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Submission to Senate Inquiry Into A Claim of Public Interest Immunity Raised Over Documents

I have been researching over many years issues to do with numbers and causes of drownings of asylum seekers on boats irregularly coming to Australia; I maintain the independent public interest website sievx.com.

I was not aware of this Inquiry until yesterday and so have had minimal time to prepare. As today is the closing date, my submission will of necessity be brief.

Terms of Reference

A claim of public interest immunity raised over documents tabled by the Assistant Minister for Immigration and Border Protection (Senator Cash), on 4 December 2013, in response to an order for production of documents and other documents tabled by the same Minister in relation to other orders for production of documents concerning immigration policy, with particular reference to:

- *the specific matters of public interest immunity being claimed by the Minister for Immigration and Border Protection; and*
- *the authority of the Senate to determine the application of claims of public interest immunity.*

The arguments of the Assistant Minister for Immigration and Minister for Immigration outlined in documents tabled in the Senate on 2, 4, 10 and 12 December last year¹ in support of a claim of public interest immunity include three assertions which do not stand up to examination in light of the facts of the history of border protection in Australia.

The Ministers' arguments are that:

- Operation Sovereign Borders (OSB) has resulted in an 85 per cent reduction in arrivals since its commencement²
- The secrecy of OSB is essential in successfully reducing arrivals
- To disclose information would undermine 'Australia's ability to protect vulnerable Illegal Maritime Arrivals [IMA] from the practices of people smugglers and other serious criminal activities... [and] further increases the tactical advantage of people smugglers and consequently increases the risk to the wellbeing of IMAs.'³

¹ Tabled document, 2 December 2013, copy online at:

<http://sievx.com/testimony/2013/Tabled2December2013relatingtoorderof14November2013.pdf>

Tabled document, Senator the Hon Michaelia Cash to Dr Rosemary Laing, Clerk of the Senate, 4 December 2013, copy online at:

<http://sievx.com/testimony/2013/Documentstabled4December2013relatingtoorderof3December2013.pdf>

Tabled document, Senator the Hon Michaelia Cash to Dr Rosemary Laing, Clerk of the Senate, 10 December 2013, copy online at:

<http://sievx.com/testimony/2013/Tabled10Dec2013relatingtoorderof5December2013.pdf>

Tabled document, Senator the Hon Michaelia Cash to Dr Rosemary Laing, Clerk of the Senate, 12 December 2013, copy online at:

<http://sievx.com/testimony/2013/Tabled12Dec2013relatingtoorderof11Dec2013.pdf>

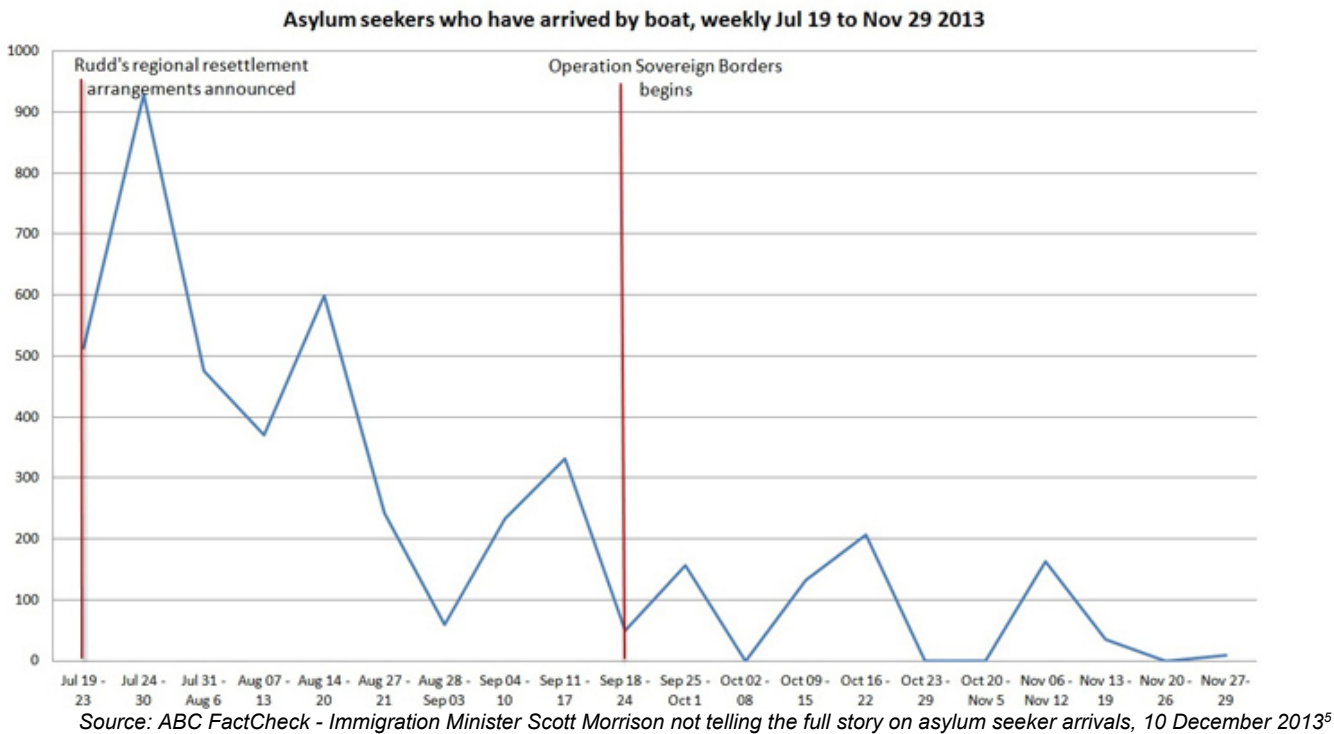
² Ibid., (see in particular Tabled Document, 4 December 2013, final paragraph)

³ Ibid., (see in particular Tabled Document, 4 December 2013, p.4, dot point #2 and p. 5, dot point #1)

Reduction in Arrivals

The claim that asylum seeker arrivals have declined by 85 per cent since the commencement of OSB is somewhat misleading. According to two researchers from the University of Queensland specialising in data analysis: 'There has been a statistically significant reduction in the number of arrivals since the Coalition took Government... *But it sits as part of trend in reduction of arrivals that began with the last government... [T]his trend began back in July and there is no sign that the election of the Abbott coalition Government has had any impact on arrivals whatsoever.*'[emphasis added]⁴

The chart below illustrates this point.



The Fact Check unit at the ABC believes that the drop in arrivals since July is also connected with Indonesia changing the way it administers visas, particularly to Iranians arriving there.⁶

Secrecy

Implicit in the documents tabled by the Assistant Immigration Minister is the belief that secrecy is essential for OSB to continue to reduce the number of people arriving in Australia irregularly by boat. This is not supported by past experience. During the period mid July to early September 2013 numbers dropped dramatically (see graph above) while the government of the day maintained accountability and transparency in border protection. That is, the Minister for Home Affairs continued to issue a media release for each asylum boat arrival; AMSA publicly displayed on its website all Pan Pan, Mayday and Securite messages relayed in respect of asylum seeker vessels in distress and Customs and Border Protection kept the public informed of rescue operations. So secrecy is not essential to reduce numbers.

Protection of vulnerable people

Ministers Cash and Morrison make the astonishing claim that the secrecy of OSB is a protective factor for asylum seekers; that withholding information from the public about 'on water operations' decreases the risk to the well being of asylum seekers.⁷ History tells us otherwise - that secrecy

⁴ ABC FactCheck: Immigration Minister Scott Morrison not telling the full story on asylum seeker arrivals, 10 December 2013, online at: <http://www.abc.net.au/news/2013-12-10/scott-morrison-not-telling-full-story-asylum-seeker-arrivals/5119380>

⁵ Ibid.

⁶ John Barron to Tony Eastley, 'Fact Check shows Govt not disclosing full story on boat arrivals', AM, 10 December 2013, online at: <http://www.abc.net.au/am/content/2013/s3908364.htm>

increases the risk to both asylum seekers and Navy personnel by allowing dangerous practices to avoid public scrutiny.

OSB is not the first military led, top secret, border protection operation conducted by Australia. In September 2001, almost exactly twelve years before the introduction of OSB, John Howard launched Operation Relex and ordered the Navy to force every asylum boat back to Indonesia. It was only through the 2002 Senate Select Committee into A Certain Maritime Incident (CMI) that details came to light of the dangerous practices inherent in turning back the boats of asylum seekers.⁸

David Marr has described the horrors that occurred under Operation Relex:

Boats were boarded by Australian sailors in violent altercations. Shots were fired across bows. Engines were sabotaged by asylum seekers. Hulls holed. Boats set on fire.

The fourth boat post Tampa [SIEV 4] slowly sank in front of HMAS Adelaide [after having being towed in circles for 24 hours] with Canberra ordering no rescue of the 223 men women and children on board unless and until they were in danger of drowning. Australian sailors eventually carried out a heroic, successful and entirely unnecessary rescue from the sea...

The death count began with the seventh boat [SIEV 7]. At least three on board died when it was successfully forced back to Roti Island off the coast of Bali. Survivors told Four Corners they were beaten with batons and sprayed in the eyes by Australian military personnel.

The 10th boat caught [SIEV 10] erupted in flames, endangering an Australian boarding party and leading to another heroic mass rescue in which two Afghan women drowned, several children survived by a miracle and Australian personnel were deeply traumatised.⁹

As a close observer and analyst of border protection policy over 12 years, I am deeply concerned that the secrecy of Operation Sovereign Borders may be concealing practices that are dangerous to asylum seekers and Navy Personnel. Last November it was reported that the bow of an asylum seeker vessel was ripped off when it was taken in tow by OSB.¹⁰ In recent days there have been reports of two asylum seeker vessels being towed back to Indonesia by the Navy with asylum seekers claiming that they were mistreated.¹¹ Minister Morrison refuses to confirm or deny these reports and so we are left to wonder just how much history is repeating itself.

⁷ Tabled document, Senator the Hon Michaelia Cash to Dr Rosemary Laing, Clerk of the Senate, 4 December 2013, (p.4, dot point #2 and p. 5, dot point #1) copy online at:

<http://sievx.com/testimony/2013/Documentstabled4December2013relatingtoorderof3December2013.pdf>

⁸ *Report of A Select Committee on A Certain Maritime Incident*, 2002, online at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/maritimeincident/report/index

⁹ David Marr, 'Turn the boats back and people will die – Abbott knows this', *SMH*, 24 January 2012, copy online at:

<http://sievx.com/articles/miscellaneous/2012/20120124DavidMarr.html> See also David Marr & Marian Wilkinson, *Dark Victory*, Crows Nest, Allen & Unwin, 2004 (see in particular chapters 14, 16, 18, 20).

For a log of the SIEV 4 incident showing that the rescue was being overseen by politicians see Jacinta Collins, 'Additional Comments' in *Report of A Select Committee on A Certain Maritime Incident*, 2002, pp.469-476; copy online at:

http://sievx.com/testimony/report/coll_comm.pdf For 'towed in circles for 24 hours' see Commander Norman Banks testimony, CMI transcript, 25 March 2002, pp.162-3, copy online at: <http://sievx.com/testimony/fulltranscript/20020325.pdf>

For SIEV 7 see Marr & Wilkinson, pp.32-322, 328; Deb Whitmont 'To Deter and Deny' *Four Corners*, 15 April 2002, copy online at: <http://sievx.com/articles/psdp/20020415FourCorners.html>

For SIEV 10 see Marr & Wilkinson, pp.350-364

For multiple first hand accounts by Navy officers involved in the towbacks under Operation Relex see #14 'Declassified Witness Statement for SIEVs 1-3 and 5-12' in 'Tabled Documents 13-31' Bound Volume, Senate Select Committee on A Certain Maritime Incident, 2002

¹⁰ David Wroe, 'Bow ripped off asylum boat as Customs attempted to tow it', *SMH*, 19 November 2013, online at:

<http://www.smh.com.au/federal-politics/political-news/bow-ripped-off-asylum-boat-as-customs-attempted-to-tow-it-20131119-2xsan.html#ixzz2qKHIGpJh>

¹¹ George Roberts, 'Indonesia says Australian Navy 'pushed' back asylum seeker boat that ran aground', *ABC*, 7 January 2014, online at: <http://www.abc.net.au/news/2014-01-07/indonesia-says-australian-navy-towed-back-asylum-seeker-boat/5187232>

For mistreatment claims see George Roberts, 'Asylum seekers on boats turned back to Indonesia say Australian Navy mistreated

Accountability and transparency are basic tenets of democracy and we the people are entitled to know what the government is doing in our name.

This inquiry is fundamentally about the question of public transparency in regard to asylum seekers and border protection. It is of concern that the opportunity to submit to the inquiry was not known to people paying close attention to this issue such as myself until one day before it closed.

Marg Hutton