

Standing Committee on Legal and Constitutional Affairs, References Committee

Inquiry into a claim of public interest immunity

raised over documents

31 January 2014

Opening Statement for Tabling

Commander Joint Agency Task Force

Chair, and members of the Committee, thank you for the opportunity to appear before you today and to make an opening statement.

Operation Sovereign Borders remains focused on stopping criminal people smugglers who manipulate their prospective clients to risk their lives by undertaking the hazardous boat journey to Australia.

Since Operation Sovereign Borders began on 18 September last year, 22 boats have arrived into immigration authorities' control, carrying 1106 illegal maritime arrival persons, which was all in the first three months of Operation Sovereign Borders.

It has now been 43 days since any illegal maritime arrivals have been transferred into Australian immigration authorities' control.

I note that today's hearing, regarding the Minister for Immigration and Border Protection's claim of public interest immunity, is a public hearing. All that is said today will be on the public record and readily available to all.

It will, of course, be of interest broadly to the Parliament and to the people of Australia and to some of our foreign partners as well as to people smugglers and those who may wish to use their services. There are several audiences, each with a keen but disparate interest in the type of information to which the public interest immunity claim relates, and each with a view on the releasing of such information:

- Some of our partner Governments would prefer that such matters be handled discreetly and quietly cooperatively; that the best approach is to work behind the scenes.
- People smugglers would hope for any and all information that can help them understand our operations and make predictions about our border control system so they can circumvent it and thereby sustain their business, which is currently under pressure.

- Both people smugglers and potential illegal immigrants alike would hope to hear a stark divergence of views in a public debate in Australia that may reinforce a persistent but incorrect assumption by them that Australia's policies will change.
- The media also have a variety of expectations about what should or can be reported upon.
- Of course, and keeping in mind our people at sea, I would prefer that anything that is made public could not in any way make their job more difficult or more dangerous.

I acknowledge that the information sought under Senator Hanson Young's motion of 14 November last year is the sort of information that I seek to keep out of the public domain, and out of the hands of those who would use it against us. I would like to reiterate why.

The documents requested relate to operational matters that I believe should not be disclosed for the reasons I have reiterated in a number of press conferences that go to the heart of the Minister's claim:

1. These documents may reveal the location, capacity, patrol and tactical routines relevant to Navy and Customs vessels and air assets.
 - Such information can undermine our tactical advantage over people smugglers, who seek to use this information to avoid or trigger detection, or to precipitate a search and rescue response.
 - Information of this type can also undermine our ability to protect Illegal Maritime Arrivals from the practices of people smugglers and other serious criminal activities.
 - Finally, it can undermine more generally the effectiveness of Australian assets to maintain maritime security awareness in the broad sense.
2. Secondly, the kinds of documents that are sought, from my perspective, may enable an exploitation of confidential methodologies and procedures used by Navy and Customs vessels and assets. Information about the arrival of ventures, including the timing of the arrival and the composition of passengers can be used by people smugglers, and has been used by people smugglers, to:
 - Provide 'proof of arrival' and the basis for payment;
 - Provide a basis for further positive marketing of their business; and.
 - Undermine communications strategies aimed at potential illegal immigrants.
3. Finally, these documents may impact upon Australia's relations with foreign States and damage those relationships, undermining the potential for international agreements and cooperative behaviours and also the working relationships necessary between operational agencies in relation to safety of life at sea or generally on-water cooperative operations.

Noting that no boat has arrived in the last 43 days, and the 22 boats that have arrived under Operation Sovereign Borders did so over a period of 3 months prior to that, it would be fair to ask “Why can’t we know details of these earlier boat arrivals?”

People smugglers operate in a highly competitive market environment. While at times they do cooperate, they do not operate as a monolithic business structure. This means that while some smugglers involved in some of those 22 ventures – each smuggler perhaps in different ventures – know elements of our activities and insights from those particular experiences, we should not assume that they share that information with their competitors. Therefore, for the time being, I consider it too early to propose to the Minister that more information than is currently provided be released.

In summary, the approach I have adopted and raised with the Minister for Operation Sovereign Borders regarding the release of public information has been developed so as to not give tactical advantage to people smugglers, avoid providing official material that may be used to manipulate or confuse potential illegal immigrants, protect our people in the conduct of their duties, and acknowledge bilateral and regional sensitivities in the counter-people smuggling effort.

The approach provides for the operational integrity necessary to underpin success. I would reiterate that I believe no successful operation involving a complex multilateral, law enforcement, diplomatic and security effort gives real-time briefings on current operations. Rather, all of them carefully manage information while conducting their operations lawfully and safely.

My overriding priority in prosecuting my duties is the safety of all involved. That includes potential illegal immigrants, and the crews of the vessels upon which they arrive, and of course our Australian Customs and Border Protection Service and Naval personnel. Protecting operational information helps me do that.