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Committee Secretary
Senate Legal and Constitutional Affairs Committee

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Senate inquiry into: Payment of cash or other inducements by the Commonwealth of Australia in exchange for the turn back of asylum seeker boats

The purpose of this submission is to give historical context to the practice of Commonwealth officials making payments to people smugglers, or to those with knowledge of smuggling syndicates. This submission addresses the last term of reference (j) Any Related Matters.

For at least 15 years, Australian officials have paid money to people involved with people-smuggling. While the incident currently under investigation involves direct payments to people smugglers on the water to turn their boat around and return to Indonesia, in the past payments were usually in exchange for information. Some of these historical payments involved very significant amounts. In one case, \$250,000 was paid to an informant who worked with people smugglers; in addition he was given indemnity from prosecution and granted Australian citizenship. Details are below.

Such actions have in the past occurred as part of people smuggling disruption activities. There have long been questions about what is being done in Australia's name to stop asylum seeker boats - that it has been done under the cloak of secrecy; that Australian Federal Police (AFP) and Australian Secret Intelligence Service (ASIS) 'sailed close to the wind' in Indonesia¹ and that it has been difficult for parliamentarians to find out what is being done by Australian officials to combat people smuggling. In 2002 on three consecutive days Senator John Faulkner gave speeches in Parliament outlining his concerns about these activities by Australian officials (appended). He said:

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...

...I believe there are serious questions about the disruption program and the behaviour of certain Australian agencies in Indonesia.²

Senator Faulkner questioned whether actions taken by Australian officials were always legal. In this regard, there are parallels with the actions that led to this Senate inquiry.

¹ Cameron Stewart, 'Put out of Business', *Weekend Australian*, 21 August 2004, accessed 21 July 2015 at <http://sievx.com/articles/challenging/2004/20040821CameronStewart.html>

² Senator John Faulkner, 'ADJOURNMENT: Immigration: Border Protection', *Senate Hansard*, 23 September 2002 accessed 20 July 2015 at <http://sievx.com/testimony/200209xxSenFaulknersAdjournmentSpeeches.pdf>

The following are examples of payments made to various individuals, and related matters on the public record. Sources include Hansard, court transcripts, articles and books by academics and investigative journalists and people smugglers themselves.

1. In 2001 Waleed Sultani was working within people smuggling syndicates in Indonesia. When giving evidence against convicted smuggler Hadi Ahmadi, Sultani told a Perth court he (Sultani) came to Australia on a Justice Visa and was provided with accommodation from 2002 until 2005 by the Federal Police. He was also given indemnity from prosecution, Australian citizenship, and a reward of \$250,000.³ (The paper referenced below is appended.)
2. In his 'as-told-to' autobiography, convicted smuggler Ali Al Jenabi referred to a man he called the Weasel who is almost certainly Waleed Sultani mentioned above. He stated that the Weasel was working with the notorious people smuggler Abu Quassey who was responsible for the SIEV X boat which sank, killing 353 people. Al Jenabi claimed that the Weasel had been giving information to the AFP about different smugglers since August 2000, and was paid about \$200 to \$300 a week by the AFP when in Indonesia. Al Jenabi also claimed that the Weasel worked for him (Ali Al Jenabi) and a smuggler called Omeid who had a reputation for cheating people.⁴
3. Ali Al Jenabi also referred to one of his employees, Haider, who was paid by the AFP (probably in 2000 or 2001) to inform on Ali Al Jenabi. Ali Al Jenabi stated that he and Haider plotted that Haider would provide a mix of accurate and inaccurate information, sufficient to both satisfy and mislead the AFP. Al Jenabi said that he and Haider lunched on the money the AFP gave to Haider.⁵
4. During his trial, Hadi Ahmadi alleged that he was approached by Federal Agent Mr Bernard Young to inform on another smuggler, Sayed Omeid,⁶ and was promised immunity from prosecution, money, and Australian citizenship in exchange for cooperating. Although unclear, this most likely occurred sometime in 2006 or 2007.⁷
5. During the 2006 trial of convicted smuggler Keis Asfoor, indemnity against prosecution was granted to two prosecution witnesses, Miguel Santos - also known as Michael Williamson - and Maidan Abdul Syaid in exchange for their testimony. At some point in time, the AFP paid for medical treatment for Santos, and in 2004 the AFP paid him \$114,000 in relation to the loss of his business. It was also claimed that in order that Syaid, who admitted to being involved in smuggling, could testify in a Perth court, the AFP paid an AU\$3,500 fine imposed by an Indonesian court for kidnapping charges and 26 million rupiah in compensation to a person to whom Syaid sold a stolen car.⁸
6. Sayad Abbas Azad claimed he was tricked by the AFP in 2008 into infiltrating smuggler networks to work as an informant. He was later arrested in Indonesia

³ 'Former people smuggler testifies in Perth court', PM, 2 June 2010 ; Transcript accessed 16 July 2015 at <http://www.abc.net.au/pm/content/2010/s2916537.htm>

Andreas Schloenhardt & Linley Ezzy, 'Hadi Ahmadi - and the myth of the "people smugglers" business model', *Monash University Law Review*, no. 25, 2012, accessed 16 July 2015 at <http://www.austlii.edu.au/au/journals/MonashULawRw/2012/25.pdf>

⁴ Rogin De Crespigny, *The People Smuggler*, Penguin, Maryborough, 2012, pp. 304-6

⁵ *Ibid.*, p. 262

⁶ It is almost certain that Sayed Omeid and Omeid are the same person because of the reputation for cheating people.

⁷ Schloenhardt & Ezzy *op. cit.*

⁸ *The Queen and Keis Abd Rahim Asfoor [2006]* District Court of Western Australia.

on smuggling charges, with a view to him being extradited to Australia.⁹ In July 2013 an Indonesian court ruled against extraditing him to Australia as people smuggling was not included in the extradition treaty between the two countries.¹⁰

7. Kevin John Enniss was arrested in West Timor on fraud charges in 1999. After being released on bail he became an AFP informant. Immigration and police officials in West Timor informed the Australian embassy that he was involved in people smuggling,¹¹ which Enniss has denied. The AFP confirmed that Enniss was paid at least \$25,000 by them as an informant.¹²
8. Journalist Natalie O'Brien reported on a boat presumed to have sunk after leaving Indonesia on October 3, 2009 when it was about 17 nautical miles off the coast of Java with 108 people on board all presumed drowned. O'Brien revealed that it took almost four hours for the AFP and Customs to pass information about this vessel to the Australian Search and Rescue agency, in order to protect the identity of the spy who had informed the AFP that the boat was in trouble.¹³

So there is evidence of a shady fifteen year history of Australia entering into financial arrangements with people smugglers as part of the disruption program. There is also evidence of the AFP prioritising the welfare of its smuggler informants over that of asylum seekers. However the incident currently under investigation appears to be the first instance on the public record that Australia has paid people smugglers on the water to turn back boats.

The practice of Australian authorities paying people smugglers is a disturbing aspect of the disruption program. It is particularly abhorrent that Australia paid significant amounts to a people smuggler, Waleed Sultani, who appears to have been associated with the disastrous SIEVX incident in which 353 people died¹⁴. (Papers referenced are appended)

Payments to people smugglers have occurred under both Coalition and ALP Governments. But payments to people smugglers to induce them to turn boats around appears to be a new practice.

⁹George Roberts, 'Alleged people smuggler claims AFP "trapped" him', ABC, 15 May 2013, accessed 16 July 2015 at

<http://www.abc.net.au/news/2013-05-15/alleged-people-smuggler-claims-to-be-informant/4691790>

¹⁰George Roberts, 'Indonesian people smuggler Sayed Abbas avoids extradition to Australia', ABC, 20 July 2013, accessed 18 July 2015 at

<http://www.abc.net.au/news/2013-07-11/sayed-abbas-extradition-verdict/4814758>

¹¹David Marr & Marian Wilkinson, *Dark Victory*, Allen & Unwin: Sydney, pp. 41-2, 45

¹²Faulkner, Op. Cit.; See also then AFP Commissioner Mick Keelty's testimony in Senate Legal & Constitutional Estimates, p. 186, 19 February 2002, accessed 21 July 2015 at:

<http://sievx.com/testimony/fulltranscript/20020219LCEstimates.pdf>; also see Commissioner Keelty's testimony to CMI Committee, 11 July 2002, accessed 21 July 2015 at

http://sievx.com/testimony/individuals/Keelty_McDevitt.pdf

¹³Natalie O'Brien, 'Australia's bungles and cover-ups exposed' SMH, 3 June 2012, accessed 18 July 2015 at <http://www.smh.com.au/federal-politics/political-news/australias-bungles-and-coverups-exposed-20120602-1zoiv.html#ixzz3gE8sBbe2>

¹⁴Marg Hutton, 'Did Australia have a man on the inside in the organisation that embarked SIEVX?' sievx.com, 19 November 2011; accessed on 21 July 2015 at

<http://sievx.com/archives/2011/20111121.shtml> and Marg Hutton, '250,000 Questions', sievx.com, 5 December 2011, accessed on 21 July 2015 at <http://sievx.com/archives/2011/20111205.shtml>; Marg

Hutton, 'The AFP and People Smugglers', sievx.com, 12 June 2012, accessed on 21 July 2015 at <http://sievx.com/archives/2012/20120612.shtml>

The Abbott Government justifies extremely harsh treatment of asylum seekers, including severe neglect that has directly contributed to deaths, as 'whatever it takes' to disrupt the people smugglers' business model. To then make direct payments to the smugglers is deeply concerning and apparently at odds with its intentions.

Yours sincerely

Marg Hutton

Enclosures:

1. Senator John Faulkner's Adjournment Speeches, September 2002
2. Schloenhardt & Ezzy, 'Hadi Ahmadi and the Myth of the People Smugglers Business Model, 2012
3. Marg Hutton – 3 short pieces re Waleed Sultani, 2011-12