

# **SUBMISSION TO SENATE SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT**

**By Dr Sam Bateman AM**

## **Introduction**

The so-called “children overboard” incident and the earlier affair of the MV *Tampa* have a number of features in common. Both incidents reflect unsatisfactory arrangements for policing our offshore areas, poor communications, and inappropriate direct intervention in the conduct of maritime operations by military officers and public servants not familiar with the maritime environment.

## **Surveillance and Enforcement**

Australia has a very large offshore jurisdictional area approximately half as big again as the Australian mainland. We face an increasing range of threats and situations in this area that demand an effective operational response. However at present, the maritime surveillance and enforcement task in Australia involves a multitude of agencies with overlapping responsibilities and powers. I believe that both the *Tampa* incident and the “children overboard” affair were indicative of a reactive and uncoordinated approach to policing our offshore areas.

An effective system of maritime surveillance and enforcement would have anticipated the requirement for increased surveillance and patrols off Ashmore and Christmas Islands and ensured that appropriate capabilities and procedures were in place to handle increasing numbers of “boat people”. However, the only asset for maritime surveillance and enforcement in the vicinity of Christmas Island immediately prior to the *Tampa* incident was a Coastwatch fixed-wing aircraft manned by civilian personnel with no capability for enforcement other than to relay messages. Subsequently the Government was in a reactive mode and an atmosphere of crisis and *ad hoc* decision-making seems to have pervaded later operations, including the “children overboard” affair. This created a situation where the Defence Force was dealing with an unfamiliar situation while subjected to pressure and interference from several different directions. If an effective system for maritime enforcement had have been in place it would have included the necessary “checks and balances” to prevent much of the confusion and disarray that subsequently arose.

The maritime surveillance and enforcement function has been the subject of numerous reviews by Government over the years but it is clear from the recent incidents that we have still not got it right. After an unfavourable performance audit of Coastwatch by the Australian National Audit Office (ANAO)<sup>1</sup>, the Joint Committee of Public Accounts and Audit (JCPAA) conducted a review of the Coastwatch function. The Committee presented

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<sup>1</sup> Auditor-General, *Audit Report No.38, 1999-2000, Coastwatch, Australian Customs Service*, 6 April 2000.

its report on 22 August 2001 concluding that the current system of maritime surveillance and enforcement was working well and that no major changes were required<sup>2</sup>. The deficiencies of the JCPAA report and its conclusions were cogently revealed only a few weeks after its release by the *Tampa* incident and the escalating “boat people” situation in the North.

*Australia's Oceans Policy* theoretically provides a policy framework in which maritime surveillance and response should be considered. This framework is based on principles of integrated oceans management that recognises the interrelationship of activities at sea and the importance of coordination. These principles should also be reflected in our national arrangements for maritime surveillance and response but current arrangements with Coastwatch, and its relationships with its client agencies, reflect an outmoded and discredited sectoral approach to oceans management. While this situation remains, maritime surveillance and enforcement operations are always going to be problematic with a tendency for *ad hoc* responses and for everyone “to get in on the act”.

## Communications

The Minister for Defence has acknowledged that there was a breakdown of communications within his portfolio with the “children overboard” incident<sup>3</sup> but I believe the causes of confusion are deeper than that. Developments in communications over the last decade or so, particularly email and mobile phones, have meant that an unofficial and informal channel of communications has developed within the Defence Force that to some extent runs counter to the formal chain of command and formal message channels. Frequently the informal channel will run ahead of the formal channel leading to the risk of “Chinese whispers” as information is passed from one person to another.

“Chinese whispers” clearly were happening during the “children overboard” incident as demonstrated for example, by the controversial phone conversations on 7 October 2001 between Commander Banks and Brigadier Silverstone and then further “up the line”. As now appears accepted, the conversation between Banks and Silverstone was the main source of the myth that was passed onto Air Vice Marshall Titheridge then to Ms Jane Halton and then seized upon by the political “spin doctors”. At the meeting of the People Smuggling Task Force on Sunday 7 October<sup>4</sup>, Group Captain Walker appears to have had the formal messages but by then, the informal channel had jumped ahead and “the horse had bolted”.

As Dennis Shanahan, Political Editor of *The Australian*, has suggested, “The entire episode was the result of senior professional military officers hurriedly transmitting information

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<sup>2</sup> Joint Committee of Public Accounts and Audit, *Report 384, Review of Coastwatch*, August 2001.

<sup>3</sup> John Kerin, “Communications breakdown, says Hill”, *The Weekend Australian*, The Nation, February, 16-17, 2002, p. 4.

<sup>4</sup> Marian Wilkinson, “Tampering with the evidence”, *The Sydney Morning Herald*, News Review, February 16-17, 2002, p.23.

orally and without confirmation”.<sup>5</sup> I agree with this assessment but in defence of the senior military officers, I must also say that they were responding to a heavily politicised environment created by aggressive, “shoot from the hip” bureaucrats in senior positions in Canberra.

What can be done about this situation? It is a consequence of technological advances and to some extent, it is inevitable that in a highly political charged situation, bureaucrats and ministerial staff in Canberra are going to seek information from the operational level on which to base their advice to the Minister. However, for officers at the operational level, these phone calls are highly disruptive. The same might be said within the Defence Force about phone calls from further up the operational chain of command. As Greg Sheridan has rightly observed in *The Australia*, these phone calls are “a dysfunctional aspect of modern military organisation”.<sup>6</sup> While Brigadier Silverstone, as Commander Northern Command, was notionally in command of border protection operations, he is an Army officer and not experienced in maritime operations. His phone call to Commander Banks<sup>7</sup> in the heat of the operation on October 7 would not have been helpful, particularly as Banks may have found the need to explain carefully some basic issues of seamanship, seaworthiness, life saving at sea, navigation and so on.

The present system of operational command and control in the Defence is a joint one and officers trained in one military environment (air, land or sea) can find themselves in command of operations in another environment. However, it is most important that they do not move personally into a mode of giving advice or asserting influence outside of their experience. I suggest that this was a feature of the phone calls between Silverstone, Titheridge and Halton. This is not to argue against joint command and control but rather to stress the importance of ensuring that protocols and standard operating procedures provide the necessary “checks and balances” with the expertise available in the various headquarters and to ensure primary adherence to formal channels of communication.

The communications situation was also confused by the strict regulations in place at the time regarding comments to the media by Defence personnel. If these restrictions had not been in place, the true situation may have emerged much earlier. Dennis Shanahan has condemned Commander Banks for not taking action earlier to correct the record<sup>8</sup>, but with the prevailing ban on media comment, it is somewhat unfair to be too critical of Banks. The ship’s companies of HMAS *Adelaide* and other RAN vessels must have been extremely frustrated to see their efforts not only not acknowledged in the media but actually misrepresented (for example, with the initial “fuzzing out” of the faces of naval personnel in the first photographs of the “children overboard” incident released to the media).

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<sup>5</sup> Dennis Shanahan, “A damning indictment of bureaucrats”, *The Weekend Australian*, The Nation, February 16-17, 2002, p. 4.

<sup>6</sup> Greg Sheridan, “Out of the blue, a big whopper”, *The Weekend Australian*, Inquirer, February 23-24, 2002, p.23.

<sup>7</sup> Marian Wilkinson, “A few good men”, *The Sydney Morning Herald*, News Review, February 23-24, 2002, p.27.

<sup>8</sup> See note 5 above.

## Maritime Awareness

The maritime environment is extremely complex and the professional conduct and direction of maritime operations require people with appropriate skills and knowledge. Effective surveillance and response requires people in operational and command positions with good maritime knowledge encompassing marine navigation, ship operations, vessel types, meteorology, fishing, marine jurisdictional zones, national legislation, international legal regimes, marine communications systems, SAR services, etc. There was nothing especially unique and unusual about either the *Tampa* incident or the “children overboard” affair, except for the level of political interest. They were relatively straightforward operational situations that were handled well by the naval vessels directly involved but much less so by the overall national system.

Both *Tampa* and the “children overboard” situation reveal frequent instances when Australian authorities were seemingly acting without the necessary maritime awareness. Significant examples are:

- The phone call between a senior official of the Department of Immigration and Multicultural Affairs (DIMA) and Captain Rinnen of the *Tampa* threatening him “in the same way as Coastwatch officers routinely try to halt the hulks used by people smugglers, boats flying no flags and acknowledging no owners”.<sup>9</sup> This treatment of a highly professional ship master from one of the largest shipping nations in the world has been widely criticised in the international maritime press.
- The apparent tendency of bureaucrats in Canberra to act ahead of appropriate legal and operational advice (both very necessary with maritime operations). This aspect has been commented upon in the media with the *Tampa* affair but it is also evident in the “children overboard” affair with the initial reaction of senior officials, particularly in the Department of Prime Minister and Cabinet.
- As already commented upon, the various phone conversations within Defence and between senior military officers and public servants.
- The initial release of the video and photographs of the “children overboard” incident. The video and photographs (with “doctored” faces and captions) were used to confirm that children had been thrown overboard. However, it was extremely naive to assume that the true story would not emerge. Most of the RAN seems to have had the “scuttlebutt” within a matter of days that children had not been thrown overboard and to the experienced eye, it was clear that first, the photographs actually depicted RAN personnel rescuing people and secondly, that the vessel shown in the video was in fact sinking.

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<sup>9</sup> David Marr and Marian Wilkinson, “They shall not land”, *The Sydney Morning Herald*, News Review, October 20-21, 2001, p.29.

## **Conclusion**

Australia faces a major challenge with policing the large offshore areas under national jurisdiction against the full range of potential threats. However, the *Tampa* affair and the “children overboard” incident have disclosed among other things that the present system of maritime enforcement and surveillance is unsatisfactory. The arrangements still in place in northern Australia for intercepting people attempting to enter Australia illegally by sea remain only temporary in nature. These arrangements are largely dependent on RAN vessels diverted from other duties and there have been no other significant changes to the overall system. Maritime surveillance and enforcement are important national tasks that demand a competent and professional response at all levels from the smallest operational unit to the highest level of Government rather than the *ad hoc* approach that exists at present.

It may well be that continuing to draw a distinction between civil surveillance and military surveillance is a luxury that Australia can no longer afford. This distinction may have made sense when the civil area of interest was mainly along the littoral. It may make less sense now that the civil surveillance area is much larger, the threat is greater and the surveillance systems required are more technologically advanced and expensive. Coastal and offshore surveillance and response are vital elements of national security.

## **About the Author of this submission**

Dr. Sam Bateman retired from the Royal Australian Navy in 1993 with the rank of Commodore and took up a position at Center for Maritime Policy, University of Wollongong where he is now an Associate Professor and Principal Research Fellow. His naval service included four ship commands and several postings in the strategic and force development policy areas of the Department of Defence in Canberra. He has written extensively on defence and maritime issues in Australia and the Asia Pacific. He is a member of the National Oceans Advisory Group in Australia and Joint Chairman of the Council for Security Cooperation in Asia Pacific (CSCAP) Working Group on Maritime Cooperation.

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