



17 December 2009

COMCARE TO LAUNCH COURT ACTION OVER MALU SARA TRAGEDY

Australia's federal workplace safety regulator, Comcare, is to prosecute the Department of Immigration and Citizenship (DIAC) and a boat manufacturer, over the deaths of five people onboard the immigration response vessel, the *Malu Sara*, in the Torres Strait in 2005.

Comcare CEO Mr Paul O'Connor said Comcare's prosecution under federal workplace safety laws will allege that DIAC had failed to protect the health and safety of its employees and other people and that the boat manufacturer, Subsee Explorer Pty Ltd, had failed to ensure the vessel was safe.

"The loss of life onboard the *Malu Sara* was a tragic event and I extend my deepest sympathy to the family and friends of the deceased.

"Comcare is currently discussing the outcomes of its investigation and this enforcement action with the families of the people who lost their lives, and the wider Torres Strait community."

Mr O'Connor said that with Comcare having now investigated the incident, it was important that lessons were learned so that similar tragedies could be prevented.

Two of the passengers were DIAC employees. There were also two adult passengers and a child passenger. In February 2009, a coronial inquest found that all five people died in the waters of the Torres Strait on or between 15 and 20 October 2005 when the *Malu Sara* went missing.

The proceedings will allege that DIAC failed in 2005 to take all reasonably practicable steps to protect the health and safety at work of its employees. Further, Comcare alleges that DIAC breached relevant legislation by failing to take all reasonably practicable steps to ensure that persons at or near a workplace under its control were not exposed to risk to their health or safety.

Mr O'Connor said Comcare's investigation found that comprehensive failures in DIAC's systems for procurement, training and risk management ultimately contributed to the deaths of the five people.

Comcare welcomes the collaborative approach taken by DIAC during the investigation.

Comcare is also to commence proceedings against the manufacturer and supplier of the *Malu Sara*, Subsee Explorer Pty Ltd. Comcare will allege that Subsee breached its duties under the plant provisions of the federal workplace safety laws by failing to ensure the vessel was supplied in a safe condition.

The maximum penalty for these types of legislative breach by a body corporate is \$242,000.

The Comcare investigation concluded a former DIAC Regional Manager had breached duties as an employee under the federal workplace safety laws. However, no prosecution will be commenced at this point due to the difficulty in substantiating the breach through court proceedings based on the admissible evidence available.

Mr O'Connor said the prosecutions sent a message to all public and private employers that protecting workers from harm at work was a fundamental obligation, and must be treated with the utmost seriousness.

"Employers must put in place strong safety systems and continually review their effectiveness. Equally, suppliers and manufacturers of plant must be aware of their serious obligations under workplace safety laws."

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