had no memory of the “beefing up” discussion except she thought it might refer to T-shirts.<sup>60</sup> Ms Halton also told the committee that the Taskforce had never tasked any agency to disrupt in Indonesia.

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<sup>55</sup> CMI Committee, 11 July 2002, p. 1939

<sup>56</sup> CMI Committee, 11 July 2002, p. 1971

<sup>57</sup> CMI Committee, 11 July 2002, p. 1939

<sup>58</sup> People Smuggling Taskforce Notes, 10 October 2001, 6pm

<sup>59</sup> People Smuggling Taskforce Notes, 12 October 2001: Present: Jane Halton, four DIMA officials, Shane Castles from AFP etc

<sup>60</sup> CMI Committee, 30 July 2002, p. 2089

But according to Ed Killesteyn from DIMIA, who attended the 10<sup>th</sup> and 12<sup>th</sup> October Taskforce meetings, the “People Smuggling Taskforce was concerned about the evidence of a surge and was, in a sense, giving a direction to the responsible areas to look for further opportunities for disruption”.<sup>61</sup>

Commissioner Keelty also indicated that the People Smuggling Taskforce was tasking agencies to beef up the disruption activities. Commissioner Keelty thought it was an “operational call along the lines of ‘The departure of the vessel is imminent; we’d be doing everything we can possibly do’”.<sup>62</sup>

### **People Smuggler Vessels**

There are a number of people smuggling vessels that have sunk en route to Australia, including the KM Palapa that was rescued by the Tampa, the Norwegian cargo ship. Stories from survivors indicate that, on some occasions, the Indonesian National Police were involved with the people smugglers in organising the departure of the vessels. As journalist Lindsay Murdoch in the Sydney Morning Herald reported last year, “boats [from Indonesia] carrying hundreds of people have sunk, drowning all aboard...Some survivors say Indonesian authorities have, at times, helped push boats out to sea knowing they are not seaworthy”.<sup>63</sup>

Survivors from the KM Palapa recently told a court case in Perth that Indonesian National Police were involved in the people smuggling operation that organised the departure of the KM Palapa from Indonesia<sup>64</sup>.

The vessel, now referred to as SIEV X which was organised by notorious people smuggler Abu Quassey, sank on the 19<sup>th</sup> October 2001, a day after it set sail, drowning 353 people including 142 women and 146 children.<sup>65</sup>

Survivors have provided information about the condition of the vessel and the circumstances that led to over 400 asylum seekers embarking on the voyage. This information raises serious questions.

Survivors have indicated that SIEV X before it departed was very low in the water and horribly overcrowded, carrying four times the number of passengers that a vessel that size should carry. Reports also suggest that the vessel was overloaded with fuel<sup>66</sup>.

According to survivors, many were forced by gunpoint onto the vessel. There were about 30 Indonesian police present and police beat them and forced them by gunpoint

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<sup>61</sup> CMI Committee, 11 July 2002, p. 2007

<sup>62</sup> CMI Committee, 11 July 2002, p. 1932

<sup>63</sup> “Shipwrecked in Indonesia; Destination Australia Following the Asylum Seekers”, by Lindsay Murdoch, *The Age*, 6 September 2001

<sup>64</sup> “Smugglers ‘got help from Police’”, by Kathryn Shine, *The Australian*, 20 September 2002

<sup>65</sup> SIEV X survivor’s oral videoed accounts taken at the UN hostel in Bogor, Indonesia on 23 October 2001, translation and transcription by Keysar Trad, Vice President of the Lebanese Muslim Association of NSW; Attached to Mr Tony Kevin’s submission to CMI Committee, Submission Number 2

<sup>66</sup> “Overload Kills On Voyage Of Doom” by Don Greenlees, *The Australian*, 24 October, 2001

to get on the boat. The police appeared to be actively involved in the people smuggling operation<sup>67</sup>.

SIEV X survivor Issam Ismail stated:

“The Indonesian Police were there. They were carrying automatic guns. They were so comfortable. They were the ones who gave the signals with their torches. Turning on the torch was a signal to send out people. Turning off the torch meant stop. That was how it was done. We saw them with our own eyes. They had weapons we had never seen before. The latest brands”.<sup>68</sup>

Survivors from SIEV X have also suggested that the vessel only took about 15 minutes to sink. Bahram Khan, from Jalalabad in Afghanistan, said “The hull sprang a hole. The mechanic could not fix it and the boat sank”.<sup>69</sup>

On the 25 October 2001 Prime Minister Howard was reported to be seeking more information about whether the reports that Indonesian security personnel forced asylum seekers onto SIEV X at gunpoint were true. Prime Minister Howard stated on regional ABC radio “It has been an appalling tragedy, it really is a desperately sad event, and if those allegations are true it reflects very badly on the authority to allow that to happen”.<sup>70</sup>

Since then the Prime Minister has not made public what information, if any, he received about the situation surrounding the departure of SIEV X.

It is still unclear what occurred in Indonesia before SIEV X departed. However, given the evidence from survivors, the Government should make a public statement about their full knowledge of the conditions surrounding the departure of this vessel. Furthermore it should reveal whether disruption activities were directed at this vessel and if so what those activities entailed. Other people smuggler vessels that left Indonesia for Australia and sank en route should be included in such a statement.

## **Conclusion**

What is most concerning about the policy of disruption can be seen in the statement made by Commissioner Keelty to the CMI Committee, “The departure of the vessel is imminent; we’d better be doing everything we can possibly do”<sup>71</sup>. It begs the question, how far has the policy of disruption gone?

An assurance from the government that illegal activities have not occurred under the disruption programme is not enough.

So far the CMI Committee has not received clear answers to questions that have been raised such as:

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<sup>67</sup> PM Radio ABC radio, Ginny Stein report, 24 October 2001

<sup>68</sup> The Five Mysteries of SIEV X, by Ghassan Nakhoul, SBS Radio/Arabic Program, 28 August 2002

<sup>69</sup> Asylum seekers' boat sinks in 10 minutes, killing 350, AAP Wire, 3.09pm, 23 October 2001

<sup>70</sup> Fed: Howard to investigate reports asylum seekers forced, Melbourne, AAP Wire, 10.14am, 25 October 2001

<sup>71</sup> CMI Committee, 11 July 2002, p. 1932

- What disruption activities are acceptable?
- Who carries them out?
- Who pays for them?
- What accountability and control mechanisms are in place? Who authorises these activities?
- What is the effect of these activities?
- What, if any, consideration was given to questions to the safety of lives at sea?

The issue of the sabotage of people smugglers' vessels has been canvassed by the AFP informant Mr Enniss. Although Mr Enniss has apparently now denied he was involved in sabotaging vessels, it is still unclear whether he paid someone in Indonesia to scuttle people smuggling vessels. Furthermore it is unclear what precise confessions Mr Enniss made to *Sunday* reporter Ross Coulthart and two of his colleagues.

Beyond Mr Enniss, serious questions remain about the disruption programme. For example, it is still unclear whether anyone, as a result of Australia's disruption policy, was directly or indirectly involved in the sabotage of vessels in Indonesia and whether Australian Ministers, officials or agencies have knowledge of such activities.

There are many unanswered questions about the policy of disruption and what it actually meant for those embarking on voyages to Australia.

An independent judicial inquiry into Australia's disruption programme in Indonesia is necessary to comprehensively investigate what has actually happened in the disruption program, what the outcomes of the program have been, the legality and propriety of the methods employed, and what accountability mechanisms ought to be instituted for the future.