

Chapter 1

Introduction

1.1 On 2 March 2011 the Parliament established the Joint Select Committee on the Christmas Island Tragedy to inquire into the incident on 15 December 2010 in which a suspected irregular entry vessel (SIEV) foundered on rocks at Rocky Point on Christmas Island (CI)¹.

1.2 The committee was asked to examine:

- operational responses of all Commonwealth agencies involved in the response, relevant agency procedures, and inter-agency coordination;
- communication mechanisms, including between Commonwealth and State agencies;
- relevant onshore emergency response capabilities on Christmas Island;
- the after-incident support provided to survivors;
- the after-incident support provided to affected Christmas Island community members, Customs, Defence and other personnel;
- having regard to the above, the effectiveness of the relevant administrative and operational procedures and arrangements of Commonwealth agencies in relation to the SIEV 221 incidence and its management; and
- being mindful of ongoing national security, disruption and law enforcements efforts and the investigations taking place, and considering appropriate information from the Australian Federal Police (AFP) and the Australian Customs and Border Protection Service (including Border Protection Command) to determine, to the extent that is possible, the likely point of origin of the vessel.

1.3 The committee was also asked to consider the findings and recommendations of the Australian Customs and Border Protection Service (Customs) (including Border Protection Command) internal review of actions relating to SIEV221, and the work being undertaken by the Christmas Island Emergency Management Committee.

Structure of the report

1.4 This report is divided into three chapters. Chapter 1 (this chapter) sets out the administrative arrangements for the inquiry, and summarises the findings of other inquiries into the incident. Chapter 2 sets out the chronology of events which preceded

¹ *House of Representatives Votes and Proceedings*, No. 29, 2 March 2011, pp 380–381; *Journals of the Senate*, No. 22 March 2011, pp 652–653.

the tragedy. Chapters 3 and 4 examine the physical response to the tragedy, and the physical and emotional care and support offered to survivors, workers and community members after the tragedy occurred. Chapter 5 forms the conclusion to the report.

Roles of agencies involved

Department of Regional Australia, Regional Development and Local Government

1.5 The Department is responsible for the provision of all State-type services to the non-self governing Territories of Christmas Island and the Cocos (Keeling) Islands.

1.6 Most State-type services are provided through Service Delivery Arrangements (SDAs) between the Commonwealth and Western Australian (WA) Government. The WA Government manages the provision of State-type services such as schools, water, sewerage and courts. As of April 2011 there were 41 WA agencies providing services to the Commonwealth for the Territories under SDAs.

1.7 The cost of providing these services is completely funded by the Commonwealth and is cost-neutral to WA. The SDAs with the agencies are premised on the communities of Christmas Island and the Cocos (Keeling) Islands receiving services equivalent to those of comparable mainland communities.

1.8 In addition to the SDAs, the Department also maintains 28 contracts for the provision of services in the Indian Ocean Territories, including for port and airport management. Certain services are delivered by the Department directly, e.g. health and power services by the Indian Ocean Territories Health Service (IOTHS) and the Indian Ocean Territories Power Authority (IOPA) respectively – which are business units based on the islands. These services are managed by the Indian Ocean Territories Administration located on Christmas Island.²

Department of Immigration and Citizenship (DIAC)

1.9 DIAC's role on Christmas Island centres on the processing and care of irregular maritime arrivals (IMAs), the term used to describe people who arrive without authority by boat. DIAC's two key contractors are Serco and International Health and Medical Services (IHMS).

1.10 Soon after their arrival on Christmas Island, IMAs are provided with the opportunity to contact their family/close friends to tell them that they are safe, and the opportunity to access consular assistance. IMAs then undergo a comprehensive and thorough assessment process, including security checking, to establish if they have a legitimate reason for staying in Australia. IMAs are interviewed to establish their

2 Department of Regional Australia, Regional Development and Local Government, *Submission 4*, p. 4.

identity, where they are from, their reasons for being in Australia, and any reasons why they may not be able to return to their home country.

1.11 If the departmental officer undertaking the interview considers the IMA is raising claims which, prima facie, may engage Australia's protection obligations, the IMA will have their claims assessed under a non-statutory process. If a departmental officer finds that an IMA is owed protection obligations, and they also meet health, character and security requirements, a recommendation is made to the Minister to allow the IMA to apply for a Protection Visa. If an officer does not conclude that an IMA is owed protection, the case is referred to an independent assessor. As part of this review stage, the independent assessor will make a recommendation regarding whether the IMA is owed protection under the Refugees Convention.

1.12 IMAs are provided with publicly funded independent advice and assistance during the processing of their refugee claims at both the primary and review stages.

1.13 Any IMA who is found to not be owed protection obligations is subject to removal from Australia, and is removed as soon as practicable.

1.14 IMA clients may be transferred between immigration detention facilities on Christmas Island and the Australian mainland to provide accommodation that is appropriate to their individual circumstances. This includes the use of community detention for vulnerable families and unaccompanied minors.

1.15 IMAs are managed in accordance with the Government's Immigration Detention Values which ensure that all people in immigration detention are treated fairly and humanely.³

Australian Federal Police

1.16 The AFP provides community policing services on Christmas Island.

1.17 Six sworn AFP members, three Special Constables and one unsworn AFP employee who is also a Special Constable, perform a variety of community policing functions including the prevention and control of crime, traffic management and road safety, emergency management coordination and assisting members of the community in times of emergency including land based and maritime search and rescue. The AFP performs the role of Territory Controller in times of declared emergency.

1.18 Regulatory functions include firearm and liquor licensing, regulation/registration of marine vessels and driver/motor vehicle licensing.

1.19 In addition to community policing requirements, the AFP has a People Smuggling Strike Team deployed to Christmas Island that conducts investigations and

3 Department of Immigration and Citizenship, *Submission 9*, pp 1–2.

gathers evidence in support of prosecutions of crew and organisers/facilitators responsible for unauthorised boat arrivals.

1.20 The AFP also delivers additional resources to Christmas Island in response to security and investigations demands such as the sinking of SIEV 221 and the response to rioting at North West Point Immigration Detention Centre in March 2011.

Australian Customs and Border Protection Service (Customs)

1.21 The Customs area relevant to this inquiry is Border Protection Command (BPC), whose role is to detect, deter and intercept illegal activity in the maritime domain. BPC is responsible for coordinating and controlling operations to protect Australia's national interests against eight civil maritime security threats:

- illegal exploitation of natural resources;
- illegal activity in protected areas;
- irregular maritime arrivals;
- prohibited imports/exports;
- maritime terrorism;
- piracy;
- compromise to Bio-security; and
- marine pollution.

1.22 BPC is not a Search and Rescue organisation but its assets, like those of any private and commercial organisation, can be called upon to respond to emergencies at sea in accordance with international obligations.

1.23 The Australian maritime domain, including the Security Forces Authority Area for which BPC has responsibility, covers an area of 11 million square nautical miles (sqnm) and equates to around 11 percent of the Earth's oceans. The Australian northern waters area which BPC patrols for all eight maritime threats, but most commonly encountering irregular maritime arrivals and illegal foreign fishing, is approximately 1.1 million sqnm.

Australian Defence Force (ADF)/Department of Defence (Defence)

1.24 Defence works in support of BPC to assist in protecting Australia's borders, primarily through maritime surveillance and interception in Australia's territorial waters and exclusive economic zone. Assets employed include Orion P3 surveillance aircraft and Armidale-class patrol boats and a number of other patrol and response units. In respect of people smuggling, potential irregular immigrants are transferred to appropriate civilian agencies by Defence personnel after their apprehension.

Conduct of the inquiry

1.25 Notice of the inquiry was posted on the committee's website and in *The Australian* newspaper, calling for submissions by 27 April 2011. The committee also advertised the inquiry in two editions of the Christmas Island newspaper, *The Islander*, in English, Malay and Chinese.

1.26 The committee also directly contacted a number of interested parties, organisations and individuals to notify them of the inquiry and to invite submissions. A total of 22 submissions were received, as listed in Appendix 1.

1.27 The committee held public hearings in Canberra on 27 May and 16 June 2011 and on Christmas Island on 6 and 7 June 2011. A list of witnesses who appeared is at Appendix 2. While visiting Christmas Island, the committee took the opportunity to conduct site visits to Rocky Point, Flying Fish Cove and Ethel Beach. This helped to contextualise the oral and written submissions it received.

Other inquiries

1.28 On 17 December 2010 Customs initiated an internal review into its actions, including BPC, related to the SIEV 221 incident. The internal review was completed on 10 January 2011 as an initial response to the incident rather than an in-depth inquiry.

1.29 The Administrator of Christmas and Cocos (Keeling) Islands and Chair of the Christmas Island Emergency Management Committee (EMC), the Honourable Brian Lacy provided draft report to the Minister on 11 January 2011 concerning the local response to the SIEV 221 incident on 15 December 2010. The draft report was ratified by the EMC at its meeting on 14 January 2011. The Administrator provided the final report to the Minister on 24 January 2011.

1.30 Summaries of both the Customs and EMC inquiries are set out later in this chapter.

1.31 A coronial inquest into the tragedy is currently underway in Western Australia. The inquest will look at a number of issues surrounding the tragedy, including whether SIEV 221 had been detected or monitored before the incident and whether the rescue effort could have been more effective.

Findings of other inquiries

1.32 While a number of inquiries have been (and continue to be) conducted into the circumstances surrounding the tragedy, the committee has had the benefit of examining the findings of two inquiries in particular. This chapter summarises the findings of those inquiries, and progress implementation of their recommendations.

Report of the Christmas Island Emergency Management Committee

1.33 The underlying finding of Mr Lacy's report was that the response of agencies on the island was excellent, exhibiting close cooperation and good communication, and that the island's Emergency Plan was effective.

1.34 One issue that was identified was the availability and use of radios, primarily due to inadequate number of handsets and knowledge of procedure. Mr Lacy recommended better definition and training in relation to radio frequencies and their use. Suggested measures to improve communication included:

- Marine radio at each agency with dedicated listening officer
- Handheld marine radios
- Use of the community radio network
- Notices on the community blackboard, and
- Use of an air raid siren.

1.35 Mr Lacy also noted that management of the Christmas Island airport was frustrated by a lack of consultation about incoming aircraft, which should have been managed through the Territory Controller. In particular, it was found that agencies on the mainland, seeking to provide assistance, failed to consult with and take account of the community's needs in respect of air movements.

1.36 The report listed the following additional resources on the island:

- Throwable grenade life jackets
- Inflatable life rings
- Hand held radios
- A properly equipped rescue trailer
- Rescue kits
- Mats for people to lie on after their recovery from the sea
- Incident management tabards
- Body bags/coffins
- A dedicated chiller for use as a morgue
- Troop carrier
- Life rings on the shoreline
- Life saving devices, toilet facilities, emergency lighting, secure shelter and improvements to the boat ramp at Ethel Beach
- A jet ski and rigid hull inflatable boat
- Accident/incident familiarisation training for community members, and
- Upgrade of the marine rescue headquarters.

1.37 The Department of Regional Australia, Regional Development and Local Government accepted, and have actioned all of these recommendations, with the exception of the following:

- lighting, toilets and shelter at Ethel Beach, on the basis that the beach should be used only in daylight emergency conditions⁴; and
- the purchase of a rigid hull inflatable boat, on the basis that the planned upgrade of existing boats will render the purchase unnecessary.

1.38 While not declining the recommendation to procure a jet ski outright, the Department undertook to evaluate the suitability of a rescue vessel such as a jet ski for use in the seas around the island.⁵

1.39 The committee has assessed the Department's response to the recommendations, and considers it appropriate.

Customs' internal review

1.40 On 17 December 2010, the Chief Executive Officer of Customs ordered an internal review of the SIEV 221 incident to be conducted by the Acting National Director of Enforcement and Investigations, Ms Sharon Nyakuengama. The Report was delivered on 10 January 2011.

1.41 The report concluded that:

- neither Customs, nor BPC appear to have had any actionable intelligence that would indicate that the vessel that foundered at Christmas Island on 15 December 2010 had departed Indonesia or was likely to arrive at Christmas around that time;
- the positioning of the Customs and ADF vessels on the morning of 15 December 2010 was in accordance with the relevant policies, processes and procedures;
- notifications relating to SIEV 221, first as a Contact of Interest (COI) and then as a vessel in distress, were on the whole made and dealt with in accordance with the relevant policies, processes and procedures, and the individual work areas appear to have acted in an appropriate manner demonstrating good judgement;
- safety equipment held onboard HMAS *Pirie* was in accordance with Navy requirements and that held onboard Australian Customs Vessel (ACV) *Triton*

4 The Emergency Management Committee agreed that Ethel beach should be used only in daylight emergencies.

5 For a full description of the Department's response and current status, refer to the updated attachment B to the Department's submission, tabled as additional information at the committee's hearing on 27 May 2010.

was in accordance with her certification. All equipment was serviceable and crew were appropriately trained in its operation;

- HMAS *Pirie*'s small rigid hull inflatable boats (RHIBs) and ACV *Triton*'s tenders were deployed in seas states above certification for normal operations. This deployment was in accordance with relevant policies, processes and procedures for emergency circumstances. The RHIBs and tenders experienced engine difficulties due to intake of kelp and debris from SIEV 221 but the crews appear to have acted appropriately to quickly rectify problems and return to the Search and Rescue (SAR) effort as soon as practicable;
- a variety of communications equipment was used at Christmas Island to coordinate activities, and the reported success rate of these communications devices was varied; and
- critical Incident Guidelines, the Occupational Health and Safety Risk Management Practice Statement, and associated Counselling and Employee Assistance Program Instruction and Guidelines were applied to provide support to officers involved in the incident at the earliest opportunity given the remote location of the incident.

1.42 The internal review made eight recommendations, which are set out below together with a summary of the action taken to implement each of them.

That, as part of the normal border command operational planning cycle, the operational policies, processes and procedures informing the posture of assets be reviewed in light of the current number of irregular maritime arrivals.

1.43 The changes made include:

- building in greater flexibility (within contractual limitations) for the planning of aerial surveillance deployments, by making changes to the mix of aircraft undertaking surveillance in some areas to release AP-3C surveillance capability to undertake increased flights to Christmas Island;
- planning through a 'rolling' structure to enable the process to be more responsive to operational feedback;
- improving up front planning by ensuring all guidance is included in the asset planning process; and
- Enhancing the integration of assets to deliver the stated outcomes.

That the trial of a land based radar surveillance system of the northern maritime approaches to Christmas Island be completed and considered as a priority.

1.44 Work on the concept for a radar trial at Christmas Island began in July 2010, as a measure to assess whether a radar on Christmas Island would enable better use of aircraft and vessels in this area. There were fears that radar surveillance may have limited capability, particularly in high seas and bad weather. The trial was established to test assumptions about the benefits and limitations of such an approach to surveillance.

1.45 The field testing phase of the trial began in early February 2011 and was scheduled to conclude with site remediation by 30 June 2011 and the evaluation report by 1 August 2011. During the first Canberra hearing, Customs advised the committee that it planned to extend the radar trial beyond 30 June 2011. The extension will give Customs 'the opportunity to test some different hardware and further develop the software by gathering data from the monsoonal season'.⁶

1.46 Integral to the effectiveness of the system is sophisticated software which can analyse the radar signal and determine if the object is travelling at a constant speed and in a single direction – this is tracking the object. Only by tracking the radar targets over several minutes can small vessels be detected in heavy seas. The software incorporated in the trial radars is being constantly improved.

1.47 The radar picture of the marine environment around Christmas Island is extremely complicated, as it results from a range of objects including waves, clouds and birds, as well as vessels. Simply detecting an object with the radar is not sufficient to identify it as a small boat.

1.48 In calm seas, trial radar has detected a large merchant vessel out to the radar horizon – the theoretical limit of detection for radars at this height which is 35 nautical miles (nm). However it should be noted that this detection involved the radar tracking the vessel from the time it left port at Christmas Island to the limits of the radar capability. This does not necessarily suggest that the radar would have detected the vessel out at 35 nm unalerted.

1.49 As well, the RHIBs used by Armidale Class Patrol Boats (ACPB) have been monitored out to distances greater than 10 nm using the ACPB as a reference point. Again there is no guarantee this could be achieved without being alerted.

1.50 As at the date of Customs' submission, no SIEVs have been detected, but, on two occasions after SIEVs were apprehended, a subsequent analysis of the raw radar data showed that each was seen by the radars even though the detection and tracking software was not able to identify the contacts as a vessel. These sightings occurred in relatively calm seas (low to moderate Sea State and insignificant to low swell) and good weather conditions.

1.51 Radar performance in heavier seas will be assessed in the subsequent test program using calibrated radar targets, which will provide a baseline to assist the performance specification of any follow-on system.

That the current arrangements for reporting of incidents (including sightings of SIEVs by non border command personnel) to the Customs National Operations Centre (CNOc), and CNOc's responsibilities for transferring information of relevance to

6 Mrs Marion Grant, Deputy Chief Executive Officer, Customs, *Proof Committee Hansard*, 27 May 2011, p. 42.

Australian Maritime Security Operations Centre's (AMSOC) responsibilities, be confirmed and reinforced.

1.52 On 24 January 2011 immediate steps were taken to reinforce to officers existing reporting arrangements for reporting of sightings of COI (other than by BPC assets) to CNOC, who in turn advise the AMSOC.

1.53 This initial advice was subsequently formalised by an Instruction and Guideline (I&G) on 'CNOC Operations' which replaced the extant instructions from 2007, which required updating.

1.54 Another I&G on 'Reporting of and response to possible SIEVs including onshore arrivals' has been finalised, and was informed by the debrief noted in a later Recommendation. This I&G includes provision for regional officers to maintain their operational readiness and assist in operational planning. Key responsibilities are outlined in order to assist land based Customs officers with the actions that should be performed in the event of a SIEV arrival. The I&Gs were approved on 21 April 2011.

That, in collaboration with relevant agencies, specific procedures be developed, documented and exercised for dealing with SIEVs arriving directly at Christmas Island in severe weather conditions.

1.55 While Customs already has in place Critical Incident Guidelines which apply to all areas of the agency's business for reporting of incidents and significant operational matters, there is no procedure specifically tailored for reporting among agencies on Christmas Island.

1.56 The Department of Regional Australia, Regional Development and Local Government promulgated a draft Emergency Management Plan for the Territory of Christmas Island, which details the emergency prevention, preparedness and response arrangements for the island. The Plan identifies the AFP as the designated organisation for the management of all incidents in the Indian Ocean Territories.

1.57 Officers on Christmas Island have reviewed these existing arrangements contained within the draft plan and have separately documented a contact list specific to the agencies with responsibilities and capabilities that would support search and rescue responses to a SIEV arriving directly at Christmas Island in severe weather conditions.

1.58 Customs conducted a multi-agency exercise on Christmas Island in May 2011 to assess and validate the contact list and agency responsibilities, to further inform the draft Plan.

That both an officer level de-brief of this incident and ongoing desktop activities be conducted to further enhance interagency command and control capabilities relevant to such an incident.

1.59 This has been implemented, with debriefs completed and the program of ongoing desktop activities commencing on 13 May 2011. Following is a summary of the outcomes of the de-briefs, which took place in Darwin and Canberra.

- **Command and control**, and in particular uncertainty about the when an activity ceases to be a border protection operation and becomes a search and rescue operation, and the command and control structure once a safety of life at sea (SOLAS) event is underway. Two actions were identified to enhance command and control which aim to ensure the transition of command responsibility in such incidents is clearly identified and communicated to all relevant parties. These were:
 - The formalisation of on-scene commander arrangements for Customs assets through the production and distribution of a Customs Marine Unit Notice, a draft of which was under consideration at the time of Customs' submission;
 - Preparation of an I&G regarding operational interaction with AMSA, including SIEV SOLAS incidents, which was due to be implemented in April 2011; and
 - The production and distribution of an Operational Notice to make Customs staff aware of the need to keep calls to the AMSOC to a minimum during times of high workload.
- **Communications**, in particular the confusion arising from the 000 calls, challenges in radio communications at the scene, and the importance of recording calls to AMSOC. These issues were addressed and responded to through the implementation of other recommendations in the review.
- **Systems**, in particular the refinement of guidelines and instructions on the keeping of logs, and the possibility of providing real-time chat facilities between Customs vessels.
- **Staffing**, the conclusion being that employee assistance provided in the period after the tragedy was beneficial and well utilised, and that further ability to provide short-term 'surge' staffing in AMSOC during busy periods would be beneficial. Participants also supported the introduction of a Crisis Action Team (CAT) in AMSOC to manage one-off critical incidents, freeing up other staff to manage normal border protection operations. A feasibility study for a CAT is in train.

That the procedural documentation for tender operations in ACV Triton be revised.

1.60 ACV Triton's extant procedures were subsequently reviewed, amended and trialled at sea in conjunction with the new response tenders. These trials incurred some

delays due to poor weather and high operational tempo, however they were finalised and promulgated on 31 March 2011.

That communication protocols and procedures between Customs and Border Protection at Christmas Island and BPC response vessels should be reviewed.

1.61 The BPC Communications Plan (COMPLAN) was amended to cover communication channels with Customs officers on Christmas Island, and further amendment is expected. In addition, a new I&G was developed detailing existing communication equipment, channels and radio call signs, as well as the specific circumstances for communication between officers on Christmas Island and BPC assigned vessels.

1.62 Further principles based instructions, that allow for flexibility in emergencies, and provide guidance as to how to establish emergency communications networks locally when necessary, will be developed to complement this I&G.

1.63 Officers on Christmas Island have undertaken an audit and identified the technical capabilities and limitations of communications equipment currently held on Christmas Island. Additional work has now commenced on documenting clear business requirements which will inform a technical capability gap analysis between what is currently available and the specified business requirements.

1.64 As an interim measure to address equipment availability issues, four Ultra High Frequency (UHF) handsets have been deployed to Christmas Island. Deployment of the handsets is being accompanied by appropriate instruction in technical use and procedures.

That critical incident support follow-up activity continues to monitor the ongoing safety, health and wellbeing of officers directly involved in the incident.

1.65 Support was offered to officers and their families immediately after the tragedy. This included provision of numerous support staff and counsellors on Christmas Island from 15 December 2010 to 20 December 2010, and follow up support in Fremantle, to where officers involved in the tragedy had returned. Wellbeing interviews commenced early in January, and all staff were cleared for re-deployment.

1.66 A psychologist returned to Christmas Island over 6–8 February 2011 following a request for additional support on the Island for employees and families. A further visit occurred over 3–8 March 2011, to provide support and to attend the Memorial Service for the deceased from SIEV 221. During the visit, counselling support was provided to employees and their families on the island and to marine staff from ACV *Triton* then embarked in the ACV *Ocean Protector*, which was at Christmas Island at the time.

1.67 In addition, a coordinated legal support effort is being made available to those officers required to give evidence at formal proceedings to ensure they are informed,

prepared and supported during this phase. Additional strategies are also being implemented for remaining staff who had involvement in the incident due the anticipated heightened media attention generated by the WA Coroner's Inquest hearings.

Acknowledgements

1.68 The committee thanks all those who contributed to the inquiry by making submissions, providing additional information or appearing before it to give evidence.

Note on references

1.69 References in this report to the Hansard for the public hearings are to the proof Hansard. Please note that page numbers may vary between the proof and the official transcripts.