

Senate Hansard 23 September 2002
ADJOURNMENT: Immigration: Border Protection

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.50 p.m.) —This is the first part of a three-part speech I will be making this week.

At both the Senate estimates committee hearings and the hearings of the Senate Select Committee on a Certain Maritime Incident I have asked officials and ministers literally hundreds of questions about Australia's involvement in disrupting and dismantling people-smuggling syndicates in Indonesia. The views I am expressing tonight and in the other two speeches I have flagged are mine and do not anticipate the report of the Senate select committee.

I am not satisfied by the answers I have received in Senate committees. In fact, I remain deeply concerned about the people-smuggling disruption program in Indonesia.

I want to outline what we know about people-smuggling disruption activities and detail the further information that must be provided to the parliament about the disruption program.

The government claims that its policy of disruption has had a significant influence on the decline in the numbers of people trying to get to Australia illegally. Disruption within a legal framework and properly administered is a legitimate tool of government.

In March this year, Minister Ruddock cited the government's policy of “physically disrupting the work of people smugglers”¹ as one of the main reasons for the decline in asylum seeker boats coming to Australia.

But what I want to know is:

- How far does this policy of disruption go? What are the limits to the implementation of this 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?
- What sorts of mechanisms are in place to ensure that we are 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?

¹ “New Legislation Next Step in Fighting People Smuggling, Philip Ruddock Press Release, 21 March 2002

- 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?

The policy of disruption in Indonesia is the untold story of people-smuggling. It is a policy undertaken by the Australian government and funded by the Australian taxpayer, and yet the Howard government and Commonwealth agencies have so far avoided parliamentary scrutiny of this policy.

Disruption Policy

So what is disruption and how does it work? Disruption has been a key element of the government's strategy to prevent asylum seekers from coming to Australia.

Disruption can occur by way of an information campaign, 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.

Geoff Raby from the Department of Foreign Affairs and Trade told 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.”²

At the CMI committee, representatives from the Department of Immigration and Multicultural and Indigenous Affairs 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.³

And it is unlikely that any reasonable person would have a problem with an information campaign to combat people-smuggling. I certainly do not.

We know that 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.

The AFP have detailed this more active element of disruption.

AFP National General Manager, Federal Agent Brendon McDevitt told the CMI committee that, in broad terms, the “primary objective” of disruption is to “... prevent

² Raby, DFAT, Senate Estimates, FAD&T, 6 June 2002, p.556-557

³ CMI Committee, 11th July 2002, p.1999

the departure of the vessel in the first instance, to deter or dissuade passengers from actually boarding a vessel.”⁴

The AFP agreed that there was a whole series of methods that could be used to prevent the departure of the vessel and that it was at the “discretion of the liaison officer in Jakarta as to the best method to apply.”⁵ There may be disruption of the transport of passengers to the embarkation point, for instance, or the movement of the boat to that embarkation point.

AFP Commissioner 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 or detention of individuals or by ensuring that the individuals do not reach the point of embarkation, if that was known.”⁶

It is not clear whether disruption extends to physical interference with vessels. It is not clear what, if any, consideration is given in the planning and implementation of disruption to questions of maritime safety, to the safety of lives at sea.

Kevin Enniss

Channel 9'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 Enniss 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. Enniss claimed that the boats were sunk close to land so that everyone got off safely.

But how can we be certain this is true?

As a result of the *Sunday* revelations in February, the AFP have confirmed that Kevin Enniss was paid at least \$25,000 by them as 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.⁷ Commissioner Keelty told Senate estimates: “... we knew he was involved in people-smuggling because he was telling us what was going on.”⁸

These admissions are not consistent with what the AFP's Director of International Operations, Mr Dick Moses, said earlier this year. When asked by the *Sunday* program, “Has the Federal Police ever authorised any informant to involve themselves

⁴ CMI Committee, 11th July 2002, p.1934

⁵ CMI Committee, 11th July 2002, p.1934

⁶ CMI Committee, 11th July 2002, p.1977

⁷ “AFP Investigation into Alleged People Smuggler Completed”, AFP Media Release, 24th August 2002

⁸ Senate Additional Estimates, L&C, 18th February 2002, p.193

in people smuggling?" he answered, "No. That's categorically no. The Australian Federal Police has not done so."⁹ This is dancing on the head of a pin. What is the difference between authorising an informant to involve himself in people-smuggling and paying him for intelligence which is known to be gained from his involvement?

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.

Despite the serious allegations made by the *Sunday* program, the AFP is yet to respond. Minister Ellison issued a press release supporting the AFP but not denying the allegations of potentially illegal behaviour by the AFP or its informants in Indonesia. Senator Ellison also rejected Labor's call for a full, independent judicial inquiry into these serious matters, but he did not indicate whether he proposed to have the issues investigated at all. This is not good enough.

⁹ "The Australian People-Smuggler", Channel Nine *Sunday* Program Cover story, 17 Feb 2002

Senate Hansard 24 September 2002
ADJOURNMENT: Immigration: Border Protection

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate)
(7.18 p.m.) —

This is the second of three speeches I will be making about the government's people-smuggling disruption program in Indonesia.

The AFP is not the only agency to be involved in disruption activities. I have been trying to establish what role DFAT, ASIS, Defence and the immigration department play in the more active element of disruption.

So far, most of the evidence about the more active element of disruption has come from the AFP. However, some evidence the AFP gave to the Senate committee and the Senate estimates hearings was contradictory and misleading.

Commissioner Keelty 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.¹⁰

But in the case of Kevin Enniss this is clearly not what is occurring in Indonesia. The AFP have admitted that Kevin Enniss, in conjunction with the Indonesian police agency POLDA, was “engaged in strategies designed to interdict asylum seekers where possible before they could depart for Australia.”¹¹ This appears to be exactly what the policy of disruption sets out to do.

We know that the AFP works closely with the Indonesian National Police, Indonesian Immigration, and the Indonesian navy, army and marines when it comes to pursuing organised people-smuggling activities.

But it is still unclear who else is involved in disruption and whether any other Australians are also involved.

The AFP has said that no payment is made to the Indonesian authorities for carrying out disruption activities. As 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 ...”¹²
He also said:
“... the AFP paid no moneys to any government agency in Indonesia to have them disrupt the activities of people-smuggling organisers.”¹³

However, Commissioner Keelty did confirm that the AFP provides equipment, training and costs in travel to those Indonesian authorities involved in disruption

¹⁰ Keelty, CMI Committee, 11th July 2002, p.1924

¹¹ “AFP Investigation into Alleged People Smuggler Completed”, AFP Media Release, 24th August 2002

¹² CMI Committee, 11th July, p.1937

¹³ CMI Committee, 11th July 02, p. 1946

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 activities.¹⁴

Commissioner Keelty also told the CMI committee that AFP informants were only paid to provide information about the location of passengers and the activities of organisers. He said "no money has been paid to anybody specifically empowered to intervene"¹⁵ in people-smuggling.

But as a result of an investigation into the activities of Enniss, the AFP confirmed that they were aware Enniss purported to be a people smuggler in Indonesia. They also admitted to knowing that Enniss had taken money from asylum seekers on at least one occasion.¹⁶ According to the *Sunday* program, Kevin Enniss has also confessed to paying Indonesians to sabotage vessels.¹⁷

I ask the question: are these activities—sinking boats, taking asylum seekers' money and purporting to be a people smuggler—illegal?

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."¹⁸

But we know that both the AFP'S investigation into Kevin Enniss—which we have only seen a summary of—and the *Sunday* program's investigation have clearly indicated that at least one Australian was involved in disruption activities of a highly dubious and probably criminal nature.

Now that these admissions have been made by the AFP, there is only silence. Since the *Sunday* program revealed that Kevin Enniss may have deliberately sunk asylum seekers' vessels, there has been no response from the AFP, any other government agency or the government itself.

Legality and propriety

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

Highly respected legal expert Professor Mark Findlay said of Mr Enniss 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."¹⁹

¹⁴ Keelty, CMI Committee, 11th July 2002, p.1941

¹⁵ CMI Committee, 11th July 2002, p. 1945

¹⁶ "AFP Investigation into Alleged People Smuggler Completed", AFP Media Release, 24th August 2002

¹⁷ "The Federal Police and People Smugglers", Channel Nine *Sunday* cover story, 1st September 2002

¹⁸ CMI Committee, 11th July 2002, p.1981

¹⁹ "The Federal Police and People Smugglers", Channel Nine *Sunday* cover story, 1st September 2002

Professor Findlay also rejected the AFP's claim to the Senate committee that the AFP and Enniss are protected by controlled operations legislation, which 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.

Beyond the activities of Kevin Enniss, I believe there are serious questions about the disruption program and the behaviour of certain Australian agencies in Indonesia.

Commissioner Keelty claimed that he was fully accountable for the disruption program²⁰, but it appears that no procedures have been put in place to ensure nothing untoward or illegal is occurring or has occurred. There seem to be no accountability mechanisms in place at all, with most of this activity taking place outside of Australian legal jurisdiction.

I asked Commissioner Keelty at the CMI committee hearing: "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 answered: "That is not for me to say. I do not have any power over the Indonesian authorities."²¹

Commissioner Keelty said:

"The AFP, in tasking the INP 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 inhumane, it would be brought to our notice and we would ask that they not do it that way. The difficulty is that, once we ask them to do it, we have to largely leave it in their hands as to how they best do it."²²

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

Role of Ministers

It is now time for ministers to front up and explain to the parliament their knowledge of, involvement in and authorisation of the disruption activities in Indonesia, and the detail of those activities.

We do know that Minister Ruddock has been involved. Nelly Siegmund from the immigration department indicated to the CMI committee that she had briefed Minister

²⁰ CMI Committee, 11th July 2002, p.1935

²¹ CMI Committee, 11th July 2002, p.1938

²² CMI Committee, 11th July 2002, p.1980-1981

Ruddock about AFP reports relating to “Indonesian involvement in being able to stop certain vessels from departing.”²³

In general, immigration officials at the CMI committee were vague about their knowledge of disruption, mainly referring to information campaigns.²⁴

This contrasts with Minister Ruddock's release of a background paper outlining the policy of disruption. It notes that “disruption during transit” includes “interception at the actual point of attempting to continue their journey, either by sea or air.”²⁵

Minister Ruddock should detail his involvement to the Australian people, as should the other ministers involved—the Attorney-General, the Minister for Justice, the Minister for Foreign Affairs and the Prime Minister.

We know from the select committee's work that the Prime Minister established the People Smuggling Task Force in his department to share high-level information, and we know that this task force discussed disruption activities on a number of occasions. What briefings did this task force provide to the Prime Minister about the nature and extent of disruption activities undertaken by, or condoned by, Commonwealth agencies?

On 27 September 2000, Senator Ellison, the Minister for Justice and Customs, “issued a ministerial direction to the AFP to give special emphasis to countering and otherwise investigating organised people-smuggling.”²⁶

What does Senator Ellison know about how this directive was put into operation?

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 the Australian Secret Intelligence Service to engage in so-called “other activities” - that is, any activities relating to people or organisations outside Australia other than intelligence collection.

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

The question of provision for the authorisation of ‘other activities’ was certainly a government priority when the Intelligence Services Bill was before the parliament last year.

It is now time for the Minister for Foreign affairs to confirm to the Australian Parliament whether he authorised the Australian Secret Intelligence Service, either prior to or following the commencement of the Intelligence Services Act, to engage in

²³ CMI Committee, 11th July 2002, p. 2001

²⁴ CMI Committee, 11 July 2002, p.1999

²⁵ Philip Ruddock, Minister for Immigration, – “People Smuggling – Australia’s Experience and Policy Responses A Background Paper”, www.minister.immi.gov.au/borders/detention/peoplesmugg_2.htm, 22 July 2002

²⁶ Keelty, CMI Committee, 11th July 2002, p.1924

disruption activities, and, if so, to explain what sort of disruption activities took place. Of course, direct parliamentary scrutiny of the role of ASIS is not possible.

Nor is it possible for the joint committee to examine these matters.

It is also possible that such an examination falls outside the powers of the Inspector General of Intelligence and Security. If ASIS is involved, the critical aspect would be the behaviour of its agents, not its intelligence officers.

Ultimately, supervision and responsibility in this area lie with the foreign minister.

If ASIS has been involved then in my view the Minister for Foreign Affairs should brief the Leader of the Opposition on this subject. *(Time expired)*

Senate Hansard, 25 September 2002

ADJOURNMENT: Immigration: Border Protection

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate)
(7.04 p.m.)

This is the third and last of the three speeches on the government's people-smuggling disruption program which I foreshadowed during the adjournment debate on Monday this week.

How much ministerial knowledge is there of the disruption activities being directed out of the Australian embassy in Jakarta?

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 matters.

Two AFP agents also work from the embassy in Jakarta. These agents work closely with the Indonesian National Police, Indonesian Immigration, Indonesian navy, army and marines.²⁷ They report directly to the Director of International Operations, Dick Moses, and the general manager of international operations, Mr Shane Castles.²⁸

Both Mr Moses and Mr Castles were regular attendees of the Prime Minister's People Smuggling Task Force last year. They would inform the task force of the criminal aspects of people-smuggling, involvement with the people-smuggling teams and disruption activities.²⁹

At the Australian embassy in Jakarta an interagency coordination 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.³⁰ Geoff Raby from DFAT has indicated disruption activities are a key focus of this group.³¹

I note that on 13 June 2001 the Minister for Immigration and Multicultural and Indigenous Affairs, Phillip Ruddock, travelled to Jakarta. He had meetings with the Australian ambassador, Ric Smith, and the interagency people-smuggling group. He also met with the Indonesian Minister of Justice and Human Rights and the Indonesian Minister of Foreign Affairs. Mr Ruddock should now confirm whether he raised certain disruption activities during meetings at the embassy either in June last year or during his visit in September.

²⁷ Keelty's Answers to Questions on Notice, Senate Estimates, L&C, QoN 129

²⁸ Senate Estimates, L&C, 28 May 2002, p.257

²⁹ John Davies, Senate Additional Estimates, L&C, 19 Feb 02, p. 209.

³⁰ Raby, DFAT, Senate Estimates, FAD&T, 6 June 2002, p. 553

³¹ Senate Estimates, FAD&T, 6th June 2002, p.557

By September 2001 we know that something concerned the Indonesian foreign affairs department enough to request the protocol between the AFP and the Indonesian police be set aside.

Protocol – MOU

AFP Commissioner Keelty told the CMI committee that on 15 September 2000 “specific protocol under the MOU to target people-smuggling syndicates operating out of Indonesia” was agreed to by the AFP and their counterparts the Indonesian National Police.³²

We have asked the AFP for a copy of the protocol and MOU but so far it has not been released.

Under this protocol the AFP provides equipment and training to the Indonesian National Police.³³

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 Department of Foreign Affairs, DEPLU, had in relation to disruption.³⁴

Amazingly, Commissioner Keelty could not or would not tell the committee why the protocol was cancelled by the Indonesian government.

Despite this setting aside of the protocol— I believe because of concerns the Indonesians had about disruption activities between the two police organisations— Commissioner Keelty told us he was not aware of the full detail of the Indonesian complaints.³⁵

Repeatedly, I asked Commissioner Keelty at the CMI committee the reasons behind the Indonesian authorities cancelling of the protocol.

For instance, when I asked Commissioner Keelty, “What concerns did the Indonesians express in relation to the disruption operation?” he replied, “I do not have a briefing on that and I do not know that anyone in the AFP does.” I replied, “I would be surprised— very surprised—if the AFP was not informed of what these concerns might have been.” Commissioner Keelty responded, “It was a decision by the Indonesian government in their DEPLU, so I would not necessarily expect them to tell me why.”³⁶

Later at the CMI committee, I again asked Commissioner Keelty the following question: “Commissioner, did you ask why the protocol was cancelled?” He replied, “I do not specifically recall.” I then asked, “You do not know if you asked why?” Again, he replied, “I answered you. I do not specifically recall.”

³² CMI Committee, 11th July 2002, p.1924

³³ CMI Committee, 11th July 2002, p.1937

³⁴ CMI Committee, 11th July 2002, p.1938

³⁵ CMI Committee, 11th July 2002, p.1939

³⁶ CMI Committee, 11th July 2002, p. 1939

After the cancellation of the Protocol

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.

However, the breakdown in the protocol does not appear to have stopped disruption activities from occurring. Between September 2001 and June 2002 the activities continued on a case-by-case arrangement between the AFP and the INP.³⁷

In October 2001 the high-level PM&C People Smuggling Task Force notes indicate that disruption activities were discussed on a number of occasions including a direction that disruption be “beefed up”.

On 10 October 2001 the task force notes state, “Discussion on the ‘architecture’ - disruption, regional conference proposal, UNHCR positions.”³⁸

On 12 October the task force notes state, “Discussion of disruption activity, and scope for beefing up.”³⁹

At the CMI committee I asked Ms Jane Halton, DIMIA officials and the Australian Federal Police what exactly could be meant by these references? What was the task force asking agencies to do when they referred to it being “beefed up”?

The head of the People Smuggling Task Force, Ms Halton, admitted there were a “couple of discussions” regarding disruption at the meetings but 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.⁴⁰

Ms Halton told the committee that the task force had never tasked any agency to disrupt in Indonesia.

But Ed Killesteyn from DIMIA, who attended the task force meetings on 10 October and 12 October, said:

“... the People Smuggling Task Force 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.”⁴¹

Commissioner Keelty also indicated that the People Smuggling Task Force was tasking agencies to beef up the disruption activities. Commissioner Keelty said: To me it is just an “operational call along the lines of, ‘The departure of the vessel is imminent; we'd better be doing everything we can possibly do.’”⁴²

³⁷ CMI Committee, 11th July 2002, p. 1939

³⁸ People Smuggling Taskforce Notes, 10th October 2001, 6pm

³⁹ People Smuggling Taskforce Notes, 12th October 2001: Present: Jane Halton, four DIMA officials, Shane Castles from AFP etc

⁴⁰ CMI Committee, 30th July 02, p. 2089

⁴¹ CMI Committee, 11th July 2002, p. 2007

Let me repeat Commissioner Keelty's words: "... we'd better be doing everything we can possibly do."

This is the deeply concerning aspect of disruption.

- How far has it gone?
- What activities are acceptable; what are not?
- 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 of the safety of lives at sea?

The issue of sabotage of people smugglers' vessels has been canvassed by the AFP informant Kevin Enniss.

I ask these questions:

- Was Enniss involved in the sabotage of vessels?
- Were others involved in the sabotage of vessels?
- Do Australian ministers, officials or agencies have knowledge of such activities?
- And what about the vessel now known as SIEVX, part of the people-smuggling operation of the notorious people smuggler Abu Quassey?

That vessel set sail on 18 October 2001 and sank on 19 October 2001, drowning 353 people, including 142 women and 146 children.

Were disruption activities directed against Abu Quassey?

Did these involve SIEVX?

I intend to keep asking questions until I find out.

And, Mr Acting Deputy President, I intend to keep pressing for an independent judicial inquiry into these very serious matters.

⁴² CMI Committee, 11th July 2002, p. 1932

At no stage do I want to break, nor will I break, the protocols in relation to operational matters involving ASIS or the AFP.

But those protocols were not meant as a direct or an indirect licence to kill.