

SUBMISSION TO EXPERT PANEL

“The Panel will provide advice and recommendations to the Government on policy options available, and in its considered opinion, the efficacy of such options, *to prevent asylum seekers risking their lives on dangerous boat journeys to Australia*”.

My name is Tony Kevin and I live at 171 Urila Road, Burra, NSW 2620. I am a former Australian senior diplomatic officer (1968-98) and the author of two books on safety of life at sea of asylum seekers trying to reach Australia in small boats: *A Certain Maritime Incident: the sinking of SIEV X* (Scribe, Melbourne 2004) and *Reluctant Rescuers* (self-published, 2012) . My latest book *Reluctant Rescuers*, three copies of which I have sent to the Panel as attachments to this submission, challenges the assumption in the Terms of Reference (above) that irregular asylum-seeker boat journeys to Australia are necessarily dangerous.

This book presents and reviews reliable published data showing that over the past 14 years, 97% of asylum seekers and 99% of boats have arrived and been intercepted by Australian authorities safely. This outcome is a credit to the men and women working at the front line in ADF and Border Protection Command (BPC) aerial surveillance and maritime interception operations.

My book challenges the now-entrenched community belief that when things go wrong and asylum seekers die at sea, these are unavoidable deaths and are necessarily the fault of the people smugglers who send the boats. I believe that Australia’s intelligence-based and still largely secret border protection system must itself carry a large share of responsibility when people die at sea whose lives could have been saved under different BPC operational doctrines and

protocols. My argument is essentially as follows: (Conclusion chapter, pages 129-130):

‘The central issue for the border protection culture now is the need to make international safety-of-life-at-sea obligations explicit and binding on all Customs-coordinated SIEV intelligence collection and assessment operations, and on all BPC operations to surveil, detect and intercept SIEVs at sea.

It is just not acceptable for a BPC commander or his Customs superior officer to claim that BPC is not a search-and-rescue organisation. Of course it is—and BPC proves that it is every day, in its normal surveillance, detection and interception practice.

Duty-of-care safety-of-life-at-sea obligations should properly attach to the border protection system as a whole, broadly defined to include Australia’s intelligence gathering and assessment agencies’ work, and from the time a SIEV leaves its last embarkation point in Indonesia bound for an Australian destination, to the time its passengers enter into Australian onshore custody

... If Australia is to go on conducting what all our governments assure us are ‘lawful’ people-smuggling intelligence-gathering and disruption operations in Indonesia, operations that right-thinking Australians are or should be agreed must not result in putting people’s lives at sea at greater risk than if these operations were not being carried out, then it seems clear that the Australian border protection system as a whole must accept expanded responsibilities for safety of life at sea in the waters to our north.

Knowledge—intelligence—creates a moral necessity of action whenever things go wrong on these voyages, or whenever the risk of their going wrong increases as a result of adverse dangerous weather degrading radar and aerial surveillance.’

The problem seems to be worsening. In five known major maritime sinkings or disappearances over the past three years, around 450 people are known to have died or gone missing presumed dead – more than on SIEV X in 2001. I refer to the two lost boats in 2009 and 2010, the SIEV 221 shipwreck at Christmas Island in December 2010, the *Barokah* foundering in December 2011, and the capsized boat on 21 June 2012. In all five cases, Australia could and should have done more to protect human life in peril at sea. My book *Reluctant Rescuers* sets out detailed public data supporting this contention.

Since my book's recent publication in June 2012, important new media-sourced and FOI-based information has emerged on the *Barokah* and on the 21 June capsized boat. I support Marg Hutton's submission to the Panel summarising key facts in these cases.

It is clear now that Australia's present rescue-at-sea practice in the international waters between Indonesia and Christmas Island is inconsistent and *ad hoc*. It is rescue by choice, not in accordance with Australia's legal maritime rescue obligations under international SAR and SOLAS conventions. Fortunately, most of the time AMSA and BPC do rescue boats in distress in these waters, otherwise the death toll would be much higher.

I recommended in my new book (page 129) that the responsible Minister for Customs [Jason Clare] could dust off the then-agreed but never implemented recommendation of the 2002 Senate Committee into a Certain Maritime Incident that:

International and legal safety obligations be given prominence in all mission tasking orders for ADF operations, especially in law-enforcement operations involving non-combatants

I hope the Panel could review and support this recommendation, to set down a firm public marker against the present creeping debasement of SOLAS rescue-at-sea doctrine and practice in respect of asylum-seeker boats reporting or observed to be in distress in international waters north of Australia. **Otherwise, the illegal and the unethical will become normalised in Australian operational doctrine and practice, to the operational demoralisation of our Navy.** Already there is a developing public confusion, with widespread views expressed that distress calls from asylum-seeker boats are likely to be phoney and should not attract the normal Australian SOLAS response. Every distress call in international waters needs to be properly investigated by those nations or vessels with capacity to do so.

Essentially I contend that **policy to deter irregular asylum-seeker voyages should have nothing to do with correct Australian rescue-at-sea doctrine and practice. The latter areas must not be allowed to be politicised.** If they are, people will continue to die at sea who could have been saved, using present ADF and Customs intelligence and interception resources. The problems, as uncovered by the SIEV 221 coronial inquest (on this, see my Chapter 6) and the history of the 2009 lost boat, are in the present doctrines: intelligence on possibly incoming boats is not being used in the way it should be used to save lives.

When things do go wrong, as they occasionally do, there have been unseemly attempts by Customs and Border Protection and AMSA to hide from the bereaved families and the public the facts of Australia's avoidable failures to save life.

I will be happy to speak further on any of these matters in public session if the Committee wishes to call me.

Tony Kevin, 16 July 2012