

Appendix 1

The Pattern of Conduct

“Facts are stubborn things, and whatever may be our wishes, our inclinations, or the dictums of our passions, they cannot alter the state of facts and evidence.”

*John Adams*¹

Introduction

1.1 Twelve Suspected Illegal Entry Vessels (SIEVs) were intercepted by the RAN under the auspices of Operation Relex.² SIEV 1 arrived on 7 September 2001 and the last illegal entry vessel, SIEV 12, arrived on 16 December 2001.

1.2 SIEVs 5, 7, 11 and 12 were escorted back to Indonesia. SIEVs 4, 6 and 10 sank at some point during the interception or tow-back process. Their passengers were rescued, with the loss of two lives on SIEV 10, and transported in the first instance to Christmas Island.

1.3 Evidence to the Committee demonstrated a clear pattern of objectionable behaviour practised by those aboard the Suspected Illegal Entry Vessels. This conduct was calculated to achieve their objective of reaching Australian territory and also exert ‘moral blackmail’³ upon the defence force personnel attempting to thwart this objective.

1.4 This pattern of behaviour included acts and threats of self-harm and aggression, including threats to children, sabotage of vessels and of equipment, jumping overboard and the attempted creation of safety of life at sea situations.⁴

1.5 Examination of this pattern of conduct was important in the conduct of the Committee’s inquiry. It established the context or atmosphere in which Operation Relex and the events surrounding the interception of SIEV 4 were conducted. The Committee heard that even by the time of the interception of SIEV 4 a pattern of conduct among those on board SIEVs had emerged. For example, concern was expressed by both military and civilian participants that those on board SIEV 4 were wearing life jackets. As Ms Halton recalled:

¹ David McCullough, *John Adams* (New York: Simon & Schuster, 2001), p. 68

² In addition to the twelve numbered SIEVs, a small number of boats have attempted to land outside the designated area of Relex’s operation in the period since 3 September 2001. See Additional Information, Department of Defence, Talking points for Senate Legislation Committee Additional Estimates Hearing, February 2002.

³ *Transcript of Evidence*, CMI, 514.

⁴ *Transcript of Evidence*, CMI 68ff and passim.

...officials were expecting SIEV 4 unauthorised arrivals to be more difficult to handle than previous arrivals. The fact that passengers were wearing life jackets and had made attempts to disable their vessel was consistent with this.⁵

1.6 According to the evidence of Rear Admiral Smith:

Numerous instances of threatened or actual violent actions against Australian Defence Force personnel occurred, as well as various acts of threatened or actual self harm and the inciting of violence throughout Operation Relex. Australian Defence Force personnel had not previously encountered these circumstances during non-warlike operations. They were extremely hazardous and volatile situations. What was a law enforcement activity had real potential to rapidly escalate into a violent situation or just as quickly deteriorate into a major safety or preservation of life situation or, worse, both.⁶

1.7 Evidence was also presented to the Committee that the behaviour exhibited was an organised response by people smugglers which evolved over time. As Vice Admiral Shackleton put it:

It was our understanding that they were learning from each event that they interacted or experienced with us and that they were starting to understand our approach to how we operated. It would not be unreasonable to expect that they were trying to find ways to counter what we were doing. Hence we found, in this particular instance, SIEV4 was giving the appearance of being better prepared and more aggressive than the previous ones that we had dealt with.⁷

1.8 This chapter outlines the emergence of this pattern of behaviour, drawing mainly from written statements provided by the naval personnel involved in these operations. Evidence is presented in relation to incidents aboard ten of the twelve SIEVs, with multiple incidents reported for some boats. SIEV 4 is not addressed in this Chapter. No evidence is presented in relation to SIEV 10, which sank with the loss of two lives, as this matter is under consideration by the Western Australian coroner.

SIEV 1

1.9 The *Aceng*, which came to be designated as SIEV 1, was intercepted by the HMAS *Warramunga* on 7 September 2001 headed towards Ashmore Island. Warnings to the master of the vessel, delivered in English and Bahasa, not to enter Australian waters proved unsuccessful and the *Warramunga* inserted a boarding party

5 *Transcript of Evidence*, CMI 901.

6 *Transcript of Evidence*, CMI 448.

7 *Transcript of Evidence*, CMI, 61.

as the vessel crossed into the Australian Contiguous Zone. The boarding was to be the first of four.⁸

1.10 On the first two occasions the vessel was turned northwards back towards Indonesia, but reset a course for Ashmore Island once the boarding party was extracted. On the second occasion that the boat was turned back, the Master indicated that his life would be in jeopardy if he did not head for Australia.

When the Master realised that again he was heading North towards Indonesia he became nervous and after pointing to himself made slashing motions at his neck and said 'Indonesia'. The Master continued to plead with me to turn back to the South or he would be killed.⁹

1.11 On the third occasion that a boarding party was put aboard to direct the boat out of Australian waters, the behaviour of those on board became abusive, with threats of harm to the boarding party, smashing of windows in the wheelhouse, and objects thrown at the boarding party personnel.¹⁰ An assessment was made by the Boarding Office that medium to high force with possibly lethal force would be required to secure the *Aceng*¹¹, and the boarding party was withdrawn to avoid further conflict.

1.12 At first light on 8 September another boarding party embarked the vessel and all 237 passengers¹² were transferred to the HMAS *Manoora* without further incident. They were transported to Nauru for processing.

SIEV 2

1.13 Suspected Illegal Entry Vessel 2, carrying 130 mainly Afghani unauthorised arrivals, was located on or about 9 September 2001¹³ having already run aground on Ashmore Reef. The condition of the boat was so poor that those on board were transferred to SIEV 1, which had already been emptied but was anchored a short distance away.

8 *SIEV 01 Event Summary*, tabled 5 April 2002 by Rear Admiral Smith.

9 Sub Lieutenant Sojan, HMAS *Warramunga*, 'Statement in the Matter of Op Relex – SIEV 01, 9 April 2002', *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

10 *SIEV 01 Event Summary*.

11 Commander Menhinick, Commanding Officer HMAS *Warramunga*, 'Statement in the Matter of SIEV 01 (Aceng), 25 September 2001', *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

12 *Offshore Processing Arrangements*, Fact Sheet No76, Department of Immigration and Multicultural and Indigenous Affairs, 5 July 2002.

13 *SIEV 02 Event Summary*, tabled 5 April 2002 by Rear Admiral Smith, indicates that the vessel was located 10 September, however Lieutenant Commander Tziolis, Commanding Officer HMAS *Gawler*, 'Statement with Respect to Specific Issues Raised During Holding Operations of Unauthorised Arrivals from SIEV 02 Ratna Mujia from 9-12 September 2001', indicates that HMAS *Gawler* was already on site 9 September 2001.

1.14 On 9 September the crew from the HMAS *Gawler*, which was at that time the On Scene Commander, conducted a compliant search of the those now aboard SIEV 1 and located 15 blades of various sizes, and two ‘improvised nightsticks’¹⁴. A search of baggage brought the total number of knives recovered to approximately 30.¹⁵

1.15 On 10 September, in a discussion with naval personnel concerning their eventual destination, one of the English speaking passengers indicated that his people would ‘throw themselves overboard if they were taken back to Indonesia’.¹⁶ Access to an interpreter and a journalist was also requested at this time, but the passengers were advised that due to the remote location of Ashmore neither was available.¹⁷

1.16 By 12 September a group of 4 or 5 young men had become more agitated and made an undefined threat of suicide. They also indicated that they would not accept any more food and water.¹⁸

1.17 On 13 September, SIEV 1 and the refloated SIEV 2 were roped together to relieve cramped conditions on SIEV 1, and the situation calmed with no more incidents reported. The unauthorised arrivals were embarked aboard the HMAS *Tobruk* on 22 September for transport to Nauru.

SIEV 3

1.18 SIEV 3, the 40 metre wooden cargo vessel KM *Sumber Bahagia*, was intercepted by the HMAS *Warramunga* north of Australia’s Contiguous Zone on 11 September 2001.¹⁹ Once again warnings to the vessel not to enter Australian waters were ignored, and after entering the contiguous zone the vessel was boarded and returned to international waters. A head count at this time identified 115, all Iraqi, potential illegal immigrants aboard, including thirty children, and five Indonesian

14 Lieutenant Commander Tziolis, Commanding Officer HMAS *Gawler*, ‘Statement with Respect to Specific Issues Raised During Holding Operations of Unauthorised Arrivals from SIEV 02 Ratna Mujia from 9-12 September 2001’, 8 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

15 SIEV 02 Event Summary, tabled 5 April 2002 by Rear Admiral Smith.

16 Lieutenant Price, Executive Officer HMAS *Gawler*, ‘Statement with Respect to Specific Issues Raised During Holding Operations of Unauthorised Arrivals from SIEV 02 Ratna Mujia from 9-12 September 2001’, 9 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

17 Statement by Lieutenant Commander Tziolis.

18 Lieutenant Commander Moncrieff, Commanding Officer HMAS *Geelong*, ‘Statement in the Matter of Suspected Illegal Entry Vessel Number Two on 12 September 2001’, 9 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

19 *SIEV 03 Event Summary*, tabled 5 April 2002 by Rear Admiral Smith, indicates that the vessel was intercepted 12 September 2001, however Commander Menhinick, Commanding Officer HMAS *Warramunga*, ‘Statement in the Matter of SIEV 03 (KM SUMBER BAHAGIA), 25 September 2001’, states that contact was established 11 September.

crew. The boat was later determined to be carrying 129 potential illegal immigrants in total.²⁰

1.19 On extraction of the boarding party the SIEV turned south but appeared disoriented, on a course which would miss Ashmore Island but reach the Australian mainland in about 36 hours. Another Rigid Hulled Inflatable Boat (RHIB) was dispatched from the *Warramunga* to warn the vessel again against entering Australian territory, and advise that they should be headed north-west. This approach was greeted with assertions from passengers aboard the SIEV that the boat was 'broken', a charge contradicted by the master. The passengers also advised RHIB that they would not alter course as they wished to go to Australia.²¹ At this point a passenger from the SIEV climbed down its side and attempted to enter the RHIB.

1.20 Some hours later the erratic course of the SIEV raised concerns about the vessel being lost and the potential for a safety of life at sea (SOLAS) situation to develop. The *Warramunga*, which had been tracking the SIEV from beyond its visual range, then moved within sight of the boat and dispatched a RHIB with a marked chart which was provided to the master of the vessel. While a member of the party aboard the RHIB was explaining to the Master the course he had to steer, 'the Master gestured with his hand his throat being cut indicating that he was not safe'.²²

1.21 The SIEV responded to the provision of the chart by changing course for Ashmore Island, and was boarded. As embarkation of the boarding party commenced one woman 'was seen holding a child over the side and threatening to throw the child over the side'²³. The boarding party 'met with violence from the [potential illegal immigrants] and thus could not secure the wheelhouse'.²⁴ The boarding party disconnected the steering from the wheelhouse and commence to steer the boat from the aft on the weatherdeck. Witness statements report the passengers becoming very aggressive towards the boarding party on noticing the change of direction.

1.22 As the Executive officer of the HMAS *Warramunga* described the situation

Tension aboard the SIEV continued as the vessel tracked west with the male PII's [potential illegal immigrants] becoming very aggressive and surging as a mass towards the BP [boarding party]. The situation continued to worsen

20 Commander Menhinick, Commanding Officer HMAS *Warramunga*, 'Statement in the Matter of SIEV 03 (KM SUMBER BAHAGIA), 25 September 2001', *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

21 Able Seaman Dollisson, Electronic Warfare Linguist HMAS *Warramunga*, 'Statement in the Matter of SIEV 03 (KM SUMBER BAHAGIA), 25 September 2001', *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

22 Lieutenant Commander Gregg, Executive Officer HMAS *Warramunga*, 'Statement in the Matter of SIEV 03 (KM SUMBER BAHAGIA), 25 September 2001', *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

23 Statement by Lieutenant Commander Gregg, SIEV 03.

24 Statement by Commander Menhinick, SIEV 03.

with all male PIIs [potential illegal immigrants] starting to riot and threaten the BP [boarding party] as a mass. I assessed that the situation could not be controlled without the use of high force and possibly lethal force. Having two unarmed BP [boarding party] members (the doctor and the interpreter) and no sign of the situation de-escalating without casualties I informed the Commanding Officer that I was conducting an emergency extraction.²⁵

1.23 Shortly after the boarding party left, the SIEV made a hard turn towards the *Warramunga* and the Commander of the navy vessel was forced to use maximum engine power to avoid a collision.²⁶

1.24 From then on the SIEV ignores all warnings from the *Warramunga* that it was headed for the dangers of Ashmore Reef and refused to follow the navy vessel to the safety of Ashmore lagoon. When continuing negotiations failed, the Commander of the *Warramunga* became alarmed at the potential risk to those on board, with 54 children now known to be amongst the passengers.

There appeared to be no formal hierarchy amongst the PIIs [potential illegal immigrants] and shouting, confusion, anger and aggression was the norm. The final demand from them and the only consistent one in the end was for them to embark the WARRAMUNGA. At 2151 a SOLAS situation was imminent. It was dark night with no moon, the reef was 2.5nm ahead. There were 54 children onboard the SIEV with no lifejackets. At 2218 with the reef only 1nm ahead and impact in 10 minutes I was standing off with the WARRAMUNGA 1000 yards to the south for my own safety. In a last attempt to avoid a SOLAS incident and loss of life I agreed to embark the PIIs [potential illegal immigrants] for the night. The SIEV then turned south, missing the reef by less than 1 nm.²⁷

1.25 The deliberate creation of a potential safety of life at sea situation in order to be taken aboard navy vessels and avoid return to Indonesia has been noted as a common element of the pattern of behaviour by potential unauthorised boat arrivals thwarted in their attempts to reach Australian territory by Operation Relex.²⁸

1.26 After embarking the potential illegal immigrants the *Warramunga* escorted SIEV 3 to Ashmore Lagoon, disembarked the passengers back onto the SIEV the next day, and handed over to the HMAS *Geelong*. The potential illegal immigrants were later embarked on the HMAS *Tobruk* and taken to Nauru.

25 Statement by Lieutenant Commander Gregg, SIEV 03.

26 Statement by Commander Menhinick, SIEV 03.

27 Statement by Commander Menhinick, SIEV 03.

28 *Transcript of Evidence*, CMI, 448, 512ff.

SIEV 5

1.27 SIEV5 was intercepted in the vicinity of Ashmore Island on the morning of 12 October 2001. Warnings were passed to the vessel, but it continued into Australia's contiguous zone.²⁹

1.28 The SIEV was boarded and redirected to the north, but on extraction of the boarding party re-entered the contiguous zone. The vessel was escorted to the Ashmore Lagoon. The boat, with about 240 people onboard, remained in custody at the lagoon until 17 October when it was boarded by a party from the HMAS *Warramunga*, including an Army Transport Security Element, with the intention of returning it to Indonesia. Family groups were transferred to the *Warramunga* for the voyage to relieve crowding.³⁰

1.29 Difficulty was encountered in starting the SIEV's engine as the ignition key and fuel transfer pump had apparently been thrown overboard,³¹ later the cooling pump was found to be unserviceable, with sabotage suspected.

1.30 Although the passengers aboard the vessel remained calm for the duration of the return voyage, when the vessel was handed back to the Indonesian Master on 19 October, 19nm from the nearest Indonesian port, the situation aboard deteriorated.³²

1.31 According to evidence tabled by Rear Admiral Smith

[A] riot ensued with one group storming the engine room of the SIEV and disabled the engine. Another PII [potential illegal immigrant] lit a fire up forward and another slashed himself 3 times with a razor blade. Most aggressive PII [potential illegal immigrant] told the Boarding Officer that most would kill themselves if they were returned to ID [Indonesia].³³

1.32 Some of those previously taken to the *Warramunga* had to be forcibly returned to the SIEV. The boarding party and transport security element were extracted, and the SIEV was later observed to be underway and heading into Indonesian Territorial Sea,³⁴ indicating that the engine had been repaired.

SIEV 6

1.33 The HMAS *Arunta* intercepted SIEV 6 on 19 October north of Christmas Island. Warnings not to enter Australian territory were issued, and the Indonesian

29 *SIEV 05 Events Summary*, tabled 5 April 2002 by Rear Admiral Smith.

30 *SIEV 05 Events Summary*.

31 Lieutenant Commander Gregg, Executive Officer HMAS *Warramunga*, 'Statement in Matter of SIEV 05', 9 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

32 Statement by Commander Gregg, SIEV 05.

33 *SIEV 05 Events Summary*, tabled 5 April 2002 by Rear Admiral Smith

34 Statement by Lieutenant Commander Gregg, SIEV 05.

crew were reported as stating that their lives were under threat if the boat did not go to Australia.³⁵

1.34 The SIEV entered the Australian contiguous zone and was boarded without incident. It was escorted to Christmas Island and the custody of the potential illegal immigrants transferred to the AFP and AQIS.³⁶

1.35 A party from the HMAS *Warramunga* reboarded the SIEV on 22 October with the intention of returning it to Indonesia. Family groups and some others were embarked onto the *Warramunga* to relieve overcrowding on the SIEV.

1.36 Extensive sabotage of the SIEV's engineering plant was discovered, and efforts were made by *Warramunga* engineers to repair the boat. Those aboard the SIEV responded aggressively, starting fires, tearing up deckboards, attempting to kick out hull planks and ripping the bilge area apart. The situation was serious enough to cause the *Warramunga* to go to action stations in readiness for a potential safety of life at sea situation, and only resolved when the potential illegal immigrants were shown that they were being videotaped and told that their actions would not assist their case with the Australian government.³⁷

1.37 Repairs were effected by 28 October, and the SIEV was underway towards the Indonesian Territorial Sea. Eleven nautical miles north of Christmas Island problems developed with the bilge pumps, and a decision was made to transfer the passengers to the *Warramunga*. The SIEV could not be saved and was scuttled by the *Warramunga* on 29 October. The passengers were disembarked on Christmas Island on 30 October.

SIEV 7

1.38 SIEV 7 was notable as a child was dropped overboard by a woman aboard. Those on the vessel also seemed to be aware of the return of SIEV 5 to Indonesia, the first boat to be so returned.

1.39 The boat had been intercepted by the HMAS *Bunbury* in the vicinity of Ashmore Island on the morning of 22 October.³⁸ When a boarding party approached the vessel and attempted to give a 'Notice to Master and Crew' one man aboard the SIEV dived overboard. Another is reported to have held up a young girl and

35 *SIEV 06 Event Summary*, tabled 5 April 2002 by Rear Admiral Smith

36 *SIEV 06 Event Summary*.

37 Commander Menhinick, Commanding Officer HMAS *Warramunga*, 'Statement in Matter of SIEV 06, 30 October 2001', *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

38 *SIEV 07 Event Summary*, tabled 5 April 2002 by Rear Admiral Smith.

‘threatened to throw this child over the side of the vessel’.³⁹ The child appeared to be aged 4-5 years, and had a cast on one arm. She was noticeably distressed.⁴⁰

1.40 The SIEV was escorted to anchor in Ashmore Lagoon, where eight irate passengers created a disturbance and demanded to know their destination, apparently aware of the return to Indonesia of SIEV 5. On 24 October a further incident occurred, with fifteen people jumping into the water.

1.41 Two members of the boarding party have made sworn statements that a small child was held over the side by a woman passenger, then dropped into the water. The child was recovered by one of the male passengers already in the water, who bought the child back to the SIEV.⁴¹ All of those who entered the water were safely returned to the SIEV.

1.42 On 28 October HMAS *Arunta* arrived in Ashmore Lagoon and took control of the SIEV in preparation for its escort back to Indonesian waters.⁴² Around ninety passengers from the SIEV were embarked on the *Arunta* to make room for the steaming party and the Transport Security Element, and the voyage was calm until the passengers were advised that they were to be returned to Indonesia.

1.43 At this point:

Threats of self-harm and deliberate damage to the SIEV were made and attempted. Incidents included threats to jump overboard, threats to throw a child overboard, PIIs [potential illegal immigrants] actually jumping into the water, dousing themselves with fuel, damage to guy wires of SIEV mast, damage to railings, starting a fire in the hold, and splashing of fuel on deck. PIIs [potential illegal immigrants] broke through the SIEV’s engineering space bulkhead but were repelled by the TSE [Transport Security Element] using pepper spray.⁴³

1.44 After extraction of the boarding party SIEV 7 followed the *Arunta* for a period, then headed towards the Indonesian territorial sea.

39 Petty Officer Chief Bosun Smart, ‘Statement in the Matter of the Boarding of SIEV 7 on Oct 22 2001’, 10 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

40 HMAS *Bunbury* SIC ADA/LAB dated 200420Z Feb 02 ‘Request for Information – SIEV Incidents’, *Maritime Headquarters Minute, Request for Information – SIEV/SUNC Incidents*, 21 February 2002. This signal refers to the vessel as SIEV 06, however Rear Admiral Smith advised the Committee that it was SIEV 07, see *Transcript of Evidence*, CMI, 480.

41 Able Seaman Flenley, Electronics Technician HMAS *Bendigo*, and Able Seaman Levi, Bosuns Mate, HMAS *Bendigo*, ‘Service Police Statements in the Matter of the Boarding of the SIEV 07 on 22 October 2001’, 25 October 2001, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

42 *SIEV 07 Event Summary*.

43 *SIEV 07 Event Summary*, tabled by Rear Admiral Smith 5 April 2002.

SIEV 8

1.45 SIEV 8 was a boat of Vietnamese origin carrying 31 potential illegal immigrants, initially detected by a Coastwatch aircraft to the north-west of the Tiwi island group on 27 October 2001. HMAS *Wollongong* intercepted the vessel.⁴⁴

1.46 Initial boarding was uneventful, although the passengers became uncooperative when advised that they were to be escorted to Ashmore Island.

1.47 According to the Commanding Officer of the *Wollongong*

At approximately 1415, the [unauthorised arrivals] began staging passive protest by de-rigging their awning in the heat of the afternoon sun, sitting on the awning with children and refusing to allow holding party to re-rig the awning. Steaming party reported to me that [unauthorised arrivals] had become angry, were ripping clothes, shouting at the steaming party and gesticulating in a threatening manner.⁴⁵

1.48 The boarding party was able to determine that the agitation on the part of the passengers was caused by their belief that Ashmore was an Indonesian Island. Repeated assurances that it was Australian territory calmed the situation.

SIEV 9

1.49 SIEV 9, a 30-35 metre vessel of ferry-like appearance, was detected four miles inside the Australian Territorial Sea in the vicinity of Ashmore Island on 31 October, and issued a warning by HMAS *Bunbury*.⁴⁶

1.50 The *Bunbury* boarded the SIEV shortly afterwards, and determined that the fuel lines had recently been cut. A boarding party from the *Arunta* relieved the *Bunbury*, but was unsuccessful in repairing the engine.

1.51 On the morning of 31 October, a riot occurred during which the passengers attempted to kick out the sideboard panels of the vessel. At the same time, a man was observed leaning over the port guard rail with his arms extended holding an infant over the side of the vessel, apparently threatening to drop the child overboard.⁴⁷ The transport security element intervened and child was brought safely back onboard.

1.52 This was to be the first of several incidents upon SIEV 9 reported to involve threats to children, although witness statements in relation to the various incidents are

44 *SIEV 08 Event Summary*, tabled by Rear Admiral Smith 5 April 2002.

45 Lieutenant Commander Heron, Commanding Officer HMAS *Wollongong*, 'Statement in the matter of the Boarding of Suspected Illegal Immigrant Vessel (SIEV) No 8 on 27 October 2001', 9 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

46 *SIEV 09 Event Summary*, tabled by Rear Admiral Smith 5 April 2002.

47 LSCIS Pedersen, HMAS *Arunta*, 'Statement in the Matter of SIEV 09 Incident 2 – approx 1030 local 31 Oct01', 8 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

not always consistent as to the details of the events, as might be expected in the circumstances.

1.53 In the second of the reported incidents, later on 31 October, the same man who had earlier threatened to throw a child overboard was observed to be roughly holding a small infant, apparently threatening to throw it overboard and in a struggle with a woman who also had hold of part of the child.⁴⁸ Some witnesses report that the man held the child over the side of the SIEV before being restrained.⁴⁹

1.54 At the same time as the second incident, a report was made of an attempted strangulation of a child,⁵⁰ although a witness to this event described it as a ‘family domestic incident’, as a father prevented his daughter from joining in a riot by grabbing her near the throat region, pushing her to the ground and making her sit down.⁵¹

1.55 On 1 November, a riot broke out on the SIEV when an attempt was made to take it under tow. Five men jumped overboard, while a woman attempted to throw her young infant overboard, but was restrained.⁵²

1.56 In the final incident involving children, a passenger is reported to have threatened to throw a child overboard if not permitted to cook his own food.⁵³

1.57 Other incidents aboard SIEV 9 included a hunger strike, threats to boarding party members, and self harm. However it is the frequency and severity of incidents involving children which is notable in regard to this vessel. As summed up by the Commander of the Army contingent aboard SIEV 9 during its transit phase,

During the riots, self harm and threats to children became common place and were not seen to be out of the ordinary, almost a ‘modus operandi’.⁵⁴

1.58 SIEV 9 was eventually towed to Ashmore Lagoon. Once those aboard realised that the vessel would not be returned to Indonesia, ‘the level of tension and

48 ABEWL Newham, HMAS *Arunta*, ‘Statement in the Matter of SIEV 09 Incident 3 – approx 2000 local 31Oct01’, 8 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

49 Statement by 5803010 Lt Henry, 9 April 02, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

50 ABCIS Mc Queen, HMAS *Arunta*, ‘Statement in the matter of SIEV 9 Incident 3-2017 local 31Oct01’, 8 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

51 Statement by Lt Henry.

52 Rear Admiral Smith, *Maritime Headquarters Minute, Request for Information – SIEV/SUNC Incidents*, 21 February 2002.

53 ABCIS Bell, HMAS *Arunta*, ‘Statement in the matter of SIEV 9 Incident 5 -1739 local, 2Nov01’, 8 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

54 Statement by Lt Henry.

belligerence decreased significantly'.⁵⁵ The unauthorised arrivals were transferred to HMAS *Tobruk* on 9 November, and transported to Christmas Island.

SIEV 11

1.59 SIEV 11 was an 18 metre long shark boat with a crew of four Indonesians and carrying 18 potential illegal immigrants including fifteen adults, two teenagers and a baby⁵⁶.

1.60 The initial boarding by HMAS *Leeuwin* on 1 December was uneventful. The boat was taken in tow by HMAS *Wollongong* towards Ashmore Island while engine and steering defects were repaired, then commenced passage towards Indonesian waters. By 13 December the passengers had become agitated, asking for UN representation and expressing concern about returning to Indonesia. Some threatened self harm or to jump overboard,⁵⁷ but the boat was released without further incident off the Indonesian coast.

SIEV 12

1.61 SIEV 12 was intercepted by HMAS *Leeuwin* 30nm north-west of Ashmore Island on December 16, and boarded before sunrise on December 17.⁵⁸

1.62 The boarding initially proceeded calmly, before a group of young men started 'yelling and screaming and inciting others to resist us'.⁵⁹ According to one of the boarding party,

I saw several of the young males destroy the boom that was being used as a support for a tarpaulin on the foredeck of the SIEV. They then proceeded to tear apart the tarpaulin and they attempted to throw part of it over the side. I saw one of the [unauthorised arrivals] threaten two members of the boarding team with a piece of this boom. At the same time I saw flames coming from the fore part of the vessel. The ship's boarding party quickly extinguished the fire. I then saw several [unauthorised arrivals] dropping paper, cardboard and other items into the forward hold and noted they were attempting to ignite these items. I also saw several [unauthorised arrivals] freely jumping over the side of the SIEV whilst wearing lifejackets.⁶⁰

55 *SIEV 9 Event Summary*.

56 *SIEV 11 Event Summary*, tabled by Rear Admiral Smith 5 April 2002.

57 Lieutenant Mortimer, 'Statement in the Matter of SIEV 11', 10 April 2002, *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

58 *SIEV 12 Event Summary*, tabled by Rear Admiral Smith 5 April 2002.

59 Lieutenant Casey, 'Statement in the Matter of Boarding Party Operations SIEV 12', *Declassified Witness Statements for SIEVs 1-3 and 5-12*.

60 Statement by Lieutenant Casey.

1.63 Incidents upon the SIEV 12 during its escort back to Indonesian territorial waters included a report of children held over the side, two incidences of self harm, two occasions of sabotage of the vessel, lighting of fires on three occasions, and four incidences of jumping overboard.⁶¹

1.64 The vessel was successfully repaired and released near Indonesia on 20 December 2001.

61 *SIEV 12 Event Summary.*