



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Reference: Certain maritime incident

MONDAY, 25 MARCH 2002

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SENATE
SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Monday, 25 March 2002

Members: Senator Cook (*Chair*), Senator Brandis (*Deputy Chair*), Senators Bartlett, Collins, Faulkner, Ferguson, Mason and Murphy

Senators in attendance: Senators Bartlett, Brandis, Collins, Cook, Ferguson, Faulkner and Mason.

Terms of reference for the inquiry:

For inquiry into and report on:

- (a) the so-called 'children overboard' incident, where an Indonesian vessel was intercepted by HMAS *Adelaide* within Australian waters reportedly 120 nautical miles off Christmas Island, on or about 6 October 2001;
- (b) issues directly associated with that incident, including:
 - (i) the role of Commonwealth agencies and personnel in the incident, including the Australian Defence Force, Customs, Coastwatch and the Australian Maritime Safety Authority,
 - (ii) the flow of information about the incident to the Federal Government, both at the time of the incident and subsequently,
 - (iii) Federal Government control of, and use of, information about the incident, including written and oral reports, photographs, videotapes and other images, and
 - (iv) the role of Federal Government departments and agencies in reporting on the incident, including the Navy, the Defence Organisation, the Department of Immigration and Multicultural Affairs, the Department of the Prime Minister and Cabinet, and the Office of National Assessments; and
- (c) operational procedures observed by the Royal Australian Navy and by relevant Commonwealth agencies to ensure the safety of asylum seekers on vessels entering or attempting to enter Australian waters.
- (d) in respect of the agreements between the Australian Government and the Governments of Nauru and Papua New Guinea regarding the detention within those countries of persons intercepted while travelling to Australia, publicly known as the 'Pacific Solution':
 - (i) the nature of negotiations leading to those agreements,
 - (ii) the nature of the agreements reached,
 - (iii) the operation of those arrangements, and
 - (iv) the current and projected cost of those arrangements.

WITNESSES

BANKS, Commander Norman, Royal Australian Navy 156

HAWKE, Dr Allan Douglas, Secretary, Department of Defence 1

SHACKLETON, Vice Admiral David, Chief of Navy, Royal Australian Navy 55

Committee met at 9.40 a.m.**HAWKE, Dr Allan Douglas, Secretary, Department of Defence**

CHAIR—I declare open this meeting of the Senate Select Committee on a Certain Maritime Incident. Today the committee will begin its hearings in relation to its inquiry, the Senate having agreed to the terms of reference of this inquiry on 13 February 2002. The reporting date for our inquiry is 16 May 2002. The terms set by the Senate are available from secretariat staff.

Today's hearing is open to the public. This could change only if the committee decides to take any evidence in private. The committee has authorised the broadcasting of the public aspects of proceedings. The hearing will last until around 10.30 p.m. and will resume at 9.00 a.m. tomorrow.

This inquiry is dealing with an issue that has been the subject of an extraordinarily high level of press attention and public comment. It has also resulted in considerable political debate in parliament and elsewhere. The committee is unanimous in its determination to produce a report which is as definitive and as thorough as possible and which is grounded in the facts, key statements, documents and accounts of those who are best placed to provide such material. The select committee is working to an extremely tight time frame, but is committed to a thorough and judicious examination of the issues. We shall be led by the evidence and we will construct the future course of our hearings to sustain a sound evidentiary approach to our business.

We shall deal as expeditiously as possible with witnesses but the committee is unanimous in its view that each witness shall be questioned until the committee is satisfied that its line of inquiry with that witness is exhausted. To that extent the times listed on the advertised program are indicative only. This may mean some witnesses are delayed. We apologise in advance should this occur. To help minimise lost working time the committee has set up computer, phone and fax facilities in the adjoining room and a member of the Defence Liaison team is present in the hearing room to coordinate and anticipate the presence of Defence witnesses.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. Under the Parliamentary Privileges Act 1987, the giving of evidence and the production of documents by a witness has the same legal status as a senator's participation in Senate proceedings and therefore attracts the very wide protection which is given to proceedings in parliament against prosecution, suit, examination, or questions before any court or tribunal. The action of a witness in giving evidence and producing documents and the evidence given therefore cannot be used against the witness, in any sense, in subsequent proceedings before a court or tribunal. Standing order 181 declares:

A witness examined before the Senate or a committee is entitled to the protection of the Senate in respect of the evidence of the witness.

This is a declaration by the Senate that it will use its powers to protect witnesses against any adverse consequences arising from their giving evidence. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

If at any stage a witness wishes to give part of their evidence in camera they should make that request to me as chair and the committee will consider that request. Should a witness expect to present evidence to the committee that reflects adversely on a person, the witness should give consideration to that evidence being given in camera. The committee is obliged to draw to the attention of a person any evidence which, in the committee's view, reflects adversely on that person, and to offer that person an opportunity to respond.

An officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy. However, they may be asked to explain government policy, describe how it differs from alternative policies, and provide information on the process by which a particular policy was arrived at.

I now wish to place on record some facts regarding the approach of the government to this inquiry. Last week, reports from several media outlets indicated that cabinet had issued a directive to departments that they were not to make written submissions to the inquiry, and that ministerial staff would be instructed not to give evidence. As a consequence, I wrote to the Department of the Prime Minister and Cabinet seeking clarification of the scope and nature of the reported cabinet directive. The committee was advised in writing on 21 March that—and I quote from the PM&C secretary's letter:

- departments and agencies will not provide written submissions;
- officials will attend if called but staff under the Members of Parliament (Staff) Act at the relevant time will not.

In response to written invitations issued by the committee earlier, a number of departments had indicated that they would be providing written submissions to the committee. None have been received so far, even though the due date the departments volunteered for submissions has passed. Some departments have advised the committee they will no longer be making the submission they had earlier advised would be provided. Let me make this comment: it will be of considerable assistance to all parties, and to the government, if this inquiry can complete its work efficiently and within the allotted time. I therefore hope that a cooperative approach can be taken and our work not unnecessarily hindered.

Witnesses will be asked to make an oath or affirmation. The committee has agreed to requests from certain witnesses that they be accompanied by counsel. For the convenience of all, where this is requested the committee has agreed that counsel may be seated at the witness table with the witness. However, counsel has no right to address the committee, nor will the committee address questions to counsel.

I note that, at his request, Senator Murphy, a member of this committee, has sent an apology for today's and tomorrow's hearings.

Welcome, Dr Hawke. Before I ask the committee members if they have any questions they may wish to put to you, do you have any comments to make by way of an opening statement?

Dr Hawke—I do. I wanted to just spend a few minutes on some background. The second part of my statement relates to my direct involvement in this matter. Without going into the detail, I want to highlight six aspects that are important to the overall context from Defence's point of

view. Although these touch on operational issues, which are more properly the province of the Chief of the Defence Force, I believe they are worth recording now, given that Admiral Barrie is not scheduled to appear until later in the proceedings.

First, Defence's role—and Navy's in particular—in support of the government policy was to detect and prevent the entry of illegal immigrants attempting to land by boat on Australian shores. This is an appropriate role for the Australian Defence Force in defending Australia and its national interests. It was specifically recognised in the government's Defence white paper, along with illegal fishing, terrorism and other issues. Second, for the sailors at the front line of this role, their operational imperatives were clear and their perspectives have been quite different from others, including those involved in the policy framework in Canberra. Third, some of the reports provided by the commanding officer and his crew were in circumstances that were often chaotic, and where ensuring that no lives were lost became their pressing priority. To the credit and the honour of the crew, not one life was lost in this case.

Fourth, the initial oral report from the commanding officer was passed rapidly up the line within, and outside, Defence. It may or may not have been adequately caveated. Those directly involved will be able to respond to that. The information passed on from Defence to others was accepted, notwithstanding the fraught circumstances from which the initial advice was derived—that is, from HMAS *Adelaide*, whose crew were in the middle of a difficult and far from typical naval operation.

Fifth, attempts to correct the view that children had been thrown overboard were affected by significant reliance on oral communication, confusion over the nature of photographic and video evidence, and the distribution of the commanding officer's message of 10 October 2001. An obvious difficulty in assessing the evidence in the issues now before the committee is that many participants have different perceptions of the same events. They have different recollections of what was said, to whom, what was heard, and when. There also seemed to be a perception that, while evidence to support the claim that a child or children had been thrown overboard had not yet been found, there was still a possibility that such evidence existed and had not yet been located. Sixth, after an initial flurry, media interest and reporting on the matter all but disappeared from around 12 October. This, almost certainly, affected the amount of attention that was given to it within Defence at the time.

I would now like to touch, very briefly, on a few aspects of my direct involvement in the 'children overboard' imbroglio up to the time of the 10 November election. On 11 October, I rang Ms Jenny McKenry, the head of our Public Affairs and Corporate Communication Division. In response to my question, she told me that the photographs that had been published in the media that day had been taken on 8 October and that they related to the rescue of people after the sinking of suspected illegal entry vessel No. 4. They could not, therefore, relate to the claims about children being thrown overboard on 7 October.

Ms McKenry went to say that on the previous day, as soon as she and the military public affairs adviser, Brigadier Gary Bornholt, had become aware that the photos had been released without captions, she had asked Brigadier Bornholt to contact Minister Reith's media adviser, Mr Ross Hampton, urgently and explain to him the context of the photographs—that is, that they had been taken on 8 October, the day that the SIEV4 sank, not the day before. Brigadier Bornholt had contacted Mr Hampton on his mobile phone that afternoon to this effect. Mr

Hampton queried Brigadier Bornholt's advice. Brigadier Bornholt went away and checked his advice, then rang Mr Hampton back and left a message on his mobile that the previous information provided about the photos was correct.

CHAIR—Dr Hawke, what was that date?

Dr Hawke—This was 11 October. Mr Hampton did not return the call. We agreed that Ms McKenry should immediately contact Michael Scrafton, the senior adviser in the minister's office, to inform him of the misrepresentation. I also asked that this advice be put in writing and, later that day, I received a copy of the email sent to Mr Scrafton.

On the morning of 8 November, Air Marshal Houston, who had been Acting Chief of the Defence Force, informed me of a discussion that he had had with Minister Reith on 7 November, in which the air marshal had said that there was nothing in the evidence he had seen to show that children had been thrown overboard.

At the Press Club luncheon address on that same day, 8 November, the Prime Minister was asked about the photographs purporting to support the view that children had been thrown overboard. The Prime Minister's reply mentioned an Office of National Assessments report. I asked to see the ONA report and any Defence intelligence product or written operational advice about this matter. It transpired that Defence had not published any intelligence material indicating that children had been thrown overboard, so the ONA report could not have been derived from such sources. I confirmed that this was indeed the case again, the next morning, with Mr Shane Carmody, the deputy secretary of our intelligence and security group.

Late on the afternoon of 8 November, Mr Moore-Wilton telephoned to ask whether I was aware of the Chief of Navy's comments in Western Australia on the issue. I replied that I was, and that a clarifying statement by Admiral Shackleton was imminent. I rang Mr Moore-Wilton a little later to say that the Chief of Navy statement had been released, and faxed a copy to Mr Moore-Wilton's office. On the afternoon of 9 November, I returned the telephone call of the secretary of immigration and multicultural affairs of the previous afternoon. He had rung to ask about the Chief of Navy's remarks, but by the time I returned his call he was aware of Admiral Shackleton's later media statement.

With the advantage of hindsight, I have asked myself whether I could have or should have taken a more active involvement. I certainly could have. Whether I should have remains an open question in my mind, with one clear exception. The clear exception where I might well have done more is my involvement in the matter of the photographs. In retrospect, I should have discussed that issue directly with and provided clear written evidence to Minister Reith. If Defence's efforts have not lived up to the expectations of others, I believe this has nothing to do with the capacity and endeavour of the individuals who have been involved. They seem to have done their level best. Our shortcomings may well, however, have something to do with the adequacy of Defence's administrative arrangements, for which the Chief of the Defence Force and I are jointly responsible.

Mr Chairman, may I thank you and the committee for allowing me the time to make this statement. There are some other matters I have not touched on that you may wish to pursue.

These include the videotape, the CDF-secretary roles and interaction and the administrative changes proposed in the light of the lessons we have learned from this matter.

CHAIR—Thank you, Dr Hawke. You were reading your statement, as I apprehend it.

Dr Hawke—Yes, I was.

CHAIR—Would it be possible to make your statement available to the secretariat so that we do not have to wait for the *Hansard*, and we can have it circulated to the committee forthwith?

Dr Hawke—Absolutely.

CHAIR—We have had a discussion up this end about the batting order, and I now call Senator Faulkner.

Senator FAULKNER—I was not involved in that discussion, but I am more than happy to open the batting. That is fine.

CHAIR—The Deputy Chair and I discussed it.

Senator FAULKNER—Dr Hawke, if I could just touch on one issue to start with. You were not interviewed by either Major General Powell or Ms Bryant for their reports. Do you have a view about the appropriateness or otherwise of the fact that your views were not sought?

Dr Hawke—I suspect that they were focused on the fact that it was an operational matter, which was properly in the province of the Australian Defence Force side of the organisation.

Senator FAULKNER—Do you think that some of the information that you have provided to the committee might well have been usefully included in either of those two reports?

Dr Hawke—My recollection from the reports is that those issues were dealt with pretty comprehensively by Jenny McKenry, and that Ross Hampton, the media adviser, had also put his side, in particular, to Ms Bryant.

Senator FAULKNER—So you have had an opportunity to see the witness statements that were made for Major General Powell's report?

Dr Hawke—No, I have not done that. I have read the reports, of course, and I have seen some related material, but I have not read any witness reports.

Senator FAULKNER—So in fact you would not be able to say whether these might necessarily have been adequately dealt with by Mr Hampton?

Dr Hawke—I think Ms Bryant's report deals pretty well with the matter.

Senator FAULKNER—Have you had any subsequent discussions with either Major General Powell or Ms Bryant?

Dr Hawke—No.

Senator FAULKNER—You have been able to detail for the committee your own personal involvement, and we appreciate that information. Do you yourself tend to take records of internal telephonic communications, meetings and the like? I am wondering what your own practice was in relation to these interactions.

Dr Hawke—No, I do not. I have from time to time, but I do not do that as a matter of course.

Senator FAULKNER—In relation to these particular matters—the events of 11 October specifically and 8 and 9 November—did you make any contemporary records at those times?

Dr Hawke—No, I did not. I should just mention in relation to what you said that there are a few issues I did not touch on—as I said—at the end of my statement, like the videotape et cetera, where I have had a direct involvement.

Senator FAULKNER—I am sorry, I did not hear what you said.

Dr Hawke—You mentioned that I had placed on the record my precise involvement—where I had been directly involved—but, as I said at the end of my statement, there were a few issues where I was involved but I did not cover—

Senator FAULKNER—I appreciate that. Would you be able to say to the committee precisely when you personally became aware of suggestions or claims that children had been thrown overboard from SIEV4?

Dr Hawke—When they had?

Senator FAULKNER—When you became aware of those claims.

Dr Hawke—I do not recall precisely when that was, but I do recall hearing something to that effect. What is not clear to me in retrospect is whether that related to 7 October or 8 October.

Senator FAULKNER—Are you aware at all of how those claims might have come to your attention? I assume it would have been from non-Defence sources, given the nature of your evidence—but that is an assumption on my part, and it might be just —

Dr Hawke—No, it may well have come about in the course of my day-to-day dealings with Admiral Barrie, where he mentioned the issue and various developments to me, or it could have arisen at one of the strategic command group meetings I attend, which CDF has on a regular and irregular basis depending on what issues are running.

Senator FAULKNER—So you cannot tell us when you were first aware of the claims that children had been thrown overboard, but you were aware of those by—I assume—11 October. Would that be right?

Dr Hawke—Yes, that is correct, because I certainly was involved in correcting—or trying to correct—the record on the photographs, that they did not show what they were supposed to show; that they were about 8 October and not 7 October.

Senator FAULKNER—But there are two different issues here, aren't there, really? One is about the claims of children being thrown overboard and the accuracy or otherwise of those claims, and the other is the issue of whether the photographs themselves related to children who had allegedly been thrown overboard.

Dr Hawke—Correct.

Senator FAULKNER—I am trying to draw a distinction, if you like, between those two key issues.

Dr Hawke—I was aware of the issue, maybe from reading the newspapers of the day. I was also aware at the time that this was a set of circumstances different from previous such vessels in that the people had life jackets on, and I do not recall how that came to my attention either.

Senator FAULKNER—I hear what you say. You are saying that you are aware that the photographs are not photographs of children who were thrown overboard. You are quite clear on that point.

Dr Hawke—I am quite clear.

Senator FAULKNER—What I am trying to understand is whether you were also clear at that point as to whether children had or had not been thrown overboard.

Dr Hawke—I was not clear about that, because I distinctly recall Admiral Barrie continuing to believe in the truth of the original report that a child or children had been thrown overboard.

Senator FAULKNER—How were you aware of Admiral Barrie's position?

Dr Hawke—From our daily discussions when he was about the place.

Senator FAULKNER—So your practice is to have a daily consultation or meeting with CDF, is it?

Dr Hawke—No, they are more informal than that. You will recall that this was an operational matter that was under the direct command of CDF, and I do not believe the secretary of the department should interfere in his role as commander of the Defence Force or as principal military adviser.

Senator FAULKNER—Are you now satisfied that children were not thrown overboard in relation to the SIEV4 incident?

Dr Hawke—I do not know the answer to that question. I suspect that is what the committee is here to try to establish.

Senator FAULKNER—With respect, the Powell report and the Bryant report are quite clear on that issue.

Dr Hawke—Yes, they are; I am not.

Senator FAULKNER—Admiral Barrie, I think, is now clear on that issue.

Dr Hawke—Yes.

Senator FAULKNER—But you are not?

Dr Hawke—No; and, personally, I do not think it is relevant.

Senator FAULKNER—I do not understand what you mean when you say you do not think it is relevant.

Dr Hawke—This was an operational matter affecting the chain of command.

Senator FAULKNER—So when did you become aware that there were concerns about the accuracy of claims that children had been thrown overboard?

Dr Hawke—I do not recall that, either. As I have said to you, this was an operational issue so I did not put a lot of time or effort into it.

Senator FAULKNER—We are not getting very far, Dr Hawke.

Dr Hawke—I do not think you can, because it is not my role.

Senator FAULKNER—But, with respect, this has been a matter of quite considerable public interest now for a very long period of time. I am merely trying to establish when you might have become aware of those concerns about reports that children had been thrown overboard. You obviously knew by 8 November, didn't you?

Dr Hawke—Not necessarily. My intervention there was because those photographs did not show what they were purported in the media to have shown. Jenny McKenry works jointly to me and to the Chief of the Defence Force, so I felt I had an obligation to check that.

Senator FAULKNER—I appreciate the two issues. I do understand there is the question of the incident to which the photos relate, and there is the other more general issue—or the primary issue if you like—the actual claims themselves, which is what I am concentrating on at the moment.

Dr Hawke—Senator, if I can help you: a lot of people outside Defence do not understand why I was not involved in that, but the fact is that it was an operational matter run by the Chief of the Defence Force through the chain of command. There are people outside of Defence who do not even understand that the Chief of Navy is not in the chain of command and that he does not command Navy operations, that the CDF does that.

Senator FAULKNER—Yes. But you do have, surely, a responsibility as secretary of the department to ensure that your minister receives accurate and timely advice. I know that you do accept that responsibility.

Dr Hawke—I do.

Senator FAULKNER—And, of course, you also have a responsibility to ensure that a minister would not wittingly or unwittingly mislead the public, so I do not know that you can wash your hands of that.

Dr Hawke—I accept that, but the point I am making to you is that this was an operational matter run by CDF. He was in daily contact with the minister. So he was providing the advice and discussing these matters with the minister, not me. I do not think I have a role in it—and I suspect if I attempted to, the ADF would be up in arms about it.

Senator FAULKNER—But I do not doubt for one minute that you treat carefully your responsibilities. What you are saying to the committee is that you do not believe it is appropriate for the secretary of the Department of Defence to trample into an operational matter—I think that is what you are saying to us.

Dr Hawke—That is correct.

Senator FAULKNER—In other words, you are saying you are not part of the chain of command.

Dr Hawke—That is correct. These issues are set out quite clearly in both the legislation and the directive that the minister gives to the secretary and the Chief of the Defence Force.

Senator FAULKNER—I accept that. But I think you would say, wouldn't you, that it is your role to ensure that the government as a whole—but your minister in particular, the Minister for Defence—does not get into hot water as a result of false claims that may be made about an operational matter? Would you accept that?

Dr Hawke—Yes, I accept that. But CDF is the principal military adviser. He held to the original view right up until almost the end of February, wasn't it?

Senator FAULKNER—I do not what know the date was. There was a press conference, as you would appreciate, when CDF—

Dr Hawke—I think it was 27 February.

Senator FAULKNER—I do think a lot of people will find it quite extraordinary that even now, as secretary of the Department of Defence, you are not able to say to us on this key issue of whether children were thrown overboard—given the findings of the Powell and Bryant reports, given the statements of senior officers in the Department of Defence; the leadership of the ADF is a better way to describe it—that you have satisfied yourself about the truth or otherwise of the claims that children were thrown overboard.

Dr Hawke—I think that is exactly the purpose of this committee's work, and I would like to hear or see what some of the witnesses before this committee have to say. I have read Bryant's report and Powell's report and I understand clearly the conclusions that they come to on the matter but, to this stage, I am not convinced that we have heard the whole story.

Senator FAULKNER—But how does this approach on the question of whether or not children were thrown overboard fit with the role that you did play in relation to the question of whether the photographs related to an incident on 7 or 8 October? It might be helpful for us if you could explain to the committee what appears to be a different approach in relation to that matter.

Dr Hawke—On that matter, these were purporting to be photographs of the 7th. I asked Jenny McKenry—who works, as I say, jointly to me and to CDF—about the veracity of that, and she told me that they did not represent the incidents of 7 October; they related to 8 October. So I took a pretty direct role in trying to have the record corrected on that issue. That issue, I think, was clearly slightly different from an operational command issue.

Senator FAULKNER—Were you concerned about the question of the photographs, as to the information that the government was putting out about those matters?

Dr Hawke—Yes, and I made those points that they were not what they purported to be—or were put about as being. But I do not think that impinges on my view that the operational matters are a matter for CDF and the chain of command.

Senator FAULKNER—Why did you take the initiative to ring Ms McKenry?

Dr Hawke—Because I was concerned about media reporting that morning as to whether or not they were of the 7th or the 8th.

Senator FAULKNER—So it was the actual concerns in the media.

Dr Hawke—Yes. I wanted to know whether those photographs had been correctly represented, and they weren't.

Senator FAULKNER—So when does the operational matter actually end in relation to the 'children thrown overboard' issue?

Dr Hawke—That is a matter for CDF, I think.

Senator FAULKNER—Can you advise us?

Dr Hawke—No, I do not have a view about that. I take a very strict approach to not interfering in CDF's role as principal military adviser or in operational issues. That is not to say that I have not given advice from time to time in the Strategic Command group or raised questions. But they are properly matters for the Chief of the Defence Force. If I were to go any further it would give weight to claims from time to time about civilian interference or control in

the Australian Defence Force. Some people misunderstand that issue with civil control of the Defence Force.

Senator FAULKNER—How do you define ‘operational matter’ here anyway?

Dr Hawke—It is a matter where CDF actually is running an operation, as this was.

Senator FAULKNER—So it is the direction of operations, isn’t it?

Dr Hawke—Yes, he directs them, and he has two advisory committees to help him do that. On non-time-critical matters he generally uses what is called the Chiefs of Services Committee, and on time-critical issues he generally uses the Strategic Command group to provide the advice to him. He takes the decisions—he is the principal military adviser—and he conducts the operations, normally through the Commander of Australian Theatre.

Senator FAULKNER—I think I am aware of the fact that you have put some effort into ensuring that the Defence Force understands its responsibility to work for the minister and the cabinet—for the government, in other words—haven’t you?

Dr Hawke—I have.

Senator FAULKNER—So this issue is, I think, an important one. I still do not understand where the operational matter begins or ends in relation to the question of photographs.

Dr Hawke—I have also written about the difference between the CDF role and my role and our joint responsibilities. I would be happy to give you a copy of that paper, if you like.

Senator FAULKNER—Yes, that might be helpful—but it is not a broad-brush issue of ‘no role in operational matters’, is it? It is more that, in terms of the direction of operations of the ADF and the three services, you have no role. Isn’t that a better way of explaining it?

Dr Hawke—That is my view.

Senator FAULKNER—So if that is the distinction, let us come back to the two incidents: first, the issue of whether the photographs related to kids being thrown overboard—in other words, the events of the 7th or the 8th, on the one hand—and, secondly, children being thrown overboard. Can you explain that distinction in terms of those two events?

Dr Hawke—My distinction is that whether or not people were thrown overboard was an issue for the chain of command. The issue relating to the photographs was my reading of the media reporting of the morning of the 9th—it must have been the 10th, I think. The media reporting was suggesting that these photographs were of events that occurred on 7 October, when it was alleged that people were thrown overboard. I wanted to check for myself whether that was the case or whether they related to the day of 8 October, which was when the vessel sank.

Senator FAULKNER—But you definitively knew by 11 October effectively that the photographs were a fraud.

Dr Hawke—I knew then that the photographs were of events on 8 October, not 7 October.

Senator FAULKNER—And I think you do understand, don't you, that that matter went uncorrected through the whole of the election campaign, which ended on 10 November?

Dr Hawke—I am aware of that, yes. And I was, of course, aware of the direct relevance of that to the 'children overboard' issue.

Senator FAULKNER—Yes.

Dr Hawke—And, as I said to you, I feel that I could have done more on that issue by talking directly to the minister and by providing him with clear, written advice to that effect. Relying on the staffers in this case simply was not good enough, so I have learned a very hard lesson from that.

Senator FAULKNER—With respect, Dr Hawke, don't you think that you yourself have a responsibility in those circumstances, particularly given that we are talking about events that took place while the caretaker conventions were in place? Don't you think that you have a responsibility to ensure that the public record is corrected?

Dr Hawke—I have a responsibility and accountability to the minister, yes. That is what I am saying: I should have discussed it directly with him and I should have written to him about it. I accept that.

Senator FAULKNER—Do you think your responsibility goes just to correcting the record with the minister and to providing formal advice to the minister?

Dr Hawke—Yes, I am accountable to the minister.

Senator FAULKNER—I appreciate that; of course you are accountable to the minister. Do you think there is an issue here in relation to your responsibilities and your role, given that the caretaker conventions were in place during this particular period? Do you think that brings any additional responsibilities to the secretary of the department in that circumstance?

Dr Hawke—I think it underscores even more that I should have discussed it with the minister or written to him at the time.

Senator FAULKNER—I would like to return to the events of the 11th, which you outlined to the committee a little earlier in your opening statement. You yourself took the initiative to ring Ms McKenry.

Dr Hawke—I did.

Senator FAULKNER—I think you say that that is because of the media questions about this issue at the time. That is the reason that you took that particular initiative.

Dr Hawke—Yes.

Senator FAULKNER—Can you say to us whether you discussed at that time these issues with CDF in your regular but informal discussions with him?

Dr Hawke—No, I do not recall talking to him about that. As far as I was concerned, I had handled it and moved on.

Senator FAULKNER—As you say, it is your practice not to take records or notes at those particular discussions. What do you do when there is an issue that requires some follow-through?

Dr Hawke—Normally, I would follow it up. What sort of issue do you mean?

Senator FAULKNER—I am asking in the broad. You do not take notes of the discussions or the like.

Dr Hawke—Normally, I would just follow it up.

Senator FAULKNER—You just remember what takes place and follow up. You have a good memory, no doubt.

Dr Hawke—It is like everybody else's; it is fallible.

Senator FAULKNER—Apart from your contact with Ms McKenry in relation to the photographs, did you request information from any other areas in the department, or was there any follow-through by you with anyone else apart from Ms McKenry?

Dr Hawke—On this issue?

Senator FAULKNER—Yes.

Dr Hawke—No. There was a later issue. Do you mean around the time?

Senator FAULKNER—I was speaking specifically about the time in my question.

Dr Hawke—There is a later issue which relates to that. Do you want me to address that?

Senator FAULKNER—If could assist us with that, that would be helpful.

Dr Hawke—This occurred on the afternoon of 15 February this year, when Brigadier Gary Bornholt called on me to say that he had now read Major General Powell's report, following its tabling in the parliament. Brigadier Bornholt said he was concerned that Major General Powell had missed the import when he—Bornholt—had told Powell about the telephone discussion between the Acting Chief of the Defence Force, Air Marshal Houston, and Minister Reith—Bornholt having been with Air Marshal Houston at the time of that telephone conversation with the minister, which was on 7 November.

I asked Brigadier Bornholt whether he had taken a record of the conversation. He said that he had taken notes. I asked him to show them to me. He went away and got his notebook and then came back and read them to me. When he had read those remarks to me, I asked the Acting Chief of the Defence Force at the time—this is 15 February 2002—Lieutenant General Des Mueller, and the Chief of the Air Force, Air Marshal Angus Houston, to join us. Brigadier Bornholt repeated his comments to me in front of those two officers, Air Marshal Houston confirmed them and I then suggested that Mr Moore-Wilton and the minister should be informed. Lieutenant General Mueller told me later that evening that he had spoken to Mr Moore-Wilton about the matter. This was the night of 15th, as you will recall, just prior to the Senate legislative committee commencing the following week.

Senator FAULKNER—We might come back to that a later stage. You said in your opening statement that you had a discussion with Ms McKenry—I think I am recalling this correctly but please correct me if I have got it slightly wrong—and that it was Ms McKenry who asked Brigadier Bornholt, and I am talking about 11 October here, to explain this to the minister's office, to Mr Hampton, I think, specifically.

Dr Hawke—No, what Jenny McKenry had reported to me, Brigadier Bornholt had already done. I then agreed with Jenny McKenry—and this is on the 11th—that she should immediately contact Michael Scrafton, the senior adviser in Minister Reith's office, to inform him of the misrepresentation. Bornholt's discussions with Hampton had been on 10 October—the previous day. So that is sort of reporting basically what she told me.

Senator FAULKNER—You agreed with Ms McKenry then that she should—

Dr Hawke—I think I actually asked her to do it.

Senator FAULKNER—Yes, you asked Ms McKenry to contact Mr Scrafton in the minister's office. She did that—

Dr Hawke—In fact, she did it, I think, with Brigadier Bornholt present.

Senator FAULKNER—and you received a copy of that email later in the afternoon.

Dr Hawke—I think the sequence of events then was that Scrafton asked her for certain information and she emailed that to him later that day, confirming the earlier telephone discussion that they had had.

Senator FAULKNER—I just might stop there for a moment, Mr Chairman. In the paper war that we have I have not seen that email. Having checked with the secretary, I have just been informed, Dr Hawke, that it is in a copy of one of the umpteen number of witness statements we have. It is appended to Ms McKenry's submission, as I understand it.

Dr Hawke—May I just make one other clarification, Mr Chairman. General Powell actually did call on me during the course of his inquiry, but we did not have a long discussion because I did not think I had anything useful to add to what he had already gleaned from other sources.

Senator FAULKNER—So you say that General Powell did speak to you?

Dr Hawke—He did call on me to tell me where he was at with the inquiry and to ask whether I had anything useful to add—I did not think I did—to what he already had.

Senator FAULKNER—I did ask you that a little earlier.

Dr Hawke—Yes. He was aware of the photographs issue at the time, but he did call on me—Ms Bryant did.

Senator FAULKNER—Was this to get a bit of a status report of where he was at?

Dr Hawke—Yes. And in the course of that, he was not—

Senator FAULKNER—As opposed to seeking, if you like, any evidence or statement from you about your own role?

Dr Hawke—That was the way I read it.

Senator FAULKNER—When did that take place?

Dr Hawke—I do not know, but I am pretty sure he would have a record of that.

Senator FAULKNER—Would that be the way normally someone conducting a routine inquiry would act, or is this something that would normally be within ADF—

Dr Hawke—It would normally be in ADF channels, yes. It is not routine, no. I am often told about these issues; for instance, with the board of inquiry into the F111 incident, I think the Chief of Air Force came and told me that he had the report and was considering the recommendations. So they happen from time to time, but it is not a regular—

Senator FAULKNER—I am just trying to understand the processes here, because you yourself—

Dr Hawke—The report from Major General Powell was to CDF, of course.

Senator FAULKNER—Yes, indeed, because it is a routine inquiry that is established as a result of a direction of CDF. I think that is correct, isn't it?

Dr Hawke—Yes, that is correct.

Senator FAULKNER—I am just wondering, therefore, about the processes—I am not being critical of them; I am just trying to understand—in relation to why Major General Powell might talk to you, given your strong views about the operation—

Dr Hawke—I think you should ask him that when he is here.

Senator FAULKNER—I could ask him but, given that he is not here, I thought I might ask you.

Dr Hawke—As I said to you, I thought he came to tell me basically where he was at and that it was on track for delivery to CDF. I recall that we had this conversation but that I did not have anything useful, I thought, to add to what he was doing.

Senator FAULKNER—So you would not be able to say to us how often you in fact had discussions with CDF on this question of children being—

Dr Hawke—No, I would not. I would have been present at most of the Strategic Command groups on this whole series of incidents over that couple of months, but not all of them.

Senator FAULKNER—No, sure. But was it a matter that received regular or irregular airing?

Dr Hawke—It was not a big issue for me at the time. It turns out to be so now.

Senator FAULKNER—I appreciate it may not have been a big issue for you, but I am asking, given that that is one of the interfaces you have, if you like, with the ADF, as to whether it was regularly or irregularly discussed.

Dr Hawke—It was not every day. CDF was away for some periods of time during these events as well, as I recall.

Senator FAULKNER—As the secretary of the department, I assume you would have received regular reports from the people-smuggling task force?

Dr Hawke—No. I do not recall ever having seen one actually. I may have. I may have seen them in passing, but I do not recall concentrating on them or focusing on them at the time. We could check my office for that. Those matters would have basically been handled in Strategic Command by Air Vice Marshal Titheridge. I may have seen some of the reports; I just do not recall them.

Senator FAULKNER—My colleague Senator Collins has now turned up the McKenry-Scrafton email. What might be useful, Dr Hawke—if you would be willing to provide it—is the email that goes to you. It may be in the same form. We have a copy of the email that goes from Ms McKenry to Mr Scrafton. Would you mind taking that on notice?

Dr Hawke—Yes. There is a whole sequence of emails here, including my confirmation back to her.

Senator FAULKNER—That is appended to Ms McKenry's witness statement.

Dr Hawke—It may just be this page that is missing.

Senator FAULKNER—They may have it too.

Dr Hawke—I will add that to the record, Senator.

Senator FAULKNER—I can identify the missing piece of information now. My colleagues have been working very hard on this. There is a McKenry to Scrafton email of Thursday 11 October 16.37 copied to you, and then appended.

Dr Hawke—That is correct. And then there is my reply here. I think we are talking about the same thing.

Senator FAULKNER—What we do not have is the next one—I do not know if it is the next one—the ‘Tim Bloomfield, 11 October 16.26’ one.

Dr Hawke—You do not have that one?

Senator FAULKNER—We do not have the appended document—

Dr Hawke—I am quite happy for you to have that.

Senator FAULKNER—which is headed ‘HMAS *Adelaide* UBA issue: sequence of events’. It may well be the same as some of the other documents. I think we have been able to nail down what is missing there. I thank my colleagues for assisting with that. In relation to the photos issue, what, if anything, did you do to clarify that issue with the minister?

Dr Hawke—Nothing. I regarded the advice having gone to Mike Scrafton as sufficient at the time.

Senator FAULKNER—Did you actually personally have any conversations with the minister about the photographs at any stage after 11 October?

Dr Hawke—Not until I was doing my performance assessment recently.

Senator FAULKNER—What was the date of your performance assessment?

Dr Hawke—The date I met with Mr Reith was 14 March.

Senator FAULKNER—What year?

Dr Hawke—This year.

Senator FAULKNER—With Mr Reith?

Dr Hawke—Yes. He was minister for nine months of the 12 months of my performance assessment period—

Senator FAULKNER—I know that.

Dr Hawke—so I had to go and have a discussion with him about my performance assessment. I said to him then what I said to you, that I felt that I should have discussed the matter with him and provided unequivocal written advice.

Senator FAULKNER—What about the broader issue of the claims of children being thrown overboard after the period of early October?

Dr Hawke—I never had a discussion with the minister about that issue. He referred to it, of course, on 14 March, when we met.

Senator FAULKNER—You also raised in your opening statement the matters that occurred on 8 and 9 November. On the morning of 8 November, Air Marshal Houston informed you of the discussion that he has had the day before—which I think has received considerable publicity—with Minister Reith. I imagine you would be aware of it, but for the benefit of the committee you might explain to us whether you were aware of the political and public sensitivity of this, given the period we are talking about in terms of the political and election cycle. You would have been aware of that?

Dr Hawke—Yes, I was aware of that.

Senator FAULKNER—Could you explain to me what you did to try and ensure that misinformation in the public arena was corrected—this is in the period of literally a day or so prior to voting in the federal election?

Dr Hawke—Air Marshal Houston told me that—I am not sure whether this is right or not, but my recollection is that I think the minister had asked him—

Senator FAULKNER—I am sorry, could you say that again?

Dr Hawke—I just have a recollection that the minister may have asked Air Marshal Houston about the matter. He went away—and you will have to ask him—and then rang the minister to say that, on the basis of the evidence put before him, there was nothing that supported the view that children had been thrown overboard. He told me that on the morning of 8 November.

Senator FAULKNER—I know. What I am asking you is: now that you were aware of this, what obligations or responsibilities did you feel you had, given the sensitivities of the political timetable, if you like—there is no other way to describe it; it is literally 48 hours from voting in a federal election? I wonder what you did to try and ensure that any misinformation was corrected and not allowed to run.

Dr Hawke—Again, that was a chain of command issue, but the two things that I did do were specifically to pursue the ONA report that was mentioned at the Press Club luncheon that day, whether or not that originated from defence intelligence sources. As it turned out, it did not. I also checked further with Gary Bornholt on the status of the photographs.

Senator FAULKNER—Why do you say this is a chain of command issue if you have your minister continuing to perpetuate untruths or misinformation in the public arena?

Dr Hawke—The Acting Chief of the Defence Force had had that discussion with the minister. That was perfectly appropriate and proper, in my view.

Senator FAULKNER—Yes, but what are your responsibilities here?

Dr Hawke—This is a chain of command issue; it is an operational issue.

Senator FAULKNER—If the minister is in the public arena making statements that are to your knowledge by this stage palpably untrue, why is that a chain of command issue?

Dr Hawke—But they were not palpably untrue at that stage. I was aware that CDF held to his original view, so it was a matter within the Australian Defence Force. Air Marshal Houston as Acting CDF was asked for his view, I think by the minister, and he told the minister. And I thanked him for telling him.

Senator FAULKNER—Given that you are one of very few people—literally a handful of people—in Australia who know about this, you do not think that you have any responsibilities in relation to your advisory role to government and the Minister for Defence to take any action?

Dr Hawke—Not on an operational issue, no. I continue to hold the view that this was an operational issue and was more properly a matter for discussion between the military side and the minister.

Senator FAULKNER—But this is about matters that were patently untrue.

Dr Hawke—But these were matters within the confines of the ADF.

Senator FAULKNER—They were not within the confines of the ADF.

Dr Hawke—They were from my point of view. I take a different view on the photographs and I take a different view on the ONA report, and I pursued those.

Senator FAULKNER—Yes, but once you have been informed, with respect, Dr Hawke, these are matters that are drawn to your attention. The photographs are drawn to your attention—or you had taken an initiative, in fact, with Ms McKenry in relation to that.

Dr Hawke—Yes, I did, and on the ONA report. But the difference here is the CDF had discussed this matter with the minister. It is an operational issue—that is appropriate. That is where I left it.

Senator FAULKNER—What about the video? Tell us about the video. Did Ms McKenry advise you that there was no video support for the claims that children had been thrown overboard?

Dr Hawke—I asked her about that on 11 October—if she knew about any videos showing children being thrown overboard from SIEV4. She said there were conflicting stories about it, but that she would check and report back. Later that day or early the next morning she told me that Brigadier Bornholt had made inquiries and that such a video did not exist. Early on 8 November Ms McKenry told me that Mr Scrafton had called to inform her that the government had decided to release the video taken by HMAS *Adelaide* of the SIEV4 on 7 October. She told

me that the public affairs and corporate communications area was to make the necessary arrangements to release the video to the media by 12 noon, and a copy of that was provided to me around one o'clock that day.

It was later, on 9 November, that Commissioner Mick Keelty of the Australian Federal Police rang to tell me that the AFP's Western Australian office also had videotape evidence of the SIEV4 incident. A copy of those tapes was provided to me by the AFP later in November, and I asked one of my senior people to view them and the separate tape that had been provided to me on 8 November by our public affairs area. Having viewed the tapes, that officer discussed them with me on 27 November. He commented that the tapes did not seem to show any evidence of people being thrown overboard but that they did show people jumping into the water as what he thought was part of a rescue process.

Senator FAULKNER—I take you to page 11 of 13 of Major General Powell's report, which I think is the only place that your name is actually mentioned in the report. This is in the chronology. On Thursday, 11 October 2001 at 1637 it says:

Ms McKenry forwards written statement from Mr Bloomfield to Secretary Hawke and Mr Scafton explaining the sequence of events with respect to the photographs by email. Hawke acknowledges receipt of message, Mr Scafton does not. Secretary Hawke asked if there was a video showing children being thrown into the water. McKenry subsequently reported to the Secretary that there was not.

In relation to that subsequent report to the secretary, can we be clear when and how that report took place?

Dr Hawke—I think she told me on the phone about that. It was not in writing. Are you talking about the videotape now?

Senator FAULKNER—Yes.

Dr Hawke—As I said, later that day or early the next morning she told me that Brigadier Bornholt had made inquiries and such a video did not exist.

Senator FAULKNER—Did you have any note of that?

Dr Hawke—No, and then it came to my attention again on 8 November.

Senator FAULKNER—But it is the subsequent morning, is it?

Dr Hawke—It was either the same day or the next morning.

Senator FAULKNER—By telephone?

Dr Hawke—Yes, that is my recollection.

Proceedings suspended from 10.50 a.m. to 11.03 a.m.

CHAIR—Senator Faulkner, I understand at this point you want to pause or rest; is that right?

Senator FAULKNER—I am happy to fit in with government senators. I do not want to dominate things; I can come back to it later.

Senator BRANDIS—Dr Hawke, it came through loud and clear during your evidence that there is a strict line of demarcation between operational matters, which are the responsibility of the CDF, and departmental matters, which are your responsibility. It is a line of demarcation that you strictly observe?

Dr Hawke—Yes. I suspect I have a very pure view of that.

Senator BRANDIS—You're a purist?

Dr Hawke—On this issue.

Senator BRANDIS—And is it also a line of demarcation that, in your experience, Admiral Barrie strictly observes?

Dr Hawke—Yes. I have given to the secretariat a copy of the paper on the diarchy which goes to these issues.

Senator BRANDIS—Is that this document?

Dr Hawke—No, it is a paper that I gave to the Royal United Services Institute on 1 May 2000. It is quite a detailed exposition of the history of the issue and where it is now.

Senator BRANDIS—This incident, the SIEV4 incident, was strictly an operational matter?

Dr Hawke—Yes, in my view, with the exceptions that I have made about the ONA report, the photographs, the videotape where I had a direct role. The other issues, in my view, were strictly within the confines of a military operation confined to the chain of command directed by CDF.

Senator BRANDIS—This being, subject to those caveats, strictly an operational matter, the line of reporting to the minister was through the CDF, Admiral Barrie?

Dr Hawke—Direct from CDF to the—

Senator BRANDIS—Direct from the CDF.

Dr Hawke—On occasions I am aware of where CDF asks other people to field issues or questions and to respond to the minister, but that is the direct line of accountability, from the minister to CDF.

Senator BRANDIS—And we know—and you have reminded us again this morning—that Admiral Barrie was, at all times relevant to this inquiry, of the view that children had been thrown overboard from the SIEV4 and he remained of that mind until well beyond the election.

Dr Hawke—Correct.

Senator BRANDIS—According to this chart which was annexure C to the Powell report, there is what is described as a secondary link to the Minister for Defence through the Head of Strategic Command, Air Vice Marshal Titheridge. Is that right?

Dr Hawke—Yes.

Senator BRANDIS—And we know from the Powell report that Air Vice Marshal Titheridge was of the view that children had been thrown overboard until at least 25 November 2001.

Dr Hawke—If that is what he said, I accept that. That goes to my view that I mentioned to you earlier, without having focused on this, that CDF sometimes tasks other officers, particularly the Head of Strategic Command, to talk direct to the minister on such issues.

Senator BRANDIS—And although you observed strictly the line of demarcation in relation to operational matters, you have told us that you had, as one would expect, informal conversations with the CDF in the relevant period, including conversations in relation to this matter?

Dr Hawke—Yes.

Senator BRANDIS—And I assume that during the course of those informal conversations Admiral Barrie would have expressed to you the view that he had that children had been thrown overboard?

Dr Hawke—That was his continuing belief.

Senator BRANDIS—And the lines of reporting to the minister on the departmental side of the demarcation line were all through you?

Dr Hawke—We did not speak to the minister about this issue; we spoke to some of his staff and that is a fault in the process that I hope won't occur again.

Senator BRANDIS—What I am trying to do, Dr Hawke, is to identify the people on either side of the line of demarcation most proximate in the reporting chain to the minister. As I understand the position, in relation to an operational matter, those people were first and foremost the CDF—

Dr Hawke—Yes.

Senator BRANDIS—secondarily, on occasions, the Head of Strategic Command—

Dr Hawke—Yes.

Senator BRANDIS—and, in relation to non-operational matters, you?

Dr Hawke—Yes.

Senator BRANDIS—And all of those people were, at all material times, of the belief, however founded, that children had been thrown overboard?

Dr Hawke—I am not aware of all of the other views, but I am aware of Admiral Barrie's view.

Senator BRANDIS—All right. We will ask Air Vice Marshal Titheridge separately. One relevant circumstance that has not been brought out in Senator Faulkner's questions so far is that a federal election was called on 5 October 2001, wasn't it?

Dr Hawke—Yes.

Senator BRANDIS—And, from that time on, were the caretaker conventions applied?

Dr Hawke—Yes, from the issuing of the writs.

Senator BRANDIS—In terms of the volume of communication between the Department of Defence on both the operational side and the departmental side, and the minister's office, what was the effect of the caretaker period having commenced from 5 October?

Dr Hawke—We would have put out instructions within the organisation about the caretaker period. May I just mention one other thing: the writs were actually issued on 8 October. That is important because I was involved in discussions with a senior Papua New Guinean official and Mr Moore-Wilton on that morning before the writs were issued.

Senator BRANDIS—And they were issued at noon, weren't they?

Dr Hawke—Yes, noon.

Senator BRANDIS—So the caretaker period commenced at noon on 8 October?

Dr Hawke—On 8 October.

Senator BRANDIS—And from noon on 8 October, can you tell me please, in terms of the extent of communication between the department and the minister, what the effect of the commencement of the caretaker period was?

Dr Hawke—We would have continued to put forward routine matters, but we would also have distributed, probably the week before, our view of the caretaker conventions throughout the organisation about what people could and could not do—on 8 October. That would have included a reference point to somebody senior if people had any questions or issues about that. I would be quite happy to table that.

Senator BRANDIS—Could you find that document for us, Dr Hawke, and table it?

Dr Hawke—Yes.

Senator BRANDIS—I imagine that one of the principles that governs communication between civilian and military personnel on the one hand and a minister on the other hand during the caretaker period is that on matters of political sensitivity there is a restriction on the level of communication. Is that so?

Dr Hawke—That is correct. If there are urgent decisions or matters that have to be taken by the existing government, normally those matters would be discussed with the opposition as well.

Senator BRANDIS—Senator Faulkner put a whole series of questions to you along the lines of: ‘Come on, Dr Hawke, this is a matter of great political sensitivity.’ Let it be assumed, for the sake of discussion, that it was a matter of great political sensitivity, this was the sort of matter that, during the caretaker period, you or your officers—or indeed the military officers—would have been prohibited by the caretaker conventions from discussing with the minister’s office. Isn’t that so?

Dr Hawke—Well, it turns out to be a particularly sensitive political matter but at the time it wasn’t. As I mentioned in my opening statement, from the 12 October until, I think, about 8 November, this issue was not on anybody’s radar screen.

Senator BRANDIS—It was not on the radar screen in any event?

Dr Hawke—Yes.

Senator BRANDIS—When it emerged on the radar screen, it emerged in the character of a politically sensitive issue which, during an election campaign, you and your officers were prohibited by the caretaker convention from discussing with the minister’s office.

Dr Hawke—I wouldn’t say ‘prohibited’, because we did. Our role was to provide factual advice about what had happened. What they do with that is up to the minister and the minister’s office, of course.

Senator BRANDIS—I will withdraw the word ‘prohibited’. Am I right in understanding that there was a greater constraint upon you than there would have been outside an election environment?

Dr Hawke—Yes, that is correct. We would not have continued to conduct the normal business by way of the ADF or the department with the minister during that period.

Senator BRANDIS—That was a constraint of which you were very properly conscious?

Dr Hawke—Yes.

Senator BRANDIS—Dr Hawke, I want to direct your attention to some evidence that the CDF gave to the Senate Defence estimates committee hearing on Wednesday, 20 February 2002. It may well be that you cannot assist me with this; if you cannot, I will ask someone else.

At page 72 of the *Hansard* of that day, Admiral Barrie was addressing Defence involvement in these people-smuggling operations. He said:

However, for these events it was a new turn. We had not seen it before, although I think we were well aware that a considerable level of briefing was occurring at the ports of departure on how to try and counter our efforts to stop this activity.

Can you tell us what information the department had about the level of briefing being engaged in by the people smugglers at the ports of departure?

Dr Hawke—I know nothing about that. That would probably be a question for the Head of Strategic Command, Air Vice Marshal Titheridge.

Senator BRANDIS—I will direct those questions to him. Dr Hawke, it is right to say, isn't it, that Defence assumed this role of border protection from Customs from the time of the *Tampa* incident on 26 August?

Dr Hawke—I think that is correct. Certainly there was a specific decision by the government that the Defence Force would undertake this sort of activity around that time.

Senator BRANDIS—With this being from that point on a strictly military activity engaged in by a joint task force, was that strict line of demarcation observed from the very start?

Dr Hawke—As far as I am aware, yes.

Senator BRANDIS—Dr Hawke, you said in response to Senator Faulkner that this was a different set of circumstances from previous SIEV incidents because the people on the SIEV4 had lifejackets on. What do you draw from that?

Dr Hawke—That is just one of the things I recalled, that this was a different set of circumstances to the prior vessels. This was the first occasion on which people had lifejackets and they had them on.

Senator BRANDIS—And you are aware, aren't you, that the people on the vessel were wearing those lifejackets at a time before the vessel was said to be in distress or was sinking?

Dr Hawke—I was aware of that, yes. That is just something that I recall from the time, for some reason, that this was quite a different set of circumstances to what had happened before.

Senator BRANDIS—Presumably, they were wearing the lifejackets for a reason.

Dr Hawke—I guess so.

Senator BRANDIS—If the boat was not sinking, there must have been another reason, other than rescue from a sinking ship, for them to be wearing the lifejackets?

Dr Hawke—You could draw that influence.

Senator BARTLETT—You mentioned before about having a purist view about the differentiation between your role and the role of the commander of the defence forces. Could you just elaborate a bit further on what you see as that separation?

Dr Hawke—The CDF and the secretary have both separate and joint roles and responsibilities. Among other things, the CDF is the principal military adviser to the minister and he is responsible for exercising full command of the Australian Defence Force. In other words, as I think I referred to earlier, he—not the single service chiefs, as some people think—commands operations. I am the principal civilian adviser to the minister, and CDF and I have joint responsibilities for the administration of the Defence Force, for strategic assessments, long-term capability planning that conforms to the government endorsed strategic assessment, providing intelligence, and effective liaison with other departments on national security matters. The essence of the evolution of this into its current state is set out in the paper that I have given to the committee secretariat in some detail.

Senator BARTLETT—What is the role of the media liaison unit within the Department of Defence?

Dr Hawke—That media liaison unit operates, obviously, in conjunction with the minister's and parliamentary secretary's offices and their media advisers. It is to provide a single point of contact on issues relating to public affairs and corporate communications. There is a particular position in that called the military public affairs adviser, staffed by a military officer, and during the course of these events that was occupied by Brigadier Gary Bornholt.

Senator BARTLETT—Can you elaborate a bit further on the issue of the caretaker convention concept, which was just explored previously, and the greater constraints that apply in terms of the nature of communications between the departmental officials and the minister's office in terms of what would be appropriate and inappropriate types of contact?

Dr Hawke—It is normally inappropriate for governments to take major decisions or to decide on new appointments during the period. They are a couple of the things that governments traditionally have not done. Where those issues are required for some matter of urgency or priority, the norm is that they be discussed and agreed with the opposition before any such announcement is made.

Senator BARTLETT—In essence, if I heard it properly, you agreed with what Senator Brandis was suggesting—that there is a greater constraint that applies in terms of just communications—

Dr Hawke—That is correct. The normal daily level of flow between Defence and the minister would have reduced during this period.

Senator BARTLETT—And that would apply both ways—contact from the minister's office or his staff with the department?

Dr Hawke—Both ways, yes.

Senator BARTLETT—Even in the minute that was tabled before from Mr Bloomfield—and amongst a lot of documents that we have got and certainly amongst a lot of the other documents we have in evidence that was given to estimates committees—there was fairly assertive contact from the minister’s office and his staff with a lot of people within the defence department requesting various things or directing people to do various things or not to do various things. Is that sort of thing appropriate during a caretaker period?

Dr Hawke—You would have to form your own view about that. It is certainly quite allowable within the caretaker rules.

Senator BARTLETT—Everything is allowable in that there is probably nothing anyone can do if it is breached, but I am asking you for your view about whether it is appropriate.

Dr Hawke—I did not see anything inappropriate.

Senator BARTLETT—Okay. There has been some comment more broadly—moving outside this specific incident—about the greater control over the ability of defence department personnel as well as defence personnel themselves, maybe officials et cetera, to be able to communicate with the media and about the greater requirement for everything to go through the minister’s office. Was that a deliberate policy adopted under Minister Reith, to constrain communications more fully?

Dr Hawke—That was a policy direction taken by Minister Reith and his private office. There was a relevant Departmental Instruction (General) issued to provide guidance and advice on that approach.

Senator BARTLETT—Is that the one titled ‘Public Comment and Dissemination of Information by Defence Members’?

Dr Hawke—That is correct. There is a new version of that that was cleared on Friday, I think, which probably has my and CDF’s joint signatures on it today. I am happy to get that for you. Minister Hill is taking a quite different approach from that taken by the former minister and his staff.

Senator BARTLETT—What is the rationale for the different approach?

Dr Hawke—I think he has a much more flexible approach and he also has reintroduced the briefings on operational matters by the military public affairs adviser to the media and others.

Senator BARTLETT—Again, in terms of the role of the Public Service, there is another old convention, if you like, about the impartiality of the Public Service and the prevention of it being politicised. Are you a purist in relation to that one as well?

Dr Hawke—Yes, I am.

Senator BARTLETT—Have you heard of concerns expressed during the period last year about defence personnel being more politicised as a consequence of that media approach that was adopted?

Dr Hawke—They were not raised with me.

Senator BARTLETT—Just sticking to this incident for a moment, there was a suggestion made in one of the documents we received—and, given that we have not published them yet, I probably should not go into them in detail, but there was certainly an assertion—that, for example, for Commander Banks to have given interviews with the media during that period was inappropriate or in contravention of directions.

Dr Hawke—I am aware of that, yes.

Senator BARTLETT—Is that the case?

Dr Hawke—That is correct.

Senator BARTLETT—So the ability for any defence personnel, or even the Defence Media Liaison Unit, to talk directly about what happened was prevented because of the policy approach adopted by Minister Reith that all comment must go through him?

Dr Hawke—That was the decision he took. From memory, there was specific guidance issued on this operation.

Senator BARTLETT—And the fact that not just individual defence personnel but the department's own Media Liaison Unit were not able to comment on any of these things directly—

Dr Hawke—They did not comment directly, but they were tasked with providing information. For instance, I think it was Defence, rather than the minister's office, that actually released the photos.

Senator BARTLETT—They were tasked by the minister's office to release them?

Dr Hawke—And the same with the videotape, from my recollection.

Senator BARTLETT—Again, that was not done until authorised by the minister's office?

Dr Hawke—Correct.

Senator BARTLETT—Apart from this incident, there were a lot of other examples in the media of commentary about particular things happening. For example, there were some allegations—quite severe allegations—purporting to quote sailors on the *Manoora* about inappropriate behaviour by the boat people. Is anything done when that sort of thing appears, apparently in contravention of the directives applying at the time? What happens when that sort of commentary is provided to the media?

Dr Hawke—I think that would be more appropriately addressed to the Maritime Commander. I am not aware of the detail of those incidents. I am aware generally of what you say.

Senator BARTLETT—Okay. So, if there are violations, or apparent violations, of Defence instructions, what course of action is taken?

Dr Hawke—They would normally be pursued by the Public Affairs and Corporate Communications division. But the new Defence instruction provides much more flexibility in that regard.

Senator BARTLETT—In terms of what we are talking about, which is the period last year, not just this incident but—

Dr Hawke—They were restricted.

Senator BARTLETT—Were any inquiries undertaken by the Public Affairs and Corporate Communications division?

Dr Hawke—I would have to check that. I just do not know.

Senator FAULKNER—Dr Hawke, you made the point that this was not on the radar screen—I think they were your words—after 12 October—this is the question of the photographs, if you like—until later in November. I do not want to put words in your mouth, but I think that was the thrust of what you were saying.

Dr Hawke—Yes, I said something along those lines.

Senator FAULKNER—Would you agree, though, if people had realised that the photos did not actually relate to children being thrown in the water but, in fact, were of the sinking SIEV4, it would very much have been on the radar screen?

Dr Hawke—That could well be the truth. As I said to you, I still feel that I should have done more on that particular issue. I should have discussed it directly with the minister, and I should have put it to him in writing. I absolutely agree with you. That could have been the case.

Senator FAULKNER—So that point is reasonable as far as it goes.

Dr Hawke—I am very conscious of it.

Senator FAULKNER—You are very conscious of that?

Dr Hawke—Absolutely. I should have done that.

Senator FAULKNER—But that comes back to my point. You say, ‘Well, it is not on the radar screen. Nothing happens.’ It sure as hell would have been on the radar screen if someone had pointed out that the photographs did not relate to children who had been thrown overboard.

Dr Hawke—You are entitled to make that assessment.

Senator FAULKNER—I think you are agreeing with that assessment, aren't you?

Dr Hawke—It could have been, yes.

Senator FAULKNER—But those who are in possession of the information, including yourself, who knew it did not relate to the incident it was alleged to relate to, did not do anything—

Dr Hawke—Did not do enough.

Senator FAULKNER—That is your view that you did not do enough. I am happy to go with that. You did not do enough to correct the public record.

Dr Hawke—That is correct. I accept that.

Senator FAULKNER—You would not accept for one minute that just because you happen to be in a caretaker period no correcting information can be given to a minister.

Dr Hawke—No, it was a factual issue. I agree with you on that.

Senator FAULKNER—Yes.

Dr Hawke—I should have done it.

Senator FAULKNER—So the caretaker period, in this sense, has got nought to do with whether the matter was corrected or not?

Dr Hawke—It is not relevant to this issue—relating to the photographs. That is correct.

Senator FAULKNER—When did you receive a copy of the Powell report, Dr Hawke? I am aware of when it goes to CDF. I think we have been informed previously of when it goes to CDF, but when did you receive a copy of it?

Dr Hawke—On 13 February 2002.

Senator FAULKNER—How would such a report of a routine inquiry come through to you normally, or would it?

Dr Hawke—No, it would not. My recollection of this is that there were two copies only of this report held by CDF. Then I recall a discussion between me and the CDF about the report, at which time he made a decision to forward one of the two copies to Mr Moore-Wilton for use in the context of Ms Bryant's separate inquiry.

Senator FAULKNER—That date was?

Dr Hawke—That would have been in December. Major General Powell's report is dated 14 December, so it would have been around that time.

Senator FAULKNER—You receive it on 13 February 2002.

Dr Hawke—That is right—after the PM tabled it in the House of Representatives.

Senator FAULKNER—When did you read it?

Dr Hawke—Shortly thereafter. I did read parts of it. CDF gave me the report for a short period after Major General Powell had completed it, and I read through it, looked at the recommendations and handed it back to him.

Senator FAULKNER—So you had read it a lot earlier.

Dr Hawke—I skimmed it; I could not say I had read it thoroughly at that stage.

Senator FAULKNER—When was that?

Dr Hawke—That would have been on or around 14 December. I was interested in the recommendations.

Senator FAULKNER—That is a bit different, isn't it? You physically do not have a copy of the report, but you have read it.

Dr Hawke—I skimmed it; I did not actually read the report.

Senator FAULKNER—You skim it around 14 December.

Dr Hawke—Yes, that is true.

Senator FAULKNER—And you handed it back to CDF. Is your memory jogged about what occurs in relation to the important meeting between Minister Reith and Air Marshal Houston?

Dr Hawke—No.

Senator FAULKNER—You did not read it that closely?

Dr Hawke—No. I basically was interested in the recommendations at the back of the report. What were we going to do about this was what was on my mind.

Senator FAULKNER—You read it closely after it was tabled in the parliament.

Dr Hawke—Yes.

Senator FAULKNER—Were you concerned when it was tabled in the parliament that the crucial—you did not notice that omission in December—

Dr Hawke—No, I did not notice it.

Senator FAULKNER—But did you notice the omission when you read the report?

Dr Hawke—No, I did not. I did not notice that until Brigadier Bornholt drew it to my direct attention on 15 February.

Senator FAULKNER—That is why I am asking you. But you had read it before then.

Dr Hawke—I read it when I got it.

Senator FAULKNER—On the 13th.

Dr Hawke—Yes—on the 13th or 14th, around that time. But I did not know. I did not appreciate the point that Brigadier Bornholt made to me until he made it to me.

Senator FAULKNER—But you were an indirect party to that, weren't you, in that you had been informed very soon after Air Marshal Houston?

Dr Hawke—Yes, I was informed the next morning.

Senator FAULKNER—That is a pretty crucial piece of information, isn't it?

Dr Hawke—Again, it was an operational issue. I am sorry to keep harping on this, but it is a fact of life.

Senator FAULKNER—We have gone through that. I do not want to go back over it again. I think we have defined what 'operational' means, and I think you and I have a clear understanding of that and probably agree. But that does not alter the fact that you are informed on 8 November about the Bornholt—

Dr Hawke—About Air Marshal Houston's discussion with the minister.

Senator FAULKNER—Yes, the Air Marshal Houston-Minister Reith discussion, which Brigadier Bornholt was also a party to. You are told about that on 8 November. You skim a copy of General Powell's report on 14 December, you read it on 13 February, but it still takes Brigadier Bornholt to draw this formally to your attention. Given that you are informed on the 8th, there is an involvement beyond even your strict definition of operational questions, isn't there? It is a gaping hole, isn't it?

Dr Hawke—No, I do not think it is. Air Marshal Houston says he told the minister. I am a bit unsure what you expect me to do with that.

Senator FAULKNER—I know that Air Marshal Houston told the minister.

Dr Hawke—I am unclear about your expectation. Are you saying I should then have written to the minister, or rung the minister and raised it with him? Because I did not see any need to do that.

Senator FAULKNER—Dr Hawke, I am drawing your attention to the fact that it is not in General Powell's report.

Dr Hawke—Yes.

Senator FAULKNER—A report that you—we now know, even though you did not indicate it to us earlier—skimmed on 14 December and read on 13 February.

Dr Hawke—That is right. But I was not looking for that.

Senator FAULKNER—But it takes the brigadier to—

Dr Hawke—That is right, because the brigadier was involved in that direct conversation with the minister.

Senator FAULKNER—Yes, but you were told about it the day after the direct conversation.

Dr Hawke—I still do not understand your point.

Senator FAULKNER—I am not making a point; I am asking—

Dr Hawke—What are you saying I should have done?

Senator FAULKNER—I am asking about the obvious weakness in relation to the Powell report and whether you, one, identified it—which I think you have said you did not—

Dr Hawke—I did not.

Senator FAULKNER—and, two, if you had identified it, what action would you have taken. I cannot really ask that question, because—even though you had two goes at it—you did not identify it.

Dr Hawke—When it was drawn to my attention, I acted immediately. But I do not regard this issue as an important one for me, even though you do.

Senator FAULKNER—I do consider it as an important issue for the Secretary of the Department of Defence, but you and I just have to disagree on that particular issue. Could you, for the benefit of the committee so that we are clear now for the record, outline in relation to the two issues—claims of children being thrown overboard, one, and photographs purporting to relate to that incident, two—what contact you had with the Department of the Prime Minister and Cabinet and the Prime Minister's office subsequent to 11 October 2001?

Dr Hawke—I have had no contact with the Prime Minister, the Prime Minister's office or the Prime Minister's department. The only time I recall having a discussion with Mr Moore-Wilton about this issue was on the afternoon or the evening of 8 November about the Chief of Navy statement that day.

Senator FAULKNER—That is one contact.

Dr Hawke—Yes. That related to the Chief of Navy statement. That is the only contact I had.

Senator FAULKNER—Which related to whether or not children had been thrown overboard and the reporting thereof.

Dr Hawke—That is the only contact I had with Mr Moore-Wilton. I have never discussed the matter with the Prime Minister or the Prime Minister's office.

Senator FAULKNER—Apart from that one instance.

Dr Hawke—No, that was the department. You asked about the Prime Minister and the office too. I never had any discussion with them about any of these issues.

Senator FAULKNER—Yes, and I asked about the Department of the Prime Minister and Cabinet.

Dr Hawke—That is right.

Senator FAULKNER—And that is limited to one contact.

Dr Hawke—One conversation with Mr Moore-Wilton. That is the best of my recollection.

Senator FAULKNER—A technical point that was being talked about previously is this issue of life jackets. I do not think it is particularly significant, but in the cable that was tabled by Admiral Barrie—I think it is 081530G/ADE/*Adelaide*—you would notice that it says, 'Supplied life jackets to those SUNCs without.' Did you examine the cable closely enough to be aware of that?

Dr Hawke—No.

Senator FAULKNER—As you know, the communications strategy within Defence has received a bit of publicity around this particular issue. Was there any Department of Defence—departmental, as opposed to ADF: I am terribly conscious of the diarchy issues now—involvement in the broad communication strategy that was developed for Operation Relex?

Dr Hawke—Correct.

Senator FAULKNER—Who formalised the final strategy? Who agreed to it?

Dr Hawke—You would have to ask CDF that; I suspect he did, but I do not know.

Senator FAULKNER—I do not think we have this. Would it be possible to get a copy of the final communications strategy? In this paper war, it may be in some of the recent material that has been provided to us, but I have not seen it.

Dr Hawke—We will take that on notice.

Senator FAULKNER—I would appreciate that. Are you aware of the special arrangement that applied in relation to the minister's office with this communications strategy, with Operation Relex?

Dr Hawke—I knew that there was one, but I am not aware of the details.

Senator FAULKNER—Would you be able to outline that for the benefit of the committee?

Dr Hawke—No.

Senator FAULKNER—Of course, one of the implications of the special communications strategy is that it applies to a period when the caretaker provisions were in place.

Dr Hawke—I think it was probably in place before then, but I do not know.

Senator FAULKNER—I am not sure that it was in place beforehand. You might take that on notice and provide a precise interface between the time when the caretaker provisions applied and the time when the communications strategy applied. I do not expect you to know that, but it might be helpful if you would take it on notice. This was a fairly direct and blatant link, I would have thought, with the election period itself, in relation to the role of the ministerial office. Was any thought given by the department to seeking advice on how the caretaker provisions might have applied to such a communications strategy—in my view, this would not have been an ADF responsibility; it would have been a departmental responsibility; your responsibility—given the special role that was required of the minister's office?

Dr Hawke—Not that I am aware of.

Senator FAULKNER—No advice was sought from Prime Minister and Cabinet?

Dr Hawke—Not that I am aware of.

Senator FAULKNER—Was any thought given to that?

Dr Hawke—I do not recall.

Senator FAULKNER—If there was, would you know?

Dr Hawke—I would expect to. I am happy to check for you.

Senator FAULKNER—I will very briefly go back to the issue of the video. Dr Hawke, when were you aware that the videotape, which you dealt with separately in your opening statement—

and I understand why you did that—does not actually show any children being thrown overboard?

Dr Hawke—I imagine it was around 8 November.

Senator FAULKNER—I am asking you.

Dr Hawke—That is what I am saying. You will recall that I said to you that I had checked with Jenny McKenry on 11 October. She had informed me of Brigadier Bornholt's inquiries, and I was told such a video did not exist on 11 October. It was then on 8 November, when the decision was made to release the video, that I was further informed about the matter.

Senator FAULKNER—And that information came from whom?

Dr Hawke—Jenny McKenry, the head of the Public Affairs and Corporate Communication Division.

Senator FERGUSON—I have only a couple of brief questions, Dr Hawke, but I think they are particularly relevant. One is in relation to the photographs and the video that Senator Faulkner has been talking about. Isn't it a fact that no-one in the government at any time claimed that they formed the view that kids were thrown overboard on the basis of the photos or the video and that, in fact, their claim was made on the basis of information provided by the ADF?

Dr Hawke—That is a correct interpretation.

Senator FERGUSON—Within the period of time we are talking about—from the time of the event until after the election—isn't it true that that information was never withdrawn, corrected or amended in any way?

Dr Hawke—Except for the discussion between Air Marshal Houston and the minister.

Senator FERGUSON—On the 8th?

Dr Hawke—No, I think it was the 7th. You will recall that we also endeavoured to find the source of the ONA report, but that was not a source from within Defence.

Senator FERGUSON—It was raised earlier by Senator Brandis that, from 26 August onwards, the ADF first became involved in the activities of illegal entry vessels coming into Australia, that it was a new activity for them and they were doing the sort of work that they had not undertaken before.

Dr Hawke—That is true, although that issue was raised in the Defence white paper as an issue that the Australian Defence Force would be likely to be involved in in the future, along with a series of other particular issues.

Senator FERGUSON—But this was the first time they had actually been involved in it?

Dr Hawke—Yes, that it was done that way; that is my recollection.

Senator FERGUSON—In fact, it was the first time that any Defence Force personnel had been involved in the apprehending of these vessels when there were probably some emotional overtones.

Dr Hawke—That would be my recollection.

Senator FERGUSON—I want to quote a line from a story by Robert Garran in the *Australian* on 9 November. He said:

The navy has severely embarrassed John Howard and two senior ministers by undermining their claims that asylum-seekers had thrown children overboard to “emotionally blackmail” naval officers.

Dr Hawke, in your view, as far as emotional blackmail is concerned, wouldn't it be just as much an emotional blackmail to actually threaten to throw children overboard as to actually throw them into the water?

Dr Hawke—I do not know why my view is important, Senator, but my guess is that some Navy people would have had that view.

Senator FERGUSON—That, in fact, whether or not the children actually went into the water or whether they were threatened to be thrown in the water and hung over the side of the vessel—it could, in fact, be more traumatic, couldn't it?

Dr Hawke—The Chief of Navy might have better advice than I have on that.

Senator FERGUSON—We will pose that question to the Chief of Navy. Thank you, Dr Hawke.

Senator JACINTA COLLINS—Just a couple of brief issues, Dr Hawke. Can I go back to our copy of your statement this morning and just clarify the point about your understanding of what was to occur with Ms McKenry?

Dr Hawke—Yes.

Senator JACINTA COLLINS—You indicate that:

I asked that this advice be put in writing

Dr Hawke—Yes.

Senator JACINTA COLLINS—Is it your view that that advice was put in writing?

Dr Hawke—Yes, although it just referred to the lengthy discussion that they had had that morning; it did not actually put in writing the issue relating to the photographs—that they were incorrectly portrayed; it did not do that. My understanding of why that is is because what Mr Scafton asked for was what Ms McKenry sent forward.

Senator JACINTA COLLINS—So Ms McKenry sent forward what Mr Scrafton asked for rather than what you, Dr Hawke, the secretary of the department, asked her to do?

Dr Hawke—That is right.

Senator JACINTA COLLINS—So, as far as your instruction was concerned—that this issue be put in writing to the minister’s office—was that instruction carried out?

Dr Hawke—Not to my satisfaction. As I said earlier, and I repeat it now, I think that I should have actually spoken directly to the minister and put that advice in writing myself.

Senator JACINTA COLLINS—Dr Hawke, I understand that, in retrospect, it is nice to reconsider these things, but if your instruction to Ms McKenry to put this matter in writing to the minister’s office was not carried through in these emails, why, when you responded to Ms McKenry, ‘Noted. Thanks,’ didn’t you raise that point at that time?

Dr Hawke—No, I did not. As I said to you, I am accountable for that.

Senator JACINTA COLLINS—Pardon?

Dr Hawke—I regard myself as being accountable for that, not her.

Senator JACINTA COLLINS—So you agree with my brief assessment that none of the material, including this minute, actually clarifies what those pictures depicted?

Dr Hawke—Absolutely. Yes, I do agree with that.

Senator JACINTA COLLINS—Thank you. Going back then to Ms McKenry’s understanding of Mr Scrafton’s request, what was it that Mr Scrafton was wanting Ms McKenry to put into writing?

Dr Hawke—I think you would have to ask her that. My understanding is that she responded by sending across what he had asked for.

Senator JACINTA COLLINS—Okay. There is also a comment here that:

Unfortunately I have discovered that photos and captions are also on the unrestricted system.

Do you know what that pertains to?

Dr Hawke—I assume that that means one of the in-house computer systems.

Senator JACINTA COLLINS—She has indicated that:

Unfortunately, I have discovered—

Are you aware of a concern about how far these photos had been disseminated or on what security basis?

Dr Hawke—No.

Senator JACINTA COLLINS—But you would agree that—I think you have already indicated—this email referring to ‘getting to the exact stuff’ and ‘no-one can find his stuff’ is hardly a response to a request from the secretary of the department to put it in writing to the minister.

Dr Hawke—That is right; my intervention was in an endeavour to make sure that the facts were known and the record was corrected. That did not happen. Again, I say to you, I think that is my responsibility and accountability.

Senator JACINTA COLLINS—Dr Hawke, I would also like to give you an opportunity to respond to some comments made by Mr Hendy in his statement in relation to this episode. Have you seen his statement?

Dr Hawke—No.

Senator JACINTA COLLINS—It goes to the issue of what communications occur within Defence and between Defence and the minister’s private office. Mr Hendy says—and I will read the paragraph from his statement:

A lot of commentary in Defence had to be verified because Defence was an organisation that lived on gossip and rumour. There was a systemic problem with checking of facts, and the organisation lacked discipline in dealing with facts, confidentiality and public commentary. In this case, when faced with a range of stories (particularly in relation to the photographs) the Minister’s staff had to take everything they heard with a pinch of salt.

Is that your understanding of the nature of communications between the Department of Defence—yourself as secretary—and the minister’s office?

Dr Hawke—I would have hoped we would do a little better than that; but if that is Mr Hendy’s assessment, that is his assessment.

Senator JACINTA COLLINS—Was this issue discussed in your briefing with former Minister Reith?

Dr Hawke—No.

Senator JACINTA COLLINS—So that did not pertain to your performance bonus.

Dr Hawke—I did not say that I got a performance bonus; this was an assessment in respect of the current year.

Senator JACINTA COLLINS—This is former Minister Reith’s chief of staff commenting on the ‘children overboard’ incident and saying that anything you hear from Defence you take with ‘a pinch of salt’.

Dr Hawke—Mr Hendy has never discussed that issue with me.

Senator JACINTA COLLINS—Thank you. Mr Hampton's notes in the statements refer to the issue of whether the photos should be shown to the shadow minister. Are you aware of any discussion over what information should have been conveyed to the opposition during this period?

Dr Hawke—No.

Senator JACINTA COLLINS—Finally, you mentioned in your earlier comments that you were aware of Admiral Barrie's views on this incident, that you met him daily and had informal discussions. Are you able to apprise us of how Admiral Barrie discounted the reports—that we now know went to him—that raised concerns about the veracity of both the photos and whether the incident itself had occurred?

Dr Hawke—I think he held to the view that the original advice put to him was correct. But you can ask him that.

Senator JACINTA COLLINS—Dr Hawke, we know that he held that view, and that is what he told us in estimates as well.

Dr Hawke—Yes, and that is what he told me.

Senator JACINTA COLLINS—Then, one week later, he made his later statement. What I am asking you, though, is: on the basis of your direct discussions with Admiral Barrie, do you know—behind the fact that he maintained that view—how he discounted this other evidence?

Dr Hawke—No, I do not.

Senator BRANDIS—How could this guy be expected to know that?

Senator JACINTA COLLINS—He had direct conversations with Admiral Barrie.

CHAIR—Order!

Senator BARTLETT—I want to go back to the line of questioning before when I was asking about the role of the Public Affairs and Corporate Communications division. From what you said before—and you can correct me if I am wrong—basically, they are not able to release information or make statements unless the minister or his office approves them, and that continues to apply even during the caretaker role—they are still subject to direction from the minister in relation to releasing any information at all about operational matters.

Dr Hawke—Yes.

Senator BARTLETT—Dr Hawke, you would be aware, I am sure, that the *Sydney Morning Herald* sent you some questions on 9 November, I think it was—just before election day—about this specific incident, which you chose not to respond to and all inquiries were directed through the minister's office. Is it normal procedure at those times that you would not respond to direct questions but would tell them to talk to the minister?

Dr Hawke—It depends on the circumstances. Normally, I do not make a habit of going around and talking to the media.

Senator BARTLETT—What if the media puts forward a direct, written question to you?

Dr Hawke—That would normally go through the channels within the organisation.

Senator BARTLETT—So it would normally go to Public Affairs and Corporation Communication?

Dr Hawke—Yes.

Senator BARTLETT—And their normal response is, ‘We can’t say anything; you’ve got to ask the minister’?

Dr Hawke—It might have been in this case. I do not recall the details of that case.

Senator BARTLETT—Why would it be in this case but not other cases?

Dr Hawke—I would have to check on the specific case you are raising.

Senator BARTLETT—I appreciate your difficulty in that this is contained in a submission that we have not released so you cannot have seen it to respond to it. I am not trying to make you say something that did not happen but, basically, the response from Mr Bloomfield was again, ‘Can’t release the information; you may wish to direct your inquiries to the minister.’ Is that how they respond to all media inquiries?

Dr Hawke—About those issues, yes.

Senator BARTLETT—About anything to do with the Pacific solution activities?

Dr Hawke—That is correct. They would have been handled by the minister’s adviser.

Senator BARTLETT—I presume this corporate communications division and the media liaison section are reasonably sizeable. What is the purpose of having a separate unit in the defence department if it is completely under the instruction of the minister before it can say anything?

Dr Hawke—That unit came about as a result of a separate review of the function within Defence. The function was done in a disaggregated way, and there was a review of those issues which led to the recommendation to create the Public Affairs and Corporate Communications division.

Senator BARTLETT—But what is the point in having a separate corporate communications division within the defence department if they are unable to do anything without the approval of the minister?

Dr Hawke—They did other things as well but, at the end of the day, it is up to the minister as to how those issues are handled.

Senator BARTLETT—You do not see any validity to the argument that is put forward in the submission we have received—which again we will hopefully release soon—that during the caretaker period Defence has an obligation to not act in a political manner and to just provide factual responses to direct questions seeking factual information.

Dr Hawke—I do not believe that we did act in a political manner.

Senator BARTLETT—Do you believe that with a direct written question seeking just factual information, not opinions or anything, about specific events it is not appropriate in a caretaker mode for the defence department to provide that information and to still be subject to curtailment by the minister at the time?

Dr Hawke—I would have to look at the specific issue you raise, but if it were a factual issue normally we would have provided that.

Senator FAULKNER—I am sensitive to the amount of time this has taken, Dr Hawke, but I want to ask you a question in relation to three issues: one, whether children were thrown overboard from SIEV4; two, whether the photographs that were published related to the incident; and, three, the fact that the video did not show children being thrown overboard. I wondered if you, in relation to each of those three issues, could indicate to the committee how you discharged your responsibility to ensure that accurate information was provided to the public and that the statements that were being made from government ministers on all those issues were corrected.

Dr Hawke—On the issue of the children overboard, my understanding of that is that Defence did provide such advice; it came through the chain of command. It was an issue within the operational context, and that is where I left it. On the photographs, I asked questions about those two photographs and whether they represented what they were being portrayed as. I pursued those issues. My failure there was not to discuss that directly with the minister or put it in writing. On the videos, basically I explained my position: that I had a look at them and I had one of my officers have a look at them. The video was released on 8 November. As far as I am aware, there is nothing on it that shows any evidence of children being thrown overboard.

Senator FAULKNER—Have you, as Secretary of the Department of Defence, at any stage put anything in writing about any of those three issues and, if so, when?

Dr Hawke—No, I did not put anything in writing about those issues until I did my performance assessment when I made the comment that I made to you earlier, that I felt I should have told the minister.

Senator FAULKNER—As I think is the normal course of events, this issue was contained within your personal—

Dr Hawke—Yes, my self-assessment.

Senator FAULKNER—Your self-assessment. And is that the only time that you have ever put these questions in writing?

Dr Hawke—Yes.

Senator FAULKNER—You met with former Minister Reith at this time, before the performance assessment?

Dr Hawke—Yes, I did.

Senator FAULKNER—It would be good to do a performance assessment of former Minister Reith. I do not want to labour this because of the time, but you might care to take this on notice for accuracy's sake because your submission does not go to these points—and I am not critical of that. I wonder if you could indicate to the committee what written advice on the three issues, if any, you are aware of going, firstly, from Defence to PM&C; secondly, to Minister Reith's office; thirdly, to Minister Reith; fourthly, to the Prime Minister's office; or, fifthly, to the Prime Minister.

Dr Hawke—From within Defence?

Senator FAULKNER—Yes. I am happy for you to take that on notice. I appreciate you might not necessarily be able to answer that in its entirety now. Are you happy to take that on notice?

Dr Hawke—Yes, I will take it on notice.

Senator FAULKNER—In relation to those advices regarding yourself, it might be useful to know if at any stage you were copied in or had drop copies sent to you or the like. I might ask you this specifically: do you actually receive copies of strategic command ministerial submissions?

Dr Hawke—Not all. I would have seen some, but I am sure I have not seen all of them.

Senator FAULKNER—There was one, of course, that went to Minister Reith that did not mention children being thrown overboard. You might check your records as to whether you received a copy of that. Was this matter discussed at any of the officials' meetings? I hear what you have said to us about your discussions with Admiral Barrie. Appreciating that, was it discussed at the Secretaries Committee on National Security, for example?

Dr Hawke—These specific issues?

Senator FAULKNER—Yes.

Dr Hawke—Not that I recall.

Senator FAULKNER—Could you outline for the committee the full extent—I think you have said there was only one contact but I want to be clear on that—of the contact with Mr Moore-Wilton? That was on 8 November.

Dr Hawke—On 8 November. That is my recollection. I do not recall any other contact with Mr Moore-Wilton about the matter.

Senator FAULKNER—Can you just recall the nature of that communication? Were you able to communicate to Mr Moore-Wilton any information at that time?

Dr Hawke—He rang me and asked whether I was aware. I said I was. I said that my understanding was that the Chief of Navy would be issuing a clarifying statement, and then some little time after that I rang back to tell him that that had happened and faxed a copy to his office. This was sort of early in the evening.

Senator FAULKNER—So your only contact with Mr Moore-Wilton—

Dr Hawke—On that issue.

Senator FAULKNER—went to the so-called clarification of the Chief of Navy's statement and no other issues.

Dr Hawke—No.

Senator FAULKNER—To what extent do you think that there is a role for you, as Secretary of the Department of Defence, to be ensuring that there is accurate information being provided to the Department of the Prime Minister and Cabinet, on your part, or to the Prime Minister or the Prime Minister's office, given the amount of publicity that was effectively propagating misinformation on this issue for such a long period of time?

Dr Hawke—Those matters were being discussed on an almost daily basis within the specific task force that was set up to handle these issues. I would have thought that they had received a full airing then. My view was that that was where those issues were being handled.

Senator FAULKNER—I think, from what you have said, that you did not think you had any responsibility to correct statements that were palpably wrong that were made by ministers and the Prime Minister. You did not see it as a responsibility of yours, given your state of knowledge, to ensure that those statements were corrected.

Dr Hawke—I think I have already said that I regret not having discussed the issue directly with the minister and I regret not having put it in writing to him about the photographs. I took other direct action on both the videos and the ONA report. They were the issues in which I had a direct involvement.

Senator FAULKNER—I know there has been some debate about changes that have occurred within Defence, and this has been touched on since Senator Hill has become the

Minister for Defence. This goes, as I understand it, to communications and the media. I think that is correct, isn't it?

Dr Hawke—That is correct. Senator Hill reintroduced the military operational briefings and he has agreed to a different approach from the public affairs one.

Senator FAULKNER—Has the detail of that been made public?

Dr Hawke—I think the Defence instruction is signed off now. It will be promulgated, and I think he is considering a number of other issues which CDF would be best placed to advise you on. But I am happy to make available the Defence instruction that CDF and I agreed on late last week.

Senator FAULKNER—Have you had a longstanding view that the level of secretaries' performance pay should be made public?

Dr Hawke—Is that relevant to this inquiry, Mr Chairman?

Senator FAULKNER—I think it is.

Dr Hawke—It does not matter what my view is; it is basically an issue for the Prime Minister.

Senator FAULKNER—But you do have a strong view on that, don't you?

Dr Hawke—Yes, I do.

Senator FAULKNER—Would you be able to share it with the committee?

Dr Hawke—My view is that it should be made public, but I am not the decision maker. I am an adviser, not a decision maker on this matter.

Senator FAULKNER—Are you able to share with the committee the outcomes of your meeting of 15 March?

Dr Hawke—No, because there is no decision on that. It was 14 March, I think, with Minister Reith. The process is not yet completed in respect of this year.

CHAIR—I do not want to prolong your ordeal any longer than necessary, Dr Hawke, but I have a few general questions and a couple of questions arising from the discussion that has been entered into this morning. Firstly, I am going to ask you if you will take a series of questions on notice, but let me forewarn you what they are before you answer. It seems to me that, for the purpose of this inquiry, it would be useful to get some context about operational arrangements. The questions that I have may not be appropriate to you, given the demarcation you have been careful to draw this morning between the defence forces and the department. But I have a series of questions which go to that and which go to the extent that we can be advised of what the rules of engagement were and so forth that relate to the circumstances around SIEV4.

Dr Hawke—I think all of those issues could be addressed to the Head of Strategic Command.

CHAIR—I will put them in more decipherable writing then and I will talk to him about it. Secondly, on the defence instruction about dealing with media, I think you and Admiral Barrie issued this instruction—the Defence Instructions (General)—on 8 August?

Dr Hawke—Yes, that is the one that has been overtaken by the latest instruction.

CHAIR—But that held in force during the period that we are looking at?

Dr Hawke—Correct; it did. My recollection—and I have to check this—is that there was a specific guidance issued in relation to Operation Relex as well.

CHAIR—Would it be possible for us to have a copy of that specific guidance note?

Dr Hawke—I will check that for you.

CHAIR—Can you recall the date on which that was issued?

Dr Hawke—No, I don't.

CHAIR—That will show though when you make it available to us. The changed situations under Minister Hill, in this respect, have they gone back to, effectively, what applied before this instruction was issued or are they a third way?

Dr Hawke—Yes, they have, but I think they have gone further.

CHAIR—They are a third way?

Dr Hawke—Yes. He probably would not put it that way, but I understand what you mean.

CHAIR—We will see this and we will make our own minds up but, in essence, are you able to say whether they are largely like they were before?

Dr Hawke—Yes, but even more relaxed than they were before.

CHAIR—Even more open?

Dr Hawke—More flexibility.

CHAIR—Just going to this instruction, point 15 says: Defence members are not to comment publicly or disseminate information about Defence policy or administration which could place in doubt their political impartiality or acceptance of the obligation to implement the policy of the elected government.

What was the reason for that provision being inserted?

Dr Hawke—I think that provision was there in the previous instruction. I would have to check that for you, but I think that has been a longstanding provision in that defence instruction. The one that you are talking about was not invented or written de novo by us; it was a derivation of a pre-existing instruction. But I will check that—

CHAIR—It really is an injunction for people in the defence forces not to be party political, to keep their comments neutral, to always tell the truth—

Dr Hawke—It applies to civilians as well.

CHAIR—And in the defence department?

Dr Hawke—Yes.

CHAIR—And telling the truth is telling the whole truth, not concealing any truth, and not allowing a mistruth to stand by way of omission?

Dr Hawke—I agree with you.

CHAIR—This instruction—and I am going to ask you whether this is a new instruction—says that only members trained through the PACC will be authorised to speak to the media, and then only after clearance of talking points. Was that, at the time, a new instruction?

Dr Hawke—That would have been new. I will check, but I suspect that that would have been new.

CHAIR—So you have to go through a training program before you would qualify to be authorised to speak, and then you may not be authorised unless your talking points have been cleared?

Dr Hawke—That was the intent of that paragraph.

CHAIR—Cleared by whom?

Dr Hawke—The instruction is in there—I think, by the Public Affairs and Corporate Communications executives in the states or at headquarters.

CHAIR—Point 26, ‘Keeping the ministers’ offices informed’ states, in part:

To ensure that the Government is not taken by surprise by issues that attract media attention, and which can damage the reputation of Defence, it is important that the private offices of our Ministers and Parliamentary Secretary are informed well in advance of any activities with the potential to arouse public of media interest.

It goes on, but let me pause my quote at that point. I leave open the question of what might damage the reputation of Defence because I think, generally, there has been a lot of comment about that with respect to this issue and people make their subjective judgments. The part of this quote that I read you that I want to focus on now is where it says:

... it is important that the private offices of our Ministers and Parliamentary Secretary are informed ...

What does that mean? Does that mean that you ring the office and you can talk to an officer on the minister's staff? Is that what it means?

Dr Hawke—It would normally mean that that contact would be made through the public affairs and corporate communications area—they would do that liaison. But there is nothing to stop people from dealing direct if there is a particular issue.

CHAIR—But when it says:

... it is important that the private offices of our Ministers and Parliamentary Secretary are informed—

what is their 'private office'?

Dr Hawke—The ministerial media adviser is essentially what that is referring to.

CHAIR—When one contacts the ministerial media adviser do you consider that is contact with the minister?

Dr Hawke—Each minister tends to have different rules of engagement. Some ministers would regard it as such; Senator Hill does not.

CHAIR—What was the situation applying at this time? If you spoke to the media adviser, was it regarded that you were passing information to the minister?

Dr Hawke—Yes, we would have been working on the assumption that that adviser would have had any necessary discussion with the minister. That may be a wrong-founded assumption.

CHAIR—But that is the assumption you were working on?

Dr Hawke—That was the assumption we were working on—that is the reason for the point I made to Senators Faulkner and Collins earlier.

CHAIR—Your department has not provided a submission to this inquiry and we are aware of a cabinet decision about that for departments. Is the reason you have not made a submission that cabinet decision?

Dr Hawke—No, my letter was received before the government made the decision. As your secretariat will be able to say, we did not think there was any need to make a submission, but, as my letter said, we offered you all of the information we had and whatever witnesses you decided to access, the latter being with the concurrence of the defence minister.

CHAIR—In your opening statement today you forthrightly and openly criticised your own actions as deficient—I note that. Have you been reprimanded in any way for that deficiency?

Dr Hawke—Not yet.

CHAIR—The question of performance pay is yet an unresolved matter?

Dr Hawke—Correct.

CHAIR—Did you consider at any stage that this would warrant resignation?

Dr Hawke—Yes.

CHAIR—And what was your consideration?

Dr Hawke—I offered my resignation.

CHAIR—To the minister?

Dr Hawke—Yes.

CHAIR—That was to Mr Reith?

Dr Hawke—No; it was to Senator Hill.

CHAIR—The fact that you are still sitting here with the glorious title of ‘secretary’ suggests that he declined. Is that right?

Dr Hawke—That may be the case; it may be that he is still considering the matter.

CHAIR—I see. Has Mr Reith, in your discussions so far with him about performance pay, intimated any concern about the criticism you yourself have made of your performance on his behalf?

Dr Hawke—No, he did not offer any criticism during our discussion. I have not spoken to him since then.

CHAIR—Has he remarked on it?

Dr Hawke—No. At the time I think he thought I was being a bit tough on myself.

CHAIR—I see. I think in answer to Senator Faulkner earlier this morning you said—correct me if I have taken it down wrongly—that ‘you do not know that children were not thrown overboard’. Is that what you said?

Dr Hawke—I said that I thought that was one of the purposes of this committee. I understand the balance of evidence over here, but I will be interested to see, as much as you will, what comes out in the course of this inquiry. I accept Senator Faulkner’s view—if I am not verballing him here—

CHAIR—I am sure he is capable of defending himself.

Dr Hawke—that, on the balance of probabilities and the information here, children were not thrown overboard.

CHAIR—Which was the conclusion of the Bryant and Powell reports—

Dr Hawke—Yes.

CHAIR—and is the latest view of Admiral Barrie?

Dr Hawke—Yes, that is correct.

CHAIR—Some of the questions I was going to ask about departmental roles during the caretaker period have been asked by other members of the committee, but just so that I can be sure—I think this was cleared up—you are not saying that the caretaker period precludes you from in any way correcting a misunderstanding or an untruth with the minister.

Dr Hawke—I think it is even more important to do that at that time.

CHAIR—Yes. The other thing you have referred to in your evidence is ONA. Did you contact it at any stage during this issue or did it contact you at any stage during this issue?

Dr Hawke—No, I was not directly contacted, but my recollection is the Deputy Secretary of the Intelligence and Security Group, Mr Carmody—and perhaps there are others; I think there were others within Defence—had discussions with ONA officials.

CHAIR—Should we ask Mr Carmody for that evidence or can you tell us at what time this was?

Dr Hawke—I did not actually pursue who spoke to whom about that. I was primarily interested in satisfying myself whether or not the ONA report derived from Defence information.

CHAIR—This is the ONA report referred to by the Prime Minister.

Dr Hawke—I was satisfied that it did not originate from, or depend on, Defence written advice in the intelligence arena.

CHAIR—I do not want to go to what I would regard as being sensitive material of what might pass between Defence and ONA, but I want to ask you the question: can you tell us on what occasions ONA contacted the Department of Defence or the Department of Defence contacted ONA on this incident?

Dr Hawke—I think ONA actually contacted Defence. That is my recollection of what happened. I think I am right in saying that Mr Carmody had a discussion with Kim Jones, the Director-General of the Office of National Assessments, but I will have to check that for you. If I were to take those on notice, I could provide on notice the answers without your having to call the witnesses. That is if you are just interested in who spoke to whom and when.

CHAIR—Yes, please take those on notice. I am really interested in knowing whether your Mr Carmody told ONA that no children were thrown overboard.

Dr Hawke—I do not know the answer to that. As I said to you, what I was pursuing was: was the ONA assessment based on advice from Defence?

CHAIR—Yes.

Dr Hawke—And I am told it was not.

CHAIR—Senator Brandis asked you a question about people on the deck of SIEV4 wearing life jackets and invited you to agree with an inference that, if they were wearing life jackets before the vessel was sinking, that was an indication—I will be corrected if I have got this wrong, and I certainly invite the correction if I have got this wrong—that they may have had some intent to abandon ship before it sank. I think your reply was that you could possibly draw that inference.

Dr Hawke—I did say that, but I think I also went on to say that might be something you would want to check with Chief of Navy, Commander Banks or other people.

CHAIR—On the face of the facts put to you, it is an inference that you were invited to draw.

Dr Hawke—The reason I raise it was I particularly remember it and the comment being made to me that this was quite different to the previous illegal entry vessels.

CHAIR—Yes.

Dr Hawke—This behaviour was quite different.

CHAIR—But it is also true, isn't it, that at this stage deterring the entry of possible illegal vessels, turning them back and causing them to sail on to Indonesia was the primary purpose of the operation? In doing so, there is evidence that the *Adelaide* fired in front of this particular SIEV vessel, SIEV4, on at least three occasions—50 feet, 75 feet and 100 feet on different occasions—and passed close behind its stern et cetera in what might be regarded as, 'Hear this: go back' sort of behaviour. Is it a reasonable inference to draw that all that type of activity could have led people on this vessel to put on their life jackets as well?

Dr Hawke—I am not across the operational details. I would prefer you asked the captain or the Chief of the Navy about that issue.

CHAIR—Sure. But if that behaviour occurred, and we will discover that, would that be a reason to put on a life jacket?

Dr Hawke—It could well be. All I recall is being told that this was quite different behaviour on the part of these people than we had seen before.

CHAIR—Yes.

Senator BRANDIS—You invited a correction from me if you got it wrong.

CHAIR—Yes.

Senator BRANDIS—The evidence of Commander Banks, and no doubt we can go into this, is that when the vessel was first sighted—that is, at a time prior to the warning shots and other manoeuvres by the HMAS *Adelaide*—more than 80 per cent of the occupants of the vessel already had life jackets on.

Dr Hawke—This is exactly why I did not want to get into this detail because I do not have a detailed knowledge of what happened during this time. I think Commander Banks is the better person to talk to about that. He was there on the scene in charge of the operation.

CHAIR—I thank Senator Brandis for making the clarification because it was not clear in that form when he asked his question. That goes to whether the SIEV was sinking—

Dr Hawke—Yes.

CHAIR—and whether its pumps were defective and things of that nature.

Senator FAULKNER—Just before Dr Hawke leaves, I have one or two questions that arise from recent evidence. Could I be clear on this, please, Dr Hawke—and I am not: on 15 February 2002, we are told that you asked the Acting CDF to inform Mr Moore-Wilton of the conversation between Air Marshal Houston and Minister Reith. I think that is right, isn't it?

Dr Hawke—Can I put it my way?

Senator FAULKNER—Yes. I want to be clear on it.

Dr Hawke—Bornholt read out his remarks. Air Marshal Houston confirmed them in front of Lieutenant General Mueller, who was Acting Chief of the Defence Force. I then suggested that Mr Moore-Wilton and the defence minister needed to be informed and General Mueller undertook to do that. I do not know whether I actually said to General Mueller, 'and you should do it', but he did it.

Senator FAULKNER—Thank you for that. That does clarify that. In relation to the conversation that you were made aware of on 8 November, which was between the Acting CDF, in this case Air Marshal Houston, and Minister Reith, did you—or not—consider a similar approach: in other words, to inform Mr Moore-Wilton of that?

Dr Hawke—No, I did not. Can I just go back one point? General Mueller told me that he had spoken to Mr Moore-Wilton that night. I am unclear when the defence minister was told, but I am pretty sure he was told. As to the discussion on the morning of 8 November, when Air Marshal Houston told me, I did not canvass the possibility of telling Mr Moore-Wilton.

Senator FAULKNER—Why the different approaches in the two instances?

Dr Hawke—In my mind was the fact that the reports by Powell and Bryant had been tabled in the parliament on the 13th. Bornholt had come to me on the afternoon of the 15th, I think it was, saying he had now had time to read it. His view was that Major General Powell had missed the import of what he had told him about the conversation between Air Marshal Houston and Minister Reith. My view was that, in that case, somebody should draw that to the attention of the Secretary of PM&C, given that the Prime Minister had tabled the statements—and that the defence minister needed to know as well.

Senator FAULKNER—You indicated to the committee a little earlier that you in fact offered your resignation in relation to these matters. Could you indicate to the committee when you did that and at what part of this process you decided to do that. I appreciate it was some time after the election on 10 November.

Dr Hawke—Yes, it was in February.

Senator FAULKNER—Was that after the tabling of the Bryant and the Powell reports?

Dr Hawke—Yes.

Senator FAULKNER—You have made the point to the committee at some length this morning that you feel many of these matters are not the responsibility of the Secretary of the Department of Defence. You have described them as, if you like, operational matters, more properly the concerns of the ADF, when we look at the diarchy in Defence. I think that is fair to say, isn't it?

Dr Hawke—Yes.

Senator FAULKNER—In that circumstance, why offer your resignation?

Dr Hawke—I offered my resignation on the basis of not offering oral advice or written advice to Minister Reith about the photographs. I feel in retrospect that I should have done that.

CHAIR—I thank Senator Brandis and Senator Faulkner for taking my line of questioning away from me. That is fine. I have no difficulty about that. But let me conclude my line of questioning now. Just going back to this last point, you have made your criticism of yourself forthrightly and directly before us and that attracts a fair bit of respect, I think, if I may say so, Dr Hawke. Can I ask you this question though: why did you not write to Minister Reith?

Dr Hawke—At the time, this was not a big issue. It subsequently became so. If you look at it that way, I guess I regard it as an error of judgment on my part at the time. It is easy to say there were a lot of other things going on and that I was attending to those and that this issue was not very large on the radar screen at that time. It turns out to be so.

CHAIR—I have no further questions. There appear to be no further questions. Thank you very much, Dr Hawke.

Proceedings suspended from 12.38 p.m. to 1.33 p.m.

SHACKLETON, Vice Admiral David, Chief of Navy, Royal Australian Navy

CHAIR—Welcome, Vice Admiral Shackleton. Let me extend the courtesy to you that we extended to Dr Hawke—do you have an opening statement of any sort?

Vice Adm. Shackleton—I do and I would be grateful if you would allow me to proceed with it.

CHAIR—By all means.

Senator FAULKNER—We might flag with the admiral our wish for him, if he is able at some point after he has made his statement, to provide the committee with copies of that statement. That might be helpful to the committee.

Vice Adm. Shackleton—I am happy to. I have a copy here.

CHAIR—We have a capacity to make copies here.

Senator FAULKNER—Sorry, I did not mean to interrupt you, but it was very helpful when Dr Hawke's statement was distributed.

Vice Adm. Shackleton—Certainly.

Senator FAULKNER—Thanks a lot.

CHAIR—The floor is yours, Vice Admiral.

Vice Adm. Shackleton—Thank you. I would like to open my evidence by making a statement concerning my responsibilities as the Chief of Navy and how they relate to the command of ADF operations. I will then describe my understanding of the issues concerning SIEV4. In particular, I will describe the role of the Navy, the issues concerning the video and its use and the photographs and their relationship with the rescue of people. I will then be happy to answer any questions you may have for me.

Turning to my responsibilities as the Chief of Navy, I am the Chief of Navy and am accountable to the Minister for Defence through the CDF and secretary for the leadership and management of the Royal Australian Navy. Minister Moore appointed me to my position on 3 July 1999. I command the Navy. Command is exercised by a person, not a committee or a staff officer. My accountability cannot be delegated. My responsibilities include ensuring that the Navy is able to achieve its mission of being able to fight and win, and professionally conduct the tasks required of it by the CDF within the resources that I am allocated. In achieving that responsibility, I appoint officers and sailors to positions of responsibility, authority and accountability that match their training, education and experience. It is my responsibility to appoint commanding officers of Navy units and it was me who appointed Commander Banks in command of the *Adelaide*. I also make recommendations to the CDF regarding the

appointments of very senior officers and it was my recommendation to CDF that Rear Admiral Smith be appointed as the Maritime Commander.

It is also my responsibility to advise the CDF on the most effective and appropriate manner in which to use naval forces. Along with the other service chiefs, I am a member of the Chiefs of Service Committee which advises the CDF on non-time critical military matters, and the Strategic Command Group which advises him on matters that typically do have time sensitivity about them. I am responsible for the development and implementation of all Navy doctrine and policies for their proper administration and operation. This includes the achievement of a safe working environment and the professional conduct of all activities undertaken by the Navy so that they can be operationally successful. I am required to set the requisite deliverables and their associated standards to be met by other elements of the Department of Defence such that I can meet these responsibilities.

As I have said, my responsibilities extend to providing the wherewithal and the ability to conduct naval operations to a high level of professional proficiency, but my command authority does not extend to the direct conduct of operations themselves. The CDF commands all ADF operations. He generally commands them through the Commander Australian Theatre, presently Rear Admiral Ritchie. CDF is assisted by many other staff officers whose work is coordinated by Head Strategic Command, presently Air Vice Marshal Titheridge. That officer is a staff officer who acts as an agent for the CDF. He is not a commander. The Strategic Command Division is a functional organisation in Russell. COMAST has four component commanders and Commander Northern Command who are responsible to him. They are the Naval Component Commander, presently Rear Admiral Smith who is also the Maritime Commander, the Land Component Commander, the Air Component Commander and the Commander of Special Forces.

Each of the component commanders has two bosses, one is COMAST himself, to whom they answer for the achievement of operations within their particular environment, and the other is their chief of service to whom they answer for the proper conduct of operations to the appropriate level of professional performance. In this case, Rear Admiral Smith is responsible to Rear Admiral Ritchie for the planning and execution of maritime operations, and to me for the professional standard to which the operation itself is conducted. In this way, I am able to meet my own responsibilities to the CDF.

As I have said, the Commander of Northern Command, currently Brigadier Silverstone, is also responsible to COMAST. For Operation Relex, Brigadier Silverstone was also designated as the commander of joint task force 639. In this role, he had tactical command of units assigned to him and he was responsible to the Naval Component Commander, Rear Admiral Smith, who himself had been designated as the lead component commander for this operation. In turn, he was responsible to COMAST and thence to CDF. At the time of the SIEV4 incident, *Adelaide* was under the tactical command of CJTF 639. In summary, the operational chain of command for *Adelaide* for Operation Relex was to CJTF 639, to the Naval Component Commander, to COMAST and to CDF. Or put alternatively, it was Banks to Silverstone to Smith to Ritchie and then to Barrie. This system is flexible and it works.

I now turn to the circumstances as I understood them on 8 November 2001, which is when I became publicly associated with this incident through media reporting. In the interim I have

become aware of the contents of the Bryant and Powell reports, and this advice has been largely incorporated in those reports. On 6 or 7 October I was told by the Maritime Commander, Rear Admiral Smith, by telephone that *Adelaide* was dealing with SIEV4 and that the people on this vessel seemed to be more aggressive and better prepared than others before it. The Maritime Commander kept me verbally apprised of the incident as it unfolded and until it stabilised. He may have told me that the reports of children being thrown over the side were not correct, but if he did I do not remember him so saying. I had an awareness that the people on these boats would go to great lengths to achieve their ends and that threatening to hurt people was not a new tactic of persons seeking to enter Australia in such circumstances. So I would not have been surprised by any comments he may have made in this respect.

The video footage released in November was of the initial incident; that is, the apprehension of the vessel and *Adelaide* taking control of it. The video was made of the events recorded by the ship's electro-optical tracking system, which works in conditions of low light as well as in daylight. On 10 October the Maritime Commander emailed me copies of photographs taken of people in the water being attended to by sailors from the *Adelaide*. The Maritime Commander verbally told me that these were photographs of people being rescued after the boat had sunk, which was after it had been taken in tow by *Adelaide*—that is, they were not photographs taken during the apprehension of the vessel. Some of these photographs subsequently appeared very shortly afterward in the print and television media, being portrayed as being a rescue of individuals thrown over the side of the SIEV.

Both the Bryant and Powell reports addressed the handling of these photographs. The description by Powell of how they were handled is correct, from my recollection of the events. On 10 October I saw these photographs on the ABC *7.30 Report* television show, and I immediately telephoned CDF with my advice that the photographs had been improperly identified. He advised me that COMAST, Rear Admiral Ritchie, had already called him about the same matter. I was aware that *Adelaide* had emailed copies of the photographs to recipients that did not have an operational need for them and that this risked their widespread distribution and poor control. Consequently, I verbally instructed the Maritime Commander to ensure that very tight control of imagery of all of these SIEV events then be put in place. I was concerned at the loose handling of operational information and the potential for the imagery to be used without appropriate management controls, noting my responsibilities for the professional conduct of the Royal Australian Navy.

On a date that I cannot remember, but it could have been 10 October or within two or so days, I was in discussion with CDF, Brigadier Bornholt and Ms McKenry in the Russell 5th floor CDF incident room, where we discussed the nature of the photographs in the media, and that they were not being correctly identified as being of the rescue of people after their boat had sunk. The photographs, as sent by *Adelaide*, originally had captions to clarify their meaning. On 20 October I departed Australia for the US and the UK and returned on 7 November. I attended the launch of *Rankin* in Adelaide on that day and then flew to Perth that afternoon. While absent from Australia, the Deputy Chief of Navy, Rear Admiral Adams, kept me apprised of events. I do not recall this particular issue—that is of SIEV4—being raised between us.

On 7 November my office advised me that Mr Scrafton would visit Maritime Headquarters that day to view the video taken by *Adelaide* of the boarding operation conducted on 7 October. I was later told that this was done in the presence of the Chief of Staff, Maritime Headquarters,

Commodore Hancock. I was later advised by both Captain Goldrick, who was my chief staff officer, and the Maritime Commander that, based on Mr Scrafton's advice, Minister Reith had agreed to release the tape to the media and that it would be released on 8 November. Captain Goldrick advised me that it was shown in the eastern states after midday on the 8th, and I saw it on television in Fremantle on the evening of the 8th.

On 8 November I attended the departure of HMAS ships *Kanimbla* and *Adelaide* for operations in the Persian Gulf area. I visited *Adelaide* and spent about 30 minutes with Commander Banks, the commanding officer. He described the circumstances of 6, 7 and 8 October, and I watched the videotape taken by the ship using its camera system. There was no evidence I could see on that tape of people being thrown into the water, but there was a person holding a child over the side with what I viewed as being the clear intent to do so. The tactical circumstances on 7 October varied from low- to high-intensity activity for the crew of *Adelaide*, and it is easy to see that in the heat of the action there could have been an assessment of people being thrown into the water. Banks told me that he reported the incident to Brigadier Silverstone via radio telephone on the seventh, when Silverstone called him from his headquarters in Darwin.

In giving evidence to the Senate on 20 February 2002, I was asked about the 'fog of war'. My answer was:

It is related to the reality that everything is real but it is not real. You are trying to pull threads and strands from many miscellaneous and sometimes disconnected information flows. You are trying to build a puzzle from many disconnected pieces. Sometimes the pieces fit accurately, sometimes they do not. It is fair to say that, often as not, you are dealing with millions of shades of grey and it is only as events start to get to a point of culmination that they start to form up into a real pattern, and then sometimes it disintegrates again as the events change. This is constantly moving and going up and down all the time. The commanding officer has to make hypotheses, judgments and calls based on what he sees at the time. It is never absolutely right; it is never absolutely wrong.

This is why it takes time to get clarity and understanding of fast moving events, and it can exist at all levels of command. Subsequent analysis of the activities undertaken by the crew of the *Adelaide* change the original assessment by Banks. This is not unusual. Commander Banks told me that he then advised CJTF 639, via radio telephone on about 9 October, of the changed assessment of these events—that is, children were not thrown in the water. But he also said to me that he was now unsure of whether he had been so definitive or not with Silverstone in the first instance. From my perspective, there is every likelihood that he had been, but, as so often is the case, the real-time nature of events can cloud what really happened. Also, from my perspective, Banks would have reported what he felt to be correct at the time. I am aware of Commander Banks's public statement regarding this matter, and I do not find it at odds with what I have just said. The media interviewed me on 8 November—the day that the videotape was released. In that interview, I said:

Our advice was that there were people being threatened to be thrown in the water, and I don't know what happened to the message after that.

My circumstances at that time were that I had been absent from the country for almost three weeks. In talking to Banks that day, seeing the video first-hand with him, and through talking with the Maritime Commander the day before, I had come to the conclusion that this would have been the information the Navy would have provided through the appropriate linkages; that is, that the original report had been corrected. I later found out that, while *Adelaide* had subsequently reported that children had not been thrown in the water, this report had not

progressed up the chain of command in a manner and clarity that altered the advice provided to the government by the CDF. This was the message that Air Marshal Houston subsequently referred to during the February 2002 Senate estimates committee hearings.

That same afternoon, 8 November, I was told by my chief staff officer that my comments were the lead news story in the eastern states, and that the chief of staff to the minister, Peter Hendy, wished to speak to me. My remarks were apparently being portrayed by the media to contradict those of Minister Reith regarding this matter, and it was about that contradiction he wished to talk to me about. Hendy and I spoke during the afternoon of the 8th. He said that he clearly recalled the minister being advised by Navy people of this incident—which is of children being thrown in the water—and he suggested to me that I should issue a clarifying statement to remove the apparent contradiction. In talking to Hendy, I gained a strong impression that he had not been told that the original report was incorrect, and this came as a surprise to me. I then spoke to Captain Goldrick and subsequently to Ms McKenry, who crafted a clarifying statement that I agreed with, which asserted that I was not contradicting the minister. It was released that same afternoon.

It was true to say that Defence had advised Minister Reith of the original report from *Adelaide* of children being thrown in the water. And it was in that context that I issued a separate statement refuting that contradiction. I would not have issued one if I did not consider that the argument was sound. I am aware that there is some notion that I was coerced into making a form of retraction. This is not so. I do not see it as part of my role to make public remarks which lead to any notion that I am a mouthpiece for others. I have provided information to Major General Powell for contribution to his report, and my remarks in this section of my statement largely reflect that written advice. I have also assisted the CDF and officers appointed by him to deal with the internal Defence management of this issue.

In closing, I spent Christmas in the Persian Gulf at sea with the 800 or so Navy people on board the *Kanimbla*, *Adelaide* and *Sydney*, which were deployed to the operation against terrorism. The people of *Adelaide* were in good spirit but were concerned about the way in which their efforts with SIEV4 had been portrayed in the media. I reassured them that they had my full confidence and that I thought that they had done a good job. In recent times the media has been seeking to make a point of Navy not properly treating the two sailors whose photographs appeared in the papers and on television. I totally reject that notion. In particular, Able Seaman Whittle has been portrayed as an injured party. That is not so. I have discussed this with her personally and I have had contact with her father, who was very supportive of the Navy's handling of this matter. On 12 March this year I visited *Adelaide* while she was at sea and before she returned to *Stirling* from her deployment on the next day. I again reinforced with them that I was proud of their efforts, for all that they had done, and as the Chief of the Navy I could not have asked them to do any more, and that it was good to have them safely home again to be reunited with their families. That completes my opening statement. I am sorry for the longwindedness of it.

CHAIR—Thank you, Vice Admiral Shackleton. I do not think that 'longwindedness' is an appropriate term to describe it. It may be an appropriate term to describe these proceedings by the time they are out, but we will see. It is my intention to rotate the call among the various senators, and I will start with Senator George Brandis.

Senator BRANDIS—Vice Admiral Shackleton, I want to ask you a number of questions about the SIEV4 incident, and I also want to direct a series of questions to you in relation to the expanded terms of reference of the committee—that is, term of reference (c), which instructs us to inquire into and report on the:

... operational procedures observed by the Royal Australian Navy and by relevant Commonwealth agencies to ensure the safety of asylum seekers on vessels entering or attempting to enter Australian waters.

I do not expect you to comment on this, Vice Admiral Shackleton, but may I say by way of a preliminary observation that it seems to me a disgraceful thing that brave sailors, officers and seamen have been used in some quarters as the meat in the political sandwich in relation to this, and I want you to feel very free in responding to my questions to say everything you feel you wish to say concerning the conduct of those under your command. Vice Admiral Shackleton, is it correct that the Navy took over the responsibility of coastal surveillance in relation to illegal immigrants from the Australian Customs Service from the time of the *Tampa* incident?

Vice Adm. Shackleton—I think there are some technicalities here. The chairman of the interdepartmental committee remained from the Department of the Prime Minister and Cabinet, and Defence participated in that IDC. Defence was given the lead role in the coordination of this operation, known as Operation Relex, and we proceeded from there.

Senator BRANDIS—Was Operation Relex a new operation name from the time the Navy took primary responsibility for the operation?

Vice Adm. Shackleton—I would have to get advice on that. In terms of ‘Was this a new style of operation for the Navy?’ the answer is yes. We had not done this style of operation before.

Senator BRANDIS—It is the case, I think, Vice Admiral, that from the time of the SIEV concerned with the *Tampa* episode on 26 August until the beginning of December, in that roughly three-month period, there were 12 SIEVs intercepted by the Royal Australian Navy.

Vice Adm. Shackleton—That would be about right.

Senator BRANDIS—And they were naturally given a corresponding serial number, SIEV1 through to SIEV12?

Vice Adm. Shackleton—Yes.

Senator BRANDIS—Vice Admiral Shackleton, I want to take you to some evidence you gave in response to some questions from me at the Defence estimates on Wednesday, 20 February this year. I am referring in particular to the *Hansard* record at page 87 through to 89. You may recall that I was asking you some questions not about SIEV4 but about another incident that occurred on 24 October 2001 concerning the vessel identified as SIEV7.

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—That was an occasion when a child was thrown into the water, wasn't it?

Vice Adm. Shackleton—That was the evidence I gave, yes.

Senator BRANDIS—Yes. I asked you at about point 3 on page 89 of the *Hansard* report:

Is there, to your knowledge, a belief among the Navy that events of this kind, which have been authenticated in relation to SIEV7—that is, children being thrown overboard from suspected illegal entry vehicles—were not an uncommon phenomenon?

You replied:

It is anecdotal. I would have to get greater clarification to say that it is a certainty.

You go on to say about two lines down:

If you are asking whether there is a belief that this is a common event, then I would have to say that that is probably the case.

Vice Adm. Shackleton—Yes.

Senator BRANDIS—I asked you:

Among Naval personnel?

And you replied:

Amongst those people involved in these operations, yes.

Do you remember giving that evidence?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—And you confirm that evidence today?

Vice Adm. Shackleton—Yes, I can.

Senator BRANDIS—In fact, it is the case, isn't it, Vice Admiral Shackleton, that when the Navy took over the primary responsibility for policing the Australian maritime borders from illegal entry vessels the Navy discovered quite soon that the use of children for the purpose of moral blackmail by asylum seekers—either by threatening to throw them into the water or by, as in the case of the event on 24 October, throwing them into the water or by, as in the case of SIEV10, deliberately sinking the vessel and carrying children into the water from the sunk vessel or by, as in the case of SIEV9, otherwise causing physical harm to children—was a practice that was routinely engaged in as a tactic? The Navy discovered that, didn't it?

Vice Adm. Shackleton—That is what we found.

Senator BRANDIS—Hence your remark in your opening statement, I assume, that threatening to hurt people in order to gain entry into Australia was not a new tactic.

Vice Adm. Shackleton—Correct.

Senator BRANDIS—Admiral Barrie gave some evidence to the Defence estimates as well on the same day—on 20 February 2002. I refer you to the foot of page 72 of the *Hansard* record. This was in response to some questions from Senator Faulkner. At the very foot of the page, Admiral Barrie says this in the very last line:

We had not seen it before ...

that is, this kind of behaviour—

although I think we were well aware that a considerable level of briefing was occurring at the ports of departure on how to try and counter our efforts to stop this activity ...

the activity being the sort of activities that I have referred to. Vice Admiral Shackleton, can you tell us what naval intelligence told you about the briefing that was occurring to these illegal immigrants at the ports of departure?

Vice Adm. Shackleton—I do not have that at hand. The Maritime Commander and Commander Australian Theatre may be able to provide you with that information directly. I would perhaps hesitate by saying it is likely to be classified in terms of its content and sources.

Senator BRANDIS—I will direct those questions to them in due course. Can I venture to suggest to you, by inferring from the context in which Admiral Barrie there spoke, that the briefings that were occurring at the ports of departure were briefings encouraging the use of children for the purpose of moral blackmail of the Australian naval forces in order to secure a foothold in Australia territory by the illegal immigrants?

Vice Adm. Shackleton—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.

Senator BRANDIS—So your impression was that this was a coordinated response by the people smugglers?

Vice Adm. Shackleton—Yes.

CHAIR—I must say we have none of this evidence before us.

Senator BRANDIS—I am just asking questions.

CHAIR—I know. I am just making the point that none of this evidence from which you are asking questions is before us. The point is that if we are going to examine the assertions, as we may wish to do, it would be useful if we had access to the same body of evidence that you appear to have access to, Senator Brandis.

Senator BRANDIS—Let me produce it. Vice Admiral Shackleton, have a look at this document, please. The document that I have given to you is in fact a suite of documents. The first two pages are a letter to me from the Minister for Defence, dated 21 March 2002, I think; is that right?

Vice Adm. Shackleton—Yes.

Senator BRANDIS—The second document is again a two-page document: a letter from me to the Minister for Defence the previous day.

Vice Adm. Shackleton—Yes.

Senator BRANDIS—If you glance at my letter, you will see that it is an inquiry for information concerning SIEV incidents, and the minister's letter is a reply.

Vice Adm. Shackleton—Yes.

CHAIR—Can we have a look at this document?

Senator BRANDIS—The document has been given to the committee, Senator Cook.

CHAIR—If that is the case, then it is a different document. I do not wish to interrupt you, Senator Brandis, but there ought to be a procedure. In your line of questioning, you are referring to what allegedly occurred in briefing SUNCs, to use the naval term, at the ports of departure. In the document that you have now identified, there is no such reference.

Senator BRANDIS—Senator Cook, if you listen to my line of questioning, all will be revealed to you.

CHAIR—All I am saying to you—and I said this in my earlier intervention—is that the allegations you are making about what occurred at the point of departure is not before the committee. That is all.

Senator BRANDIS—Senator Cook, I asked this witness a number of questions about what he understood to be the briefing at the ports of departure. I am moving on to another, although related, topic.

CHAIR—You explained to the witness what you believed happened at the point of departure and invited him to concur. That is a line of questioning that is permissible in this form.

Senator BRANDIS—As you say, it is a perfectly permissible line of questioning.

CHAIR—All I said and all I insist on saying at this point—one thing and nothing more, but it is material to this line of inquiry—is that we have no evidence that what you are putting to the vice admiral is in fact what happened.

Senator BRANDIS—I am terribly sorry, Senator Cook, but I saw the vice admiral take an oath. There is evidence: it is the evidence that he has just given.

Vice Adm. Shackleton—Senator, perhaps when the Maritime Commander is given an opportunity to give evidence—he has copious details of each SIEV incident—he will be able to describe for you the way in which we saw an increase in their readiness to deal with us, which led us to understand that there was some feedback mechanism in their processes which alerted them to our approach so that they would, in their own way, be more prepared to deal with us.

CHAIR—Thank you, Vice Admiral. All I am saying to Senator Brandis—and he has clarified it to some extent—is that the evidence that is before us is the evidence that you have given, not the questions that have been put to you. My intervention is to simply say that none of us were aware of these questions. It is perfectly reasonable that Senator Brandis should proceed in this way—I make no criticism of that—but, if we are to examine these allegations, we do need a body of evidence that we can examine. Senator Brandis believes that that is the evidence that you are giving. That is his belief—that is fine, we will deal with that. But I do make this other point, and I make it to you, Senator Brandis: when I made my intervention in the first place, you then referred to this document—which you have now handed to the vice admiral—which has nothing to do with the evidence of what may have occurred at the point of departure. I am familiar with the document you have now referred to, and I just wanted to make that distinction lest there be some confusion.

Senator BRANDIS—No, Senator Cook, I am afraid you have missed an intervening stage. I then went on to ask the witness whether it appeared to him that the use of children and threats to the life of children for the purpose of moral blackmail of Australian naval personnel was a coordinated response. This document speaks directly to that issue.

Senator FERGUSON—Mr Chairman—

CHAIR—If I may, is it related to the point that Senator Brandis has made?

Senator FERGUSON—Yes.

CHAIR—Well, let me hear you on that point.

Senator FERGUSON—Mr Chairman, at the opening of this inquiry you said this morning that you wanted to give every senator an opportunity to exhaust all the questions that each witness might be required to answer. Whether or not there is documentary evidence before the committee at present should not preclude any senator from asking a question of a witness about anything that they think is relevant to this inquiry. Senator Brandis is following a line of questioning which is very relevant because it also alludes to the motives and behaviour of these people, and I think that every scrap of evidence that we can possibly get should be allowed in this inquiry—as you intimated in your opening statement.

CHAIR—Thank you, Senator Ferguson. Nothing that I have said is in any way meant to prevent a line of questioning by a member of this committee. What I have said is to get the line of questioning into context. No document before us goes to what may or may not have been said by refugee seekers—or whatever the proper title is—at the point of departure. Secondly—and as far as I am concerned we should get on to the business—the document that has been

nd as far as I am concerned we should get on to the business—the document that has been adduced, which I took to have been adduced to establish the point after my intervention, is not related to that point.

Senator JACINTA COLLINS—Senator, I might be able to short-circuit this process. Vice Admiral, correct me if am wrong, but I think in your statement you indicated that there was a document that pertained to Senator Cook’s issue but that you did not have it on you at the time. If there is any such documentation, can I ask that you provide it to us on notice?

CHAIR—I think that has already been asked by Senator Brandis.

Vice Adm. Shackleton—I may have created in your minds the notion that there is a lengthy intelligence report somewhere. We would have to go and investigate that. Clearly, from the behaviour of the SIEVs, we saw an increase in their understanding of how to deal with the Navy, as we got ourselves in the position of dealing with them. They were learning, and so that meant to us that somebody was obviously instructing them in how better to approach the Australian Navy when they came into Australian waters.

Senator BRANDIS—Let me then take you through the document. The main body of the document is a minute dated 1 March 2002 from the Head of Strategic Command, Air Vice Marshall Titheridge, to the minister. May I tell you, Admiral Shackleton, that this is a document produced to me, as a member of the committee, and to the committee, by the minister. It contains—

CHAIR—No, it was presented to the committee, through you.

Senator BRANDIS—No. As I understand it, the document also went directly to the secretariat. I am told by the secretary that it was produced to the secretariat of the committee as well. The second page of the document sets out, in a sense, a table of contents, under the heading ‘Unauthorised Arrivals Incident Information’. Do you see that?

Vice Adm. Shackleton—Yes.

Senator BRANDIS—The next page is a glossary of acronyms. Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—Then there is a series of enclosures identified in the top right-hand corner—enclosure one through to enclosure eight—and the method of the document is to have one enclosure for each of the eight Navy ships involved in SIEV incidents during the period under review. Do you see that?

Vice Adm. Shackleton—Yes.

Senator BRANDIS—You have seen this document before?

Vice Adm. Shackleton—I may have; I do not recollect it directly. But I am an addressee on that, I see that.

Senator BRANDIS—Yes, you are. It is not done in chronological order, but I reconstructed a chronology. The earliest event in the sequence is that reported at enclosure 3 concerning SIEV3. I am going to take you through this document so as to enable you to develop your proposition that the Navy saw increasingly—in regard to the use of children for the purposes of moral blackmail—a coordinated response by the illegal immigrants and the people smugglers. Let us start then with the earliest incident—that is, that concerning the HMAS *Warramunga*. The illegal entry vessel was SIEV3 and the date was 12 September 2001; do you see that?

Vice Adm. Shackleton—Correct.

Senator BRANDIS—Are you aware that there was a SIEV incident involving the interception of SIEV3 by the HMAS *Warramunga* on 12 September 2001?

Vice Adm. Shackleton—I am, but if you would permit me, the individual with the expertise who can talk to you with all of the knowledge on these matters is the Maritime Commander. He dealt with these on a day-to-day basis blow by blow. I am happy, obviously, to sit here and answer your questions, but you may find yourself repeating those same questions with the Maritime Commander.

Senator BRANDIS—I may, but you are the Chief of Navy and it is the men and women under your command whose professional conduct has been the subject of outrageous criticism by some, and I am giving you the opportunity as Chief of Navy to make your own observations in relation to that. We have been tasked by the Senate to do that very thing. May I take you, please, to subparagraph C, which is the long subparagraph in the middle. In relation to this particular SIEV incident, Lieutenant Commander Gregg reported that one female potential illegal immigrant was seen holding a child over the side and threatening to throw the child over the side.

Vice Adm. Shackleton—Yes, that is what it says.

Senator BRANDIS—You are familiar with that incident having occurred?

Vice Adm. Shackleton—Yes.

Senator BRANDIS—The next SIEV incident in the sequence was the SIEV4 incident on 7 October. That is reported at enclosure 1. You will see in subparagraph D that—let us leave to one side the question of whether or not a child was in fact thrown into the water from SIEV4—it is, I think, not in controversy that a little girl was dangled from the side of the SIEV4 vessel and threatened to be thrown into the water.

Vice Adm. Shackleton—That is what the video shows, yes.

Senator BRANDIS—That is the event reported as occurring at approximately 0600 hours?

Vice Adm. Shackleton—That is correct.

Senator MASON—If I could also just draw your attention to your statement to Major General Powell. On page 3 of that, in addressing this incident about the child being held over the side of the boat, you say, in paragraph J:

1.4.13 On 8th November I attended the departure of HMA Ships *Kanimbla* and *Adelaide* for operations in the Persian Gulf area. I visited *Adelaide* and spent about 30 minutes with CMDR Banks, the Commanding Officer. He described the circumstances of the 6th, 7th and 8th October, and I watched the videotape taken by the ship using its camera system.

And then you say, and this is important:

There was no evidence I could see on that tape of people being thrown in the water, but there was a person holding a child over the side, with what I viewed as being the clear intent to do so.

Is that correct?

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—Just to complete the discussion of the video taken from SIEV4, you do not say, of course, that the video proves one way or another whether another child was thrown into the water; you merely say, as I understand your evidence, that it is not conclusive of that issue.

Vice Adm. Shackleton—What the video shows is, as we have just been describing, that there was a child held over the side. From what I saw, there was no evidence on that tape of anybody being thrown into the water.

Senator BRANDIS—I want to move on now from SIEV4 to the next SIEV incident, and that is the incident concerning SIEV6, which is described in enclosure 8 on the last page of the document that I have handed to you. That was an incident involving the HMAS *Bunbury* on 7 October 2001.

Vice Adm. Shackleton—Yes.

Senator BRANDIS—Was that incident reported to you?

Vice Adm. Shackleton—I was aware of that, yes.

Senator BRANDIS—In subparagraph D, the precis of the report of the boarding party tells us:

... members of the Boarding Party observed a large male standing atop the vessel's coachhouse. He picked up a young girl (aged 4-5 years) by one leg and held her over the STBD side of the vessel and started yelling. The young girl appeared very distressed. All observers noted that she had a cast on her left arm.

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—Vice Admiral Shackleton, I wonder if you would like to comment on the effect having to attend to an incident in which a little girl with her arm in a cast is held screaming by the leg over the side of one of these vessels has upon the morale of Australian Defence personnel, male and female. What does that do to your personnel?

Vice Adm. Shackleton—I do not think ‘morale’ is the word to use. I think the words to use are ‘care and concern about the safety of children’, which everybody in this country has a very strong feeling about. It goes to the heart of what we have been attempting to do. This has been very hard work, and the sailors have acquitted themselves in a way in which I think most Australians would be very proud of. In my own sense, I cannot be any more proud of them than I am. The point is that this has been very difficult. The people who are engaged in the SIEV—that is, the people themselves—are in difficult circumstances. The point is that they are trying to get to Australia. It has been the Navy’s task to stop them doing that.

Senator BRANDIS—The next SIEV vessel where we see this sort of conduct is that identified as SIEV7, and that apparently engaged two naval vessels—the HMAS *Arunta* and the HMAS *Bendigo*.

Vice Adm. Shackleton—Are you looking at enclosure 6?

Senator BRANDIS—Enclosure 2 deals under the subheading ‘Incident One’ with the incident concerning SIEV7, so far as the intervention of the HMAS *Arunta* was concerned, and enclosure 6 deals with the incident involving SIEV7, so far as the HMAS *Bendigo* was concerned. The second of those two incidents—that concerning HMAS *Bendigo* on 24 October—was the occasion when a child was thrown into the water, but there was an earlier incident involving the same SIEV vessel—SIEV7—with the HMAS *Arunta*. Do you see that in enclosure 2?

Vice Adm. Shackleton—Yes, I do. But enclosure 6 quite rightly makes the point that the woman dropped the child into the water and then it was recovered after an individual swam to get the child. But you are talking about enclosure 2?

Senator BRANDIS—Enclosure 2 also refers to SIEV7, and that involves at an earlier point in time in the voyage of that vessel—

Vice Adm. Shackleton—‘Threatened to throw child overboard’.

Senator BRANDIS—Yes. So there was a threat made at the time that HMAS *Arunta* apprehended the vessel. It was taken to Ashmore Island. Then the occasion when the child did end up in the water, having been dropped overboard by the illegal immigrant, took place at Ashmore Island. That is reported at enclosure 6; is that right?

Vice Adm. Shackleton—Yes.

Senator BRANDIS—Senator Mason points out to me that one of the other species of conduct reported by the crew of the HMAS *Arunta* at subparagraph d. of ‘Incident One’ is that, during the passage—that is, the passage escorting the vessel from Ashmore Island to Indonesian territorial waters—several incidents occurred, including attempts to set fire to the vessel and

attempts by potential illegal immigrants to set fire to themselves, including dousing themselves with diesel fuel. Do you see that?

Vice Adm. Shackleton—That is right.

Senator BRANDIS—May I ask this generally: these episodes of attempts to destroy a vessel by fire or by sabotage or by holing the vessel were emerging as part of what you would call the coordinated response, weren't they?

Vice Adm. Shackleton—We were seeing this as a fairly commonplace event, yes.

Senator BRANDIS—Thank you. The next SIEV vessel in the sequence is that identified as SIEV9.

Senator MASON—Could I just ask a quick question about SIEV7? I remember when Senator Brandis asked questions of you about this at the estimates.

Vice Adm. Shackleton—Yes.

Senator MASON—When were you first briefed about that?

Vice Adm. Shackleton—I honestly could not tell you. I would have been familiar with SIEV7 at around about the time. I am kept generally apprised of events as they emerge and, if I seek more detail, then people will provide it; otherwise I will have a telephone conversation with the Maritime Commander at periodic intervals and we all discuss the nature of operations. We all exchange information.

Senator MASON—Do you know if Admiral Barrie was told about SIEV7—or the minister?

Vice Adm. Shackleton—I cannot tell you directly. I can see no reason why he would not have been. Strategic command is, as I have said, his staff function which keeps him apprised of events. It would be for Admiral Barrie to say, but I would find it surprising if he was not.

Senator MASON—Perhaps you could follow up with SIEV7 and the chain of command a bit later on. Thank you.

Vice Adm. Shackleton—If Admiral Barrie was out of the country at the time, then it was the acting CDF at the time.

Senator MASON—I might pursue that later on, Admiral. Thank you.

Senator BRANDIS—SIEV9—

Vice Adm. Shackleton—Which incident are we looking at?

Senator BRANDIS—Enclosure 2. There are four separate incidents in relation to SIEV9 reported at Enclosure 2, each of them concerning the HMAS *Arunta*. By the way, can you help

me here? Looking at the notation of the dates under ‘Incident Two’, subparagraph a., as you read that date, what date is that intended to describe?

Vice Adm. Shackleton—That is a Navy way of describing the time in zulu time, and the digit after the word ‘zulu’—‘z’—is a check sum digit which is supposed to add up, which demonstrates that the earlier numbers are in fact correct. It is a cross-referencing correction. You would have to take, I think, depending on where the ship was, either 8½—can I just check?

Senator BRANDIS—Yes, sure.

Vice Adm. Shackleton—You take nine hours off, and that will tell you what time it was in local time.

Senator BRANDIS—But what about the date? It says ‘October 01’, but I am just not sure which of those digits tells you the day in October.

Vice Adm. Shackleton—The date is the two left-hand digits, so that was the 31st.

Senator BRANDIS—It was 31 October. Then can I go back to Incident One, please, in relation to SIEV7.

Vice Adm. Shackleton—Yes.

Senator BRANDIS—I may have misled you. I took Incident One to have been at an earlier date. The incident concerning SIEV7 involving the *Arunta* I took to be at an earlier date than the incident concerning SIEV7 involving the *Bendigo*. It is apparent to me now from what you say that the incident concerning SIEV7 involving the *Arunta* was on 29 October and the *Bendigo* incident was the earlier incident of the two—that is, 24 October.

Vice Adm. Shackleton—Yes. The way you read this is the *Bendigo* was with the SIEV at Ashmore Island, and then was being escorted by *Arunta* from Ashmore Island back to Indonesian waters, which explains why the *Bendigo* incident was on the 24th and the *Arunta* incident was on the 29th.

Senator BRANDIS—Admiral, back to SIEV9—Incident Two, Enclosure 2—again concerning the personnel of the *Arunta*. We know from that, don’t we, that on 31 October a male suspected unauthorised non-citizen threatened to throw a young infant overboard and, according to the notation here, that was only prevented by that person being restrained by Army transit security element personnel on board the SIEV?

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—You were made aware of that incident?

Vice Adm. Shackleton—I was.

Senator JACINTA COLLINS—Chair, I think we need to be very careful of how we read these statements. I think it actually says that he was restrained; it did not use Senator Brandis's language, which was 'he was only prevented from doing such'. Are you aware of that distinction, Vice Admiral?

Vice Adm. Shackleton—I am just reading here what it says at subparagraph b, which is what it says—

Senator JACINTA COLLINS—Which is not what Senator Brandis said. He said that the man was only stopped from doing it by personnel.

Vice Adm. Shackleton—I think the text is the words that I would—

Senator JACINTA COLLINS—Thank you.

Senator BRANDIS—That is what it means to you, isn't it, Admiral?

Vice Adm. Shackleton—Restrained, stopped, prevented—

CHAIR—Senator Brandis, do you intend to enter this document into the evidence?

Senator BRANDIS—Yes.

CHAIR—For public release?

Senator BRANDIS—Yes.

CHAIR—At the conclusion of your examination?

Senator BRANDIS—Yes.

CHAIR—Okay, thank you.

Senator BRANDIS—Admiral, the description in paragraph d. under 'Incident Two' tells us—and I was not purporting to quote the very words when Senator Collins made her intervention; so let me quote the very words on this occasion:

SIEV09 was a 30-35 metre wooden vessel of small ferry like appearance. Engine was damaged by a PII—

I do not think it is controversial; that means potential illegal immigrants—

/Crew prior to BUNBURY bp.

That, I take it, means the *Bunbury* boarding party—

ARUNTA boarding party and TSE—

that is, transit security element—

inserted and conducted handover from BUNBURY. Attempts to rectify defect and re-start engines repeatedly caused tension amongst PIIs and led to a series of incidents where PII were restrained, adult PIIs jumped overboard and threatened to throw children overboard.

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—You were made aware of that incident?

Vice Adm. Shackleton—Yes, I was.

Senator BRANDIS—Part of what you have characterised as the apparent coordinated response, Admiral?

Vice Adm. Shackleton—Well, ‘coordinated response’—I would say it is a case of people learning how to make our lives more difficult so as to achieve their own ends.

Senator BRANDIS—By using children for moral blackmail?

Vice Adm. Shackleton—By taking all kinds of action: burning the boat, wrecking the engines—

Senator MASON—Is that to create a situation that, I think at the hearings, Admiral, you described as SOLAS—or safety of life at sea situation? Those activities are undertaken to create a safety of life at sea situation so that the Royal Australian Navy will have to pick up asylum seekers?

Vice Adm. Shackleton—That is certainly a thing that we see being a considerable part of their intentions. Of course, if we can prevent the boat from sinking—keep it seaworthy, keep the engine operating—and take it back to where it came from, that in its own way prevents them achieving what they set out to do, which is, literally, to sink it in front of us. Then we have no choice but to rescue them.

Senator MASON—As Senator Brandis has pointed out, when the engine is sabotaged, water pumps are sabotaged, fires are lit and that becomes very difficult.

Vice Adm. Shackleton—It does not get much harder than that.

Senator BRANDIS—And once you rescued them, then, at least, until the Pacific solution started to come into effect, those asylum seekers were then in a position to litigate in Australian courts to seek the declaration of Australian courts that they were refugees?

Vice Adm. Shackleton—That is outside my expertise, Senator, but that is how I understand it is.

Senator BRANDIS—Rather than, had they remained at the ports of departure in Indonesia, having to pursue that claim under the auspices of the UNHCR, where, I think, the statistics tell

us, that the prospects of success are about one-sixth of what they are by the more generous standards of the Australian system and the more generous spirit of the Australian people—

Senator BARTLETT—It is quite legitimate for people to put their opinions on the record but, in terms of people reading this, there are differing views about the veracity of that statement. I am not sure we should go down that path.

Senator FERGUSON—You will get your chance to say so later.

Senator BRANDIS—Thank you, Senator Bartlett. Vice Admiral Shackleton, can we go to incident three, please, on the next page? This again involves SIEV9; it again involves crew from the *Arunta*, apparently in company with the *Bunbury* and the *Gladstone*. Are the *Bunbury* and the *Gladstone* both naval vessels?

Vice Adm. Shackleton—They are; they are Fremantle patrol boats.

Senator BRANDIS—Pardon my ignorance of naval matters. On this occasion, which occurred on 31 October 2001, it is reported—as you will see from paragraph e. in statements from members of the boarding party and the boarding officer:

One PII attempted to throw a child overboard, as another PII illegal immigrant attempted to strangle a child. PII's restrained children safe.

Was that incident reported to you, Vice Admiral Shackleton?

Vice Adm. Shackleton—I don't remember being told that they were attempting to strangle a child. I remember being told that this was an incident which had similar traits to other incidents, but that is what is written here.

Senator BRANDIS—Yes.

Vice Adm. Shackleton—And I would have no reason to doubt the authority of it.

Senator BRANDIS—Again, may I suggest to you that, as part of this pattern of coordinated response, apparently the potential illegal immigrants and crew damaged the engine. Do you see that reported in paragraph d.?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—This is yet another incident of that behaviour.

Vice Adm. Shackleton—Yes.

Senator BRANDIS—Under 'Incident Four'—once again, concerning SIEV9 and, once again, concerning the *Arunta*, in company with the *Bunbury* and the *Gladstone*—occurred on 1 November 2001. Do you see that there?

Vice Adm. Shackleton—Yes, I do. The *Arunta* is a busy ship.

Senator BRANDIS—Apparently. The statements from the boarding party and boarding officers of the *Arunta* report—as paraphrased in paragraph b.—state:

During a disturbance onboard, 5 male PIIs jumped overboard whilst 1 x female PII threatened to throw young infant overboard. Restrained by Army TSE Personnel onboard SIEV.

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—Was that incident reported to you?

Vice Adm. Shackleton—Yes, I was aware of that.

Senator BRANDIS—Once again, as reported in paragraph d., the report states:

Attempts to rectify defect and re-start engines repeatedly caused tension amongst PIIs and led to a series of incidents where PII were restrained, adult PIIs jumped overboard and threatened to throw children overboard.

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—You have no reason to doubt the veracity of that?

Vice Adm. Shackleton—No.

Senator BRANDIS—On another occasion, again involving the *Arunta*, in company with the *Bunbury* and the *Gladstone*, on 2 November 2001, again involving SIEV9, the report states:

PII threatened to throw children overboard if not permitted to cook own food.

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—What do you think of that?

Vice Adm. Shackleton—Well, they must like their own cooking.

Senator BRANDIS—Yes. Once again, you will see in paragraph d. the same behaviour was reported in relation to interfering with attempts to rectify the engines—they were restrained; some adults jumped overboard and threatened to throw children overboard.

Vice Adm. Shackleton—Yes.

Senator BRANDIS—Vice Admiral, the next SIEV incident in sequence—apparently, so far as we know, no children were thrown overboard, or threatened to be thrown overboard or

otherwise harmed on SIEV1, SIEV2 and SIEV5 or SIEV8. But the next one is SIEV10, which is reported at Enclosure 5. This is an incident involving the HMAS *Wollongong*. Do you have that there?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—As I understand the method of the notation, that was an incident that occurred on 8 November 2001?

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—The throwing of children into the water, or threats to throw children into the water in this case, is recorded as not having been observed. Do you see that?

Vice Adm. Shackleton—Yes.

Senator BRANDIS—But what was observed is what is recorded in paragraph d. Let me read it:

As a result of the torching and subsequent sinking of SIEV 10 by PIIs, 33 children under the age of 12 were recovered from the water by WOLLONGONG and ACV ARNHEM BAY crew. During the incident, PIIs were abandoning ship en masse. Some children were observed being held by adults as they entered the water. The method of entry into the water by the remaining children cannot be determined. Members of WOLLONGONG Boarding party do not recall any person physically dropping or throwing a child overboard. Worthy to note that WOLLONGONG and ARNHEM BAY recovered several children without parents in attendance—

that is a rather formal way of describing little kids bobbing around in the water without parents in attendance—

and conducted boat transfers between the vessels for family reunification purposes.

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—Was that reported to you?

Vice Adm. Shackleton—I was aware of that, yes.

Senator BRANDIS—You do not doubt the veracity of that?

Vice Adm. Shackleton—No.

Senator BRANDIS—Finally, there is SIEV12, which is reported at enclosure 4. This involves the HMAS *Leeuwin* and, as I understand the notation, was an incident that occurred on 16 December 2001. Is that right?

Vice Adm. Shackleton—Correct.

Senator BRANDIS—Once again, the engines appear to have been stopped, and there was a report of smoke forward of the vessel:

... from an area where fuel drums were present. At the same time a fire was lit aft ... Also, at this time SUNCs were threatening to throw children over the side. These threats were intimidated by taking children to side of SIEV and demonstrating intent to drop children into the sea.

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—That was reported to you?

Vice Adm. Shackleton—I cannot remember the specifics, but I would have been aware of it.

Senator BRANDIS—You do not doubt the veracity of the report?

Vice Adm. Shackleton—No.

Senator BRANDIS—That is the last of the 12 SIEVs in the period. The first one involving the abuse of children was on 12 September—that is SIEV3—and this one was on 16 December. So on seven of the 10 SIEV vessels that were apprehended or intercepted by the Royal Australian Navy in the three months between September and December, there was, may I suggest to you, a repeated pattern of the abuse of children, the physical harming of children, by the unlawful immigrants? Would you go along with that, Vice Admiral?

Vice Adm. Shackleton—I would say that—because I do not know that the abuse of the children is all that definite—certainly the use of children to demonstrate on their part what they might do with the children was certainly designed to get our attention.

Senator BRANDIS—Do you know whether these threats were taken very seriously by your personnel?

Vice Adm. Shackleton—Of course.

Senator BRANDIS—They were serious threats, weren't they?

Vice Adm. Shackleton—We take all threats like this very seriously.

Senator FERGUSON—We have had an enormous amount of publicity over the incident of SIEV4.

Vice Adm. Shackleton—Yes.

Senator FERGUSON—Were any of the other SIEV incidents—one to 12—reported to the Australian media by the Australian defence forces?

Vice Adm. Shackleton—I do not know; I would have to check.

Senator FERGUSON—It would appear that SIEV4 has become currency for journalists because of statements that were made in relation to children being thrown overboard, yet we have numerous incidents—from one to 12—of children being either thrown overboard or threatened to be thrown overboard. But I have seen no or minimal reporting of any of those incidents in the Australian media in all of that three-month period.

Vice Adm. Shackleton—That would be my recollection.

Senator FERGUSON—Could you check and see whether or not attempts were made to inform the media of those incidents?

Vice Adm. Shackleton—I can do that.

Senator FERGUSON—Senator Brandis talked about moral or emotional blackmail. There was an article by Robert Garran and another reporter called ‘Navy scuttles PM’s story’. The lead-in states:

The navy has severely embarrassed John Howard and two senior ministers by undermining their claims that asylum-seekers had thrown children overboard to ‘emotionally blackmail’ naval officers.

In the light of the series of events presented to you by Senator Brandis and whether or not a person is threatened to be thrown overboard or is actually thrown overboard, it would appear to me that there is emotional blackmail in either of those two actions.

Vice Adm. Shackleton—I am not quite sure whether you can use the word ‘blackmail’. I think in this context you are seeking to get people in the Navy to do something which we might not otherwise do. I agree that it may be a fine line with the word ‘blackmail’—coercion or threat to harm, those kinds of things which would force us to perhaps take a less stringent line and thereby acquiesce to what they want rather than to what we had as a mission to achieve.

Senator BRANDIS—Of course, Admiral, the peculiar evil of this case was that they were not threatening to harm themselves; they were threatening to harm children, including, according to some of these reports, children as young as two. Don’t you think that ramps up the level of moral blackmail?

Vice Adm. Shackleton—I think all of this is very hard on the sailors involved—all of the events.

Senator BRANDIS—I did not say there were not; I said they were also threatening to harm children. They were not merely threatening to harm themselves; they were threatening to harm children including, in relation to the report—

Senator JACINTA COLLINS—This brief asks only in relation to the child incident. That is it; that is all the brief says.

Senator BRANDIS—Please do not interrupt me, Senator Collins!

CHAIR—Order! Senator Brandis.

Senator BRANDIS—Admiral Shackleton, in relation to the SIEV4 incident, we have it from, I think, Commander Banks's report that the four-year-old girl being threatened to be thrown overboard, that you had seen on the video, was later discovered by inquiries as being treated in this way by her own father. Did you know that?

Vice Adm. Shackleton—No, I was not specifically aware of that.

Senator FERGUSON—Can I just continue and perhaps put the original question in a different manner, rather than using the words 'emotional blackmail'. Admiral Shackleton, don't you think that the threat of children being thrown overboard would have just as much a traumatic effect on your Defence Force personnel as a child actually being thrown in the water?

Vice Adm. Shackleton—There is no question about it. Until somebody physically withdraws the child from the position where there is a clear intent to throw somebody over the side, you continue to work on the basis that that is exactly what they might do. It was very stressful and very difficult for sailors to continue to do their jobs in those circumstances. But I think it is to the credit of the Australian Navy that they did do it.

Senator FERGUSON—So whether or not children were actually thrown into the water, or whether it was only threatened that they would be thrown into the water, in effect, it has the same result on your serving personnel.

Vice Adm. Shackleton—Yes, it does.

Senator FERGUSON—So that also leads me to say that there is simply no truth in the story that was put out that the Navy had embarrassed the Prime Minister by undermining claims of emotional blackmail of naval officers because, whether you use the term 'emotional blackmail' or 'having a traumatic effect on those officers', these incidents, regardless of whether the children were in the water or being threatened with being thrown in the water, would have had an effect on your officers.

Vice Adm. Shackleton—It would have had an effect on the officers, but what I would say is that it did not prevent them from doing their job.

Senator FERGUSON—I understand that—under difficult circumstances.

Vice Adm. Shackleton—Senator, you asked me whether we made any reports to the media about other incidents such as this. I am advised that the ADF made no reports to the media on Operation Relex and that all media contact was to be through the minister's office with regard to this particular matter.

Senator FERGUSON—Was that because it was in an election period?

Vice Adm. Shackleton—I have no idea.

Senator FERGUSON—It would seem strange that there was so much publicity about one SIEV4 incident when in fact we had at least 10 others in that period which did involve children

being thrown overboard and which, in the light of public comment, the Australian public were not made aware of.

Vice Adm. Shackleton—Senator, I cannot comment.

Senator FERGUSON—Thank you.

Senator BRANDIS—Admiral Shackleton, you had a conversation at some stage—you will have to help me with the date because I cannot remember—with Brigadier Bornholt about all of this. Is that right?

Vice Adm. Shackleton—About which part of this incident, Senator?

Senator BRANDIS—I am sorry; about the ‘child overboard’ affair, shall we say—the SIEV4 specifically.

Vice Adm. Shackleton—Yes. I had a discussion with Brigadier Bornholt about the veracity of the photographs that were being presented in the media.

Senator BRANDIS—Was the discussion limited to the photographs in relation to the SIEV4?

Vice Adm. Shackleton—Yes, it was.

Senator BRANDIS—You did not tell him anything about these other SIEV incidents?

Vice Adm. Shackleton—I did not discuss those other incidents. I was aware of the other incidents, but my concern at that stage was that the photographs in the paper and on the television were being portrayed as the rescue of children thrown over the side of SIEV4 when in fact they were sailors who had entered into the water—jumped off the side of our ship—to go and rescue those from the sinking vessel.

Senator MASON—Senator Ferguson asked you questions before about press reports. Can I just hand you a document—

CHAIR—Before you hand out other documents, Senator Mason, if Senator Brandis has folded his line of questioning then now is probably an appropriate time for him to—

Senator BRANDIS—Absolutely. I table the document that I have been directing Admiral Shackleton’s attention to. It is a document that was supplied to the committee last Thursday, but I formally table it.

CHAIR—Before you formally table anything—I take that as a statement of intent to table—I just want to say that this is a document in possession of the committee which you have now unilaterally sought to table without first obtaining the permission of the committee so to do.

Senator BRANDIS—If I need to—

CHAIR—If you do not mind, I am speaking, and you will be quiet while I am. The normal procedure, in my understanding, is that the release of documents tendered to the committee is a decision for the committee. I was aware of that when you started and I let you go—so I make that observation: I let you go. But I do think this behaviour of introducing documents that are in the possession of the committee and pre-empting the rights of other committee members to have a say in their public disclosure is something for the committee to debate in a private session. It is not a procedure that I would want to encourage. On this occasion I have let it go, but on a future occasion—and this applies not just to you but to all members of the committee—I think the appropriate course is the traditional one of the committee making decisions about documents in its possession and the release of those documents.

Senator BRANDIS—Senator Cook, may I say in my own defence—and I thank you for your observation—that when I wrote to the Minister for Defence last Thursday I was careful to frame my request as a request that the document be supplied to me and to other members of the committee. As I understand it, the document has been supplied both to the committee corporately and to me individually. Whether it concerns my capacity as a member of the committee and as the personal recipient of the document or my capacity as a person in custody of a document given to the committee, it is the same document, one way or another. I put it before the witness, nobody suggested that this was not directly germane to term of reference (c). The matter has been examined at length without objection and the document is now before you in whatever form is appropriate.

CHAIR—I have said what I have said; I am not going to repeat it. You introduced this document to the committee and, subsequently, I am advised by you and by the secretariat that so did the minister. The remarks I have made are remarks that I do not wish to vary in the face of that explanation. The document is now before us. Is it the wish of the committee to make this document public?

Senator BARTLETT—We have not made public any other document or the other submissions or anything else that we received some time before, have we?

CHAIR—No, we have not.

Senator BARTLETT—So this will be the first document that we publish.

CHAIR—That is my understanding. If it is the wish, that is so granted. The document is now tabled for public information. Senator Mason, do you want to go down this course too?

Senator MASON—Yes.

CHAIR—This concerns a new document which is not in the public domain either—well, it may be.

Senator MASON—Correct. I brought it to the notice of the committee previously—

CHAIR—It is not a document for the committee—I think that is the relevant point. The author and the recipient of this document are outside our immediate purview, so I think you are free to proceed on this document, but would you please identify it for the rest of us?

Senator JACINTA COLLINS—Are we to table this document as well, or are we just providing it to the witness?

Senator MASON—I have no opposition, Chair.

CHAIR—I understand that it is the intention of Senator Mason to ask questions based on this document.

Senator MASON—Just a few questions, yes.

CHAIR—In which case I think it is appropriate that the document on which the questions are based be made available.

Senator FERGUSON—Are you suggesting that in times past either government or opposition senators have not quoted from documents that they have themselves and have not made public to every other senator?

CHAIR—No, and I never said that.

Senator FERGUSON—So why should you make that request of Senator Mason?

CHAIR—I was in the process of identifying what it is. In fact, I think I said to Senator Mason that I do not think that this is a document the origin of which comes from the committee or the recipient of which was the committee, and it is outside our purview. I think I said that, or words to that effect. Therefore, I do not think it is necessary for us to release it. But, because it is going to be the subject of an examination by a member of the committee, I think in due deference to the person being examined and those watching these proceedings they should know what the document is and have access to it. That is fundamental and elementary.

Senator MASON—I think that is right.

Senator JACINTA COLLINS—Courtesy, Senator Ferguson.

Senator FERGUSON—Does that mean we will get all Senator Faulkner's documents that he quotes from in future?

CHAIR—If Senator Faulkner did exactly as occurred here, I would ask him the same question. Circulate it to the committee and provide it to the admiral, please.

Senator MASON—Senator Ferguson mentioned that there was some criticism from the press about the performance of the RAN but not much praise. I wanted to draw your attention to that document. You see a letter from the Leader of the Opposition to the Minister for Defence, Senator Hill, dated 4 March.

Vice Adm. Shackleton—That is what I have in front of me, yes.

Senator MASON—The first paragraph of that letter reads:

Dear Minister

I write to request that you inquire into an allegation that Australian naval ships witnessed a sinking refugee vessel on 19 October 2001, and did not provide assistance.

Vice Adm. Shackleton—Yes.

Senator MASON—If you go to the first page of the letter attached to that letter, it is addressed to the Leader of the Opposition, Mr Crean; the Leader of the Opposition in the Senate, Senator Faulkner; Senator Stott Despoja; Senator Bartlett; Senator Brown; and the Clerk of the Senate. That is correct?

Vice Adm. Shackleton—Yes.

Senator MASON—The heading of the letter is:

Dear Sir/Madam

A REQUEST THAT THE SENATE URGENTLY INVESTIGATE, IN THE CONTEXT OF ITS CURRENT ENQUIRIES INTO NAVAL ENCOUNTERS WITH VESSELS CARRYING ASYLUM-SEEKERS, A SURVIVOR'S ACCOUNT THAT AUSTRALIAN NAVAL PATROL SHIPS WITNESSED A SINKING REFUGEE VESSEL ON 19 OCTOBER 2001 IN THE SUNDA STRAIT, BUT DID NOT TRY TO RESCUE SURVIVORS

Is that correct?

Vice Adm. Shackleton—Yes.

Senator MASON—I think the person who wrote the letter is basing that allegation on an article in the *Australian* of 21 December 2001. In the third paragraph of the letter there is a quote from that story. Let me read it:

“The survivors say two boats, which their rescuers told them were Australian border patrol vessels, shone floodlights on them but did not help.”

A spokesman for the Defence Department said the closest ship was the HMAS Arunta, which was 230 nautical miles south of the spot.”

My question to you is: is it true that Australian naval patrol vessels witnessed a sinking refugee vessel on 19 October 2001 but did not try to rescue survivors?

Vice Adm. Shackleton—Absolutely not.

Senator MASON—That is incorrect—it is wrong?

Vice Adm. Shackleton—Absolutely. It is completely wrong.

Senator MASON—Are you sure of that?

Vice Adm. Shackleton—Yes, I am.

CHAIR—I have got a few questions, Admiral. I think I might just pick up the baton at this point, if I may. My usual procedure is to wait until last, but this time I promote myself up the order. I was going to ask you to tell us what the last document that Senator Mason has kindly provided you with says, but I think I can make this statement: the Leader of the Opposition is not saying that that happened. The Leader of the Opposition is simply seeking advice from the Minister of Defence, having received a complaint which hypothesises that it may have happened. He is seeking comment from the Minister of Defence on what he has to say about this. I might just say, for myself, that I think that is a responsible course of action for the Leader of the Opposition to take.

Senator JACINTA COLLINS—Do you know if the minister has responded?

CHAIR—No, I do not know. That is for the minister to reply to. I also note that the author of the hypothesis contained within that letter has put a submission to this committee. Since this matter is now before the committee, is it the wish of the committee that the submission lodged by Mr Tony Kevin be made public? There being no objection, it is so ordered.

I note as well that in my opening statement this morning I said that people who are referred to under parliamentary privilege will, as far as I am concerned, have the right of reply under privilege to answer any allegations made. I do not think that Senator Mason has made an allegation—I want to say that clearly. He has simply taken a hypothesis and asked the admiral for a reply. I just want to be clear about that. I think, though, that if there is any further weight to be given to this matter—and I express this as my view, and not on behalf of the committee—there is a probable case for Mr Kevin, if he so wishes, to appear and give evidence.

Having said that, let me go to a few questions, if I may. You can refresh our minds on this—at the beginning of your examination by Senator Brandis you made some upfront disclaimer, if I may use those words, that you are not the right person to have these questions asked of, and that there is some other officer who can, I think your words were, tell us ‘chapter and verse’ what actually happened. Is that right?

Vice Adm. Shackleton—I am happy to talk where I can in the broad, but, for the purposes of accuracy, I would defer to others who I know have expert detailed knowledge. I am quite happy to tell you where I think that that can be provided, which might aid you. But I guess that is on a case-by-case basis.

CHAIR—Can you just identify again, for the record, who is the officer that you believe can, as I think you said, tell us ‘chapter and verse’?

Vice Adm. Shackleton—In relation to the SIEV4 incident, blow by blow, I think you would want to talk to Commander Banks. In terms of the detail of other SIEV incidents, in a much higher level of detail than I can talk to you about, you would want to talk to the Maritime Commander, who is Rear Admiral Smith.

CHAIR—I think that, as well, you said—and I am just seeking for you to correct me here, and please do so—that the document from which Senator Brandis quoted in his examination of you was not something that you recall seeing, although you noticed that your name was on the list of people to whom it had been provided. Is that right?

Vice Adm. Shackleton—That is correct. I had seen a version of this document that was constructed slightly differently. I would have to check to see that the information has been faithfully carried across, but I recognise the way in which the information is presented and, without checking, I would—perhaps incorrectly—make the assumption that it has been transferred properly.

CHAIR—The document has a covering letter in the form of a minute from Australian Defence Headquarters Strategic Command, signed by A. W. Titheridge. I should indicate that it is probably to A. W. Titheridge that I will address my major questions relating to this document, since he appears to be the author or the responsible individual in relation to it.

Vice Adm. Shackleton—He would have collated that information provided from within his own organisation and from information available elsewhere in the command chain to compile that list.

CHAIR—Under the heading ‘Unauthorised arrivals information’ there appears the reference ‘Telcon COS MINDEF/CN SEC 28 Feb 02.’ Can you tell us what that means?

Vice Adm. Shackleton—That is a reference to a telephone conversation between the chief of staff for the Minister of Defence—in this case it would have been Minister Hill’s chief of staff—and my secretary, who is my principal staff officer. It relates to a request from the minister’s office to me to provide this information to the minister’s office. I had my chief staff officer—or secretary, as he is referred to here—talk to the minister’s office and say that the appropriate place for that to come from was Strategic Command, which was dealing with these SIEV incidents because of their operational nature.

CHAIR—Did the request to gather this information originate from your office—from your secretary—or from the minister’s office?

Vice Adm. Shackleton—As far as I am aware, it came from the minister’s office.

CHAIR—Would that have been on 28 February?

Vice Adm. Shackleton—Probably a day or so before.

CHAIR—You were asked a number of questions by Senator Brandis, in which he read to you what was in the document. In the first one—he did not always ask you this question—he asked, ‘Is what I have read what is printed there?’ to which you replied, ‘Yes.’ That answer does not mean to say that you verify what is written there, does it? It just means that Senator Brandis has conveyed to you accurately what is written there.

Vice Adm. Shackleton—In most cases; yes. There are areas where I am aware of the detail, and there are areas where I am not so aware of the detail.

CHAIR—This document may be a third or a secondary source; it is not a source document containing the original reports, is it?

Vice Adm. Shackleton—No. It is a compilation of information over a period of time, which was put together to create the chronological history of the events, and what occurred in relation to those events, from SIEV1 through to SIEV12.

CHAIR—In the chronological history, I was thrown by the dating of these reports. I think you have cleared up how that date is read. I was reading the last number in the line of numbers as being the day, but it is actually the first.

Vice Adm. Shackleton—Yes. We have a methodology of having the date, followed by a four-figure time group in 24-hour clock format, then the letter to indicate the time zone—sometimes it is ‘z’-zulu, sometimes it is ‘k’-kilo and sometimes it is ‘I’-India/‘k’-kilo—then sometimes a check digit after that letter, followed by the month.

CHAIR—Some might say that one of the reasons for this inquiry is that the events that occurred—whatever they were—in one place, got transported through a line of command, or by some other means, to another place and that, in the transmission of that evidence, by whatever means, there were foul-ups, inconsistencies and so forth. That is one of the things that we are inquiring into: what they were, how they occurred, who knew what, and when. Are you able to say that the information contained in this report is accurate, to your personal knowledge?

Vice Adm. Shackleton—I did not go back to the primary source. You would have to go back to the primary source for that, but the way it is written indicates to me that it was written by people with access to primary information.

CHAIR—From the primary source?

Vice Adm. Shackleton—Yes.

CHAIR—But there is always the possibility that, in the translation of the primary source—which is the very thing we are inquiring into—mistakes occurred.

Vice Adm. Shackleton—That is always possible.

CHAIR—Following the *Tampa* incident, were the rules of engagement for ships in this particular theatre, or this region, changed by the Navy?

Vice Adm. Shackleton—I do not set the rules of engagement; the CDF sets the rules of engagement.

CHAIR—So you are not the right person for me to ask that question of?

Vice Adm. Shackleton—No. Again, the Maritime Commander, Air Vice Marshal Titheridge or Admiral Ritchie would be able to deal with that. This can work two ways: either a commander lower down, such as Admiral Ritchie or Admiral Smith, can ask for a rules of engagement change to meet what they think are the circumstances that they will find themselves in, so that they have operational flexibility to deal with the contingencies that they see might emerge, or they can be set by the CDF himself as part of the overarching arrangements under

which we are going to operate—and, to complete that, the CDF in the end, and often with the agreement of the minister, will authorise the rules of engagement.

CHAIR—Are you implying to me—I am happy if this is what you are implying, because I will go to the correct person—that it is not appropriate for me to ask you a question about what may be an element of the rules of engagement?

Vice Adm. Shackleton—You could try me, Senator, and, if I do not know, I can tell you.

CHAIR—Let me ask you the question: I do not know how it would be expressed in Navyspeak—and I mean that term nicely—but, in layman’s language, was one of the rules of engagement not to rescue people from the water unless their vessel was sinking or had sunk?

Vice Adm. Shackleton—No, we would not operate that way.

CHAIR—You would not operate in that way.

Vice Adm. Shackleton—No.

CHAIR—So I can see the answer correctly, if their vessel had sunk, you would rescue them.

Vice Adm. Shackleton—Yes.

CHAIR—If their vessel was in imminent danger of capsizing or sinking and people were leaving the vessel, would you rescue them in those circumstances?

Vice Adm. Shackleton—We did that.

CHAIR—You did do it?

Vice Adm. Shackleton—Yes.

CHAIR—It is not clear from this report, is it, as to what the circumstances always were in the case of all the vessels that you have been asked about?

Vice Adm. Shackleton—That information will be available.

CHAIR—But it is not available in here.

Vice Adm. Shackleton—I think there are some where the information is more detailed than others, but there are obviously generalisations in some parts of it.

CHAIR—Just on the subject of generalisations, one of the issues that we will doubtless get around to talking about as this committee wends its way to its final conclusion—over however many days of hearings that it takes to do so—is an argument that I have read about in the media that people holding children up on board a vessel could be interpreted as threatening to throw them overboard or could be interpreted, in other circumstances, as saying, ‘Look, there are

children on board this vessel—back off or go easy.’ Is that second version something you are familiar with?

Vice Adm. Shackleton—I am familiar with the argument, but I do not know whether I would agree with it or not.

CHAIR—That means that you are agnostic.

Vice Adm. Shackleton—No, it means that I would not agree with it.

CHAIR—You do not agree with it?

Vice Adm. Shackleton—No. Somebody holding a child upside down by the leg—

CHAIR—No, I am not going to that incident.

Vice Adm. Shackleton—does not, to me, seem friendly.

CHAIR—It does not seem to me to be very friendly, particularly for the child—you would be traumatised.

Vice Adm. Shackleton—Yes.

CHAIR—Senator Faulkner, you seem to be indicating that you would like to ask a few questions.

Senator FAULKNER—Yes, I would also like to ask a few questions of the Admiral. Admiral, could I please take you to the events of 8 November. You indicated in your opening statement today, or you outlined for the benefit of the committee, what occurred on 8 November. Thank you for that. It does seem—as you said—in part to be similar to some of the information that you provided to General Powell in the preparation of his routine inquiry. Committee members have had the benefit of seeing a copy of your and other witness statements for both General Powell’s and Ms Bryant’s reports, and I hope that they will be able to be released shortly, after the appropriate decisions have been made at the committee level. I wondered, first of all, in relation to that submission to General Powell, whether that was the only contact you had had with General Powell or whether there was any other contact—but it is the only copy that we have in the witness statements that I have been able to identify.

Vice Adm. Shackleton—I had a verbal discussion with General Powell shortly after he took on his role, at which time I think I discussed with him the generalities of some of my thinking and gave him some suggestions as to where he might go and make inquiries to get to the detail, in that he was an Army officer and he was going to spend a fair bit of time dealing with the Navy—in part—which is why Commander Noonan was provided as his assistant, to help him through the maze of the Navy. I then undertook, after he circulated a request to people generally, to respond to what you knew at the time—and that is what I have written down there. I am aware that I have probably made a number of assertions that may not stand up to the full

investigation of fact, because I guess I was going off a certain amount of hearsay, but in the end that was factored in to all of the general's report.

Senator FAULKNER—Okay, so your first discussion about the generalities went more to the general light that you might be able to shed on this from a Navy-wide perspective as opposed to your own role. Would that be fair?

Vice Adm. Shackleton—What, in terms of my conversation with General Powell?

Senator FAULKNER—Your first—the verbal communication you had with the general.

Vice Adm. Shackleton—As I remember it, it was saying to him that you would get the details of the issues from Maritime Command, Strategic Command and the *Adelaide*. In part it was also questions from him as to how he might seek out information from within the Navy and other parts of the defence organisation, and in terms of some views that I had about where, if there had been an issue where it had gone wrong, I would probably start to look myself.

Senator FAULKNER—So it does not really go specifically, at that stage, to the detail of what occurred on 8 November?

Vice Adm. Shackleton—No.

Senator FAULKNER—Thanks for that. You mentioned also, in answer to my earlier question, some assertions which may or may not have held up. Would you be able to identify those assertions for us?

Vice Adm. Shackleton—Yes. I think in my remarks to General Powell I made some assertions about what Brigadier Silverstone may or may not have said—and they were third-hand. That is probably the main area, because I, frankly—

Senator FAULKNER—Would that be in part k of your witness statement?

Vice Adm. Shackleton—There is that, and I think the other thing that was hearsay was part b—although I think subsequently the inquiry, the Powell thing and the Bryant report, seemed to make that turn to be accurate.

Senator FAULKNER—So, with the benefit now of hindsight, in relation to part k you had the advantage of having had a discussion with Commander Banks but not Brigadier Silverstone. Is that the point you are making?

Vice Adm. Shackleton—I certainly spoke to Banks but I did not talk to Silverstone about his side of the conversation.

Senator FAULKNER—So are you saying to the committee that this witness statement in a sense reflects the nature of the discussion that you had with Commander Banks?

Vice Adm. Shackleton—Yes, and the other part of here where, again, it is hearsay—but whether it is fact or fiction I do not know—is part q on the last page.

Senator FAULKNER—What element of that?

Vice Adm. Shackleton—I had discussions with Admiral Ritchie and Admiral Smith on the afternoon of 8 November. If you remember, I said I had been out of the country and I was in a real state of catch-up mode to find out what had gone on and who had said what to whom. In the conversations I had with those people I felt that I had been led to believe that the minister's office was aware of the true assessment—what the tape and the photographs represented. But I have no way of saying that that was true.

Senator FAULKNER—Going back to both your witness statement and the opening statement to the committee, I think it is fair to say that you draw significantly on your witness statement for the opening statement that you made to the committee. That is reasonable, isn't it?

Vice Adm. Shackleton—That is quite right.

Senator FAULKNER—You made the point that, while you were in Western Australia, the statements that you made on the wharf there became a public issue of some notoriety—if you like—really while you were in the air flying back east. Is that right?

Vice Adm. Shackleton—No, I was still in Western Australia at that stage of the game.

Senator FAULKNER—Were you? I see. So where did you actually issue the 'clarifying statement'?

Vice Adm. Shackleton—As I remember it, Perth was three hours behind Sydney. I think I spoke to the media at about 12.30 p.m. Perth time, which would have been 3.30 p.m. eastern time—so it was in time to get in before the five o'clock deadline for the eastern state news arrangements. Then I think it was at about six o'clock eastern time, which would have made it three o'clock Perth time, that I became aware of the furore. I then spoke to Ms McKenry and then had that other statement sent out. In the interim, as I have said, I spoke to Mr Hendy to find out what his concerns were.

Senator FAULKNER—Yes, but actually you were in Perth, and Mr Hendy—you told us at the estimates committee—called your office at Russell.

Vice Adm. Shackleton—I think, as far as I was aware, he was in his Canberra office.

Senator FAULKNER—Yes. Do you know who he spoke to in your Canberra office?

Vice Adm. Shackleton—I think he spoke to my chief staff officer, Captain Goldrick. I had had my telephone turned off during the time that we had been on the wharf at *Sirling*. Then when I turned it on again there was a message to call, which I did, and that is how I found out about it.

Senator FAULKNER—Have you been able to ascertain from Captain Goldrick what Mr Hendy actually said?

Vice Adm. Shackleton—No, and I have not beyond that day said much to him about that particular question, other than he said that Peter Hendy was trying to get in contact with me over this issue, at which time I then phoned Mr Hendy. As I remember it, I could not get through to him the first time, but then I think he called me back.

Senator FAULKNER—Did Mr Hendy just make the one contact with your Canberra office; do you know?

Vice Adm. Shackleton—No, I do not know.

CHAIR—Shall we break?

Senator FAULKNER—Absolutely. I am sure that Vice Admiral Shackleton would agree.

Vice Adm. Shackleton—Absolutely. I always agree with you, Senator.

CHAIR—I think you have got the opportunity for a caffeine hit, Vice Admiral.

Vice Adm. Shackleton—I would be happy with that.

Proceedings suspended from 3.21 p.m. to 3.32 p.m.

CHAIR—We will now resume. Before I give the call to Senator Faulkner, on our indicative list of witnesses, we have fallen well behind the clock. I foreshadow to the committee that before we rise for the dinner recess we might take a moment to see whether we can agree on offering any advice to witnesses who are listed for today but who now appear not likely to be required today so they do not have to waste their evening. There might be one or two other housekeeping matters. I see that we all agree.

Senator FAULKNER—Thank you. I want to clarify with Vice Admiral Shackleton what information we might glean by contact with Captain Goldrick. Just so we can do that, you had one conversation with Mr Hendy?

Vice Adm. Shackleton—Sorry, can I clarify? I can have somebody call Captain Goldrick, who is on a ship in the Persian Gulf, and we can put questions to him that way if you choose. They would be, I guess, questions in the broad about how many times phone calls were made. Would that satisfy you?

Senator FAULKNER—I would not want you to go to a huge amount of trouble. What I would ask you to do, maybe, is take some questions on notice and progress it that way. That is fine. What I am trying to clarify is what information we need before we finalise that, if that is helpful—

Vice Adm. Shackleton—Yes.

Senator FAULKNER—just to save time if we can. You only had the one conversation with Mr Hendy?

Vice Adm. Shackleton—That is my recollection.

Senator FAULKNER—I am wondering if Captain Goldrick or other members of your staff may have had other conversations between the first doorstep interview you did on the wharf at Stirling and the issuing of the so-called clarifying statement. That may involve Captain Goldrick. I suppose what I am trying to be clear about is whether that in fact involves any other officers.

Vice Adm. Shackleton—I would have to check with my office. If Hendy was going to ring, he would either ring me direct, depending on the nature of the business, or he would have phoned—other than that, Captain Goldrick, who was my point of contact for all ministerial dealings. If Goldrick was not available to take that call, then I have got a number of other people in the office who would have taken a message and then forwarded it on. I can ask in my office to see whether there was anybody who took any calls about that time.

Senator FAULKNER—I am interested in the number and nature of such communications. I know we dealt with this at the estimates committee, which is why I do not want to get bogged down in it too much, but if you could ask that of Captain Goldrick at a reasonable time—given that he is in the Gulf, ask him at some time that suits all concerned—and if you could also ask other staff members who might be a little more available, that would be helpful.

Vice Adm. Shackleton—I can tell you whether anybody had any contact with Hendy on that day.

Senator FAULKNER—With Hendy or other members of the minister's staff.

Vice Adm. Shackleton—We can do that.

Senator FAULKNER—Does all contact go through to your Canberra office, or do you have staff who travel with you? For example, when you are at Stirling, do you have any staff who travel with you there?

Vice Adm. Shackleton—I have a more junior ranking officer who typically travels with me, but Goldrick would typically be in Canberra doing what he does, which is essentially Canberra based coordination of my office and my affairs—and by 'affairs' I mean the business of the Navy.

Senator FAULKNER—But in this case, how does the communication go from Canberra to you? It is not all direct. I am sure the Chief of Navy would not get bogged down with every single communication, so you would at least have someone, or some people, around you to assist you with that.

Vice Adm. Shackleton—On that particular occasion there was the media adviser, Mr John Clarke, who was outposted to my office from the PACC organisation. He was there as a strategic communications adviser—a corporate communications and public affairs adviser. I am

trying to think who else was there. My flag lieutenant—as the title is called—is predominantly there to make sure that I get to where I have got to go at the right time. So if there were any media contact that day, it would have gone through Clarke from PACC, or, indeed, from the minister's media adviser. Other than that, it would have gone to Goldrick, who would then phone me direct to get resolution or for me to decide what action was going to be taken.

Senator FAULKNER—We have all got Mr Clarke's witness statement. He talks about informally viewing correspondence from Brigadier Bornholt on the 8th. That, I assume, occurs in Perth?

Vice Adm. Shackleton—I have not seen that—

Senator FAULKNER—Well, if he is with you in Perth, it must happen in Perth.

Vice Adm. Shackleton—I guess so, and he may well have done things which I was not privy to.

Senator FAULKNER—I think that is the other thing that we need to understand, Admiral, just in terms of this, because I was asking you a number of questions about what occurs between your original doorstep interview and the production of what is described as the clarifying statement. So if you could add to the question that you have taken on notice, in relation to the Canberra operations, any of the operations that might involve Mr Clarke or others at the Perth end, that might be useful too.

Vice Adm. Shackleton—I can ask those individuals if they had contact with PACC or the minister's office about this issue.

Senator FAULKNER—Yes, it is contact with the minister's office or PACC, the number of contacts and a small amount of detail about its content and nature.

Vice Adm. Shackleton—We can provide that.

Senator FAULKNER—That would be useful. However, I appreciate the point you make. Your only formal communication that you are personally involved in with the office of the Minister for Defence is your direct conversation with Mr Hendy?

Vice Adm. Shackleton—That is correct.

Senator FAULKNER—I assume that we can categorically rule out any contact from the Prime Minister's office as well with you or your staff members either based in Canberra or with you in Perth?

Vice Adm. Shackleton—There was certainly no contact with me from any other organisation, and by that I mean the Prime Minister or his staff or Minister Reith or any other member of his staff.

Senator FAULKNER—Thank you for that. In relation to the other lose end, as you are checking that other information, could you just let me know if there was any contact with the PMO as I would appreciate that.

Vice Adm. Shackleton—Yes, I will.

Senator FAULKNER—Thank you very much. Going to some of the issues we are dealing with, just for absolute clarity's sake, I think you can be pretty precise—can't you?—about when you realised that the photographs of the kids in the water do not actually depict kids being thrown overboard but rather the rescue of 8 October 2001. I just wondered if, for the sake of the record, you could be clear on that.

Vice Adm. Shackleton—I am clear. As I say, the Maritime Commander sent me those emails on 9 October. I saw them on the *ABC 7.30 Report* the next night. I cannot recollect which day they were on the front page of the newspaper, but as soon as I saw them on the television I spoke to CDF by telephone to tell him that I thought that the photographs were being linked to the wrong event.

Senator FAULKNER—And that time?

Vice Adm. Shackleton—That would have been about 7.45 on the evening of 10 October.

Senator FAULKNER—Thank you. Would you be able to shed any light on the nature of the conversation that you had with CDF after the photographs were screened on the *7.30 Report*? I do not want to put words into your mouth, so it is best if you just tell us.

Vice Adm. Shackleton—You mean the phone call I had with the CDF?

Senator FAULKNER—Yes.

Vice Adm. Shackleton—As far as I can recollect, I said I had just seen these photographs appearing on television and they don't have captions but they are linked to the wrong event—that is, they are not photographs of people being recovered after having been thrown over the side. They are people being recovered from the boat sinking. He then said that COMAST, Rear Admiral Ritchie, had already called him just prior to my call and he thanked me for the call.

Senator FAULKNER—Did you glean from that conversation, or was the matter discussed, as to how ministers might be informed of this?

Vice Adm. Shackleton—I seem to remember asking him, 'Would the minister be told about this?' I got the impression that the CDF intended to talk to the minister about it and I got that also when we were in the Senate—I think it was on the 20th—I thought the CDF made remarks and, in relation to questions about this, that he had spoken to the minister.

Senator FAULKNER—I am asking that just from the perspective of that conversation, that you got that impression?

Vice Adm. Shackleton—Yes.

Senator FAULKNER—In relation to further communications that you might have had with CDF first of all on 11 and 12 October, did this matter then go off the boil?

Vice Adm. Shackleton—As I said, I can remember having a discussion with the CDF, the brigadier and Ms McKenry after we had finished a briefing of the Strategic Command group—on what issue it was I cannot remember; it may or may not have been a SIEV related incident; there was a lot going on at the time—where I said that, from my perspective, I wanted to know what we were going to do about getting into the minister's office the advice that the photos had been portrayed in relation to the wrong incident. At that stage, I think Ms McKenry or Brigadier Bornholt said that they were trying to do that. From my recollection, the brigadier said that he had told Mr Hampton of the incorrect linkage, but after that I was not aware what was going to be done about it or what was in fact done about it.

Senator FAULKNER—You knew about the photos not depicting an actual incident of children being thrown overboard by 7.45 on the evening of 10 October?

Vice Adm. Shackleton—Yes.

Senator FAULKNER—When did you know that the claims that children were thrown overboard were not correct, which is of course a different issue?

Vice Adm. Shackleton—When I returned from overseas on 7 November, I travelled from Adelaide to Perth with the Maritime Commander, during which time I became aware that the video did not show people being thrown over the side. I then visited the ship on 8 November and looked at the tape and, as I said in my opening remarks, I had a half-hour discussion with Commander Banks about it all. At that stage of the game, certainly the video did not portray to me that people had been thrown over the side, other than, as I have said, that there was somebody being held over the side with what I thought was the intent to throw. I think it was on 8 November that it was clear, certainly from the evidence I had, that there was nothing to support the notion that somebody had been thrown in the water.

Senator FAULKNER—I was going to ask you separately about the video, because I heard what you said in your opening statement—and I appreciate that—and what is in your witness statement. It is fair to say in fact that on the morning of 8 November you knew two new things. Again, I would just like you to indicate whether I have got this right. First of all, you knew that the video did not depict any child being thrown overboard?

Vice Adm. Shackleton—Yes. That would have been about 10.30 or 11 o'clock Perth time.

Senator FAULKNER—My second point is that, as a result of that evidence, you came to the conclusion that there was no truth to the story that kids had been thrown overboard? What I am trying to understand is whether you came to the conclusion about those two separate things as a result of seeing the video. I appreciate what you have said about the video—that is clear—but the other question I am asking you of course is about the actual veracity of the claims that kids had been thrown overboard.

Vice Adm. Shackleton—As I said, I spent 30 minutes, or thereabouts, with Commander Banks. He was quite emphatic that nobody had gone in the water, and the video that I saw backed up what he said. He had no doubt in his mind that, irrespective of what was said up front, the reality was that no kids had been thrown in the water. Based on his strength of conviction and on the video, which I saw, one would have to believe him.

Senator FAULKNER—Thank you for that information. It was with that information, presented to you a very short time earlier that day, that you then did your doorstep—I mean doorstep—on the wharf at *Stirling*?

Vice Adm. Shackleton—It did feel like a doorstep. But, yes; that is what happened.

Senator FAULKNER—The committee is interested in what occurred after the doorstep, through to the so-called clarifying statement. You have taken some questions on notice about staff interactions, and I appreciate that. You have indicated in your statement where the clarifying statement was drafted, or who drafted it. I will have to look for that—unless you can point me to the paragraph number. It is Ms McKenry and others.

Vice Adm. Shackleton—It is in paragraph 1.4.23.

Senator FAULKNER—That is basically Captain Goldrick and Ms McKenry?

Vice Adm. Shackleton—No, Ms McKenry, as the head of PACC, Public Affairs and Corporate Communication, drafted it. She and I talked on the phone. After we had made a number of changes and propositions and more changes, the release was sent out the way it was.

Senator FAULKNER—The statement was not cleared with the minister's office, was it?

Vice Adm. Shackleton—Not that I am aware of, but I honestly cannot remember. I said that I was happy with the statement and that, as far as I was concerned, it should go as it was; but, to be honest, I cannot remember whether or not that was cleared with the minister's office.

Senator FAULKNER—But your discussion with Mr Hendy was what led to the clarifying statement later on?

Vice Adm. Shackleton—Yes, it was. If McKenry was required to get clearance on it from the minister's office, then she would have been the one that did it.

Senator FAULKNER—In paragraph 1.4.22 of your statement, you say:

In talking to Hendy—

I interpolate here that that is the one discussion you have with him—

I gained a strong impression that he had not been told that the original report was incorrect, and this came as a surprise to me.

Vice Adm. Shackleton—Yes.

Senator FAULKNER—Did you correct it with him?

Vice Adm. Shackleton—At that stage, I needed to get more information. The conversation I had with Hendy then led me to conversations with Admiral Ritchie to find out more about what had been said by whom to who else. As I think I said earlier, when I made those statements to the press my expectation would have been that the original story, now about a month old, would have been corrected. It was the case that—certainly in the ship *Adelaide*, as I subsequently found in a message from the ship, dated, I think, 10 October—by 10 or 11 October there was some feeling that no children had been thrown over the side. In my own case, I was, for whatever reason, not privy to that at the time.

Senator FAULKNER—We have just established that by the time that you had your discussion with Mr Hendy you knew three things. You knew a lot more than three things but, at least in relation to this incident, you knew three things: one, you thought that kids were not thrown overboard—

Vice Adm. Shackleton—Correct.

Senator FAULKNER—Two, you knew that the video on HMAS *Adelaide* did not depict kids being thrown overboard.

Vice Adm. Shackleton—Yes.

Senator FAULKNER—And, three, you had known for nearly a month that the photographs in the water, the so-called evidentiary support of the claims that kids had been thrown overboard, did not depict kids who were thrown overboard at all but, rather, events on another day—the sinking of SIEV4.

Vice Adm. Shackleton—Yes.

Senator FAULKNER—So I think, Admiral, the discussion you had with Mr Hendy is important. Given that you knew all that, you say in your statement—and I accept it—that you talked to Hendy, you gained the strong impression he had not been told the original report was incorrect and that this came as a surprise to you. I accept that. What I find hard to accept, given your state of knowledge of these events, is that you would not say it to him. You may have said it to him, but I want to be really clear on this because I think it is an important point. Did you tell Hendy any of these three things that you knew?

Vice Adm. Shackleton—Senator, I honestly cannot remember. I had seen the video. The video had been seen by the minister's staff, in the form of Mr Scafton. I do not know whether Hendy had seen the video or not. It had certainly been played on television here in the eastern states by the time I had the telephone conversation with him. So I guess the fact that that tape had been played—and the minister's staff or minister's advisers had seen it and would have come to the same conclusion as I did—meant that Hendy was now telling me that I was contradicting what the minister had said. I then took what he was meaning as being that, in the technical sense, the first advice to the minister was that children had been thrown overboard. What I had not appreciated up until that time was that at no time had the minister been told that that first report was now incorrect.

Senator FAULKNER—Regardless of the value judgment in the latter part of your answer, there are two things. There is the ABC radio program—I think it is *PM* but I am not 100 per cent sure—and there is the AAP story. There are these two things. AAP says:

Navy chief Vice Admiral David Shackleton said today the navy had never advised Defence Minister Peter Reith that boat people threw children overboard from an Indonesian vessel.

Vice Admiral Shackleton said the navy's advice to the minister was that a child, believed to be aged about five or six, had been held over a top railing of the boat with intent to throw the child overboard.

“Our advice was that there were people being threatened to be thrown in the water and I don't know what happened to the message after that,”

They are your words:

“Our advice was that there were people being threatened to be thrown in the water and I don't know what happened to the message after that,”

To directly quote you on ABC radio:

All I can say is that the video tape shows that this child was held over the side ... all that we can discern from that ... is the absolute intent to drop that child in the water. The boat from the *Adelaide* came underneath—

the vessel at the time—

and then the child was brought back inside, and that's all I can say.

And then, of course, it is those statements that led to the clarifying statement. The words that are in your mouth, so to speak, as opposed to the reportage of AAP, are an accurate reflection of the situation, aren't they?

Vice Adm. Shackleton—It was at the time, which is I guess what surprised him when I spoke to Hendy. I had been aware, like everybody else, of the media reporting of this early in the piece. It had then, in its own way, gone off the scope. I had been overseas and I came back and I saw this tape on board HMAS *Adelaide*, by which time a month had moved along. I was surprised that we were still working off the original report which, from what I could see on the tape and from the way that it was discussed with me, was now wrong.

Senator FAULKNER—Yes, but you put out the so-called clarifying statement:

My comments in no way contradict the minister. I confirm the minister was advised that Defence believed children had been thrown overboard.

How were you able to make that final statement: ‘I confirm the minister was advised that Defence believed children had been thrown overboard’?

Vice Adm. Shackleton—Because I checked; I cannot remember who I spoke to but I verified that that was in fact the report that the minister had been given.

Senator FAULKNER—Again, this is fairly important, Admiral.

Vice Adm. Shackleton—I can understand what you want to know—

Senator FAULKNER— Well, I think it is important.

Vice Adm. Shackleton—All I can say to you is that the fact was that Defence had advised the minister that children had been thrown over the side, or words to that effect. By the time I was dealing with this—the best part of a month later—and when I saw the videotape and discussed this with Commander Banks, it was my expectation that somebody would have told the minister that the first report was wrong.

Senator FAULKNER—Yes, but for you to put a clarifying statement out two days prior to an election with this being—I don't use this language but everyone else does so it seems to be accepted now—a 'hot-button' issue—whatever that means; I think we know what it means but it is just a horrible use of the English language—I think it is reasonable for me to press this question. In that atmosphere, for you to put out a clarifying statement, it is reasonable for me to ask you how on earth you were able to confirm that and who you checked it with in this circumstance. I would like to press you on that.

Vice Adm. Shackleton—I am really not in a position to be able to help you. What I did was send out a clarifying statement which reiterated the facts as they then were, in that the minister had been told that the child or children had been thrown over the side and there had been no change to that advice.

Senator FAULKNER—But who tells you that, given that you actually know, when you put the clarifying statement out, the three things that we have gone through: the video does not show it, the pictures relate to another incident, and you believe there is no truth to the fact that kids have been thrown overboard, for God's sake?

Vice Adm. Shackleton—I cannot help you with who I spoke to there because I cannot remember. The only people I remember speaking to that day were the people from PACC, my own staff, Admiral Ritchie and Admiral Smith. Maybe they can tell you I spoke to them but I cannot remember raising this issue with them.

Senator FAULKNER—I could ask them but, to be honest, on this occasion this is a logical question to ask you. It is your statement: 'I confirm the minister was advised'. It is not Admiral Ritchie or anyone else who is confirming it, it is you: 'I, Vice Admiral Shackleton, confirm'.

Vice Adm. Shackleton—That was my belief at the time.

Senator FAULKNER—But to put out such an important statement in the hothouse atmosphere, literally at the end of an election campaign, and not be able to say to the committee who you confirmed it with—after, as you say, the extraordinary amount of press and public interest in it on that day—is incredible.

Vice Adm. Shackleton—But in my conversation with Admiral Ritchie, he told me that Air Vice Marshal Titheridge was the individual who phoned into the IDC with this information, which said that a child or children had been thrown over the side. That was the original report that was made to the minister and, up until I do not know when, that advice had not changed.

Senator FAULKNER—You confirmed it but you do not know who you confirmed it with. I do find it amazing that you put out a clarifying statement given the circumstances, which we all appreciate—and I know you do, because you have said so earlier—but it is also the fact that the clarifying statement itself is so inadequate in the circumstances. Let me ask you how you can sign off on a statement that says, ‘I confirm the minister was advised that Defence believed children had been thrown overboard,’ when at best that statement—would you agree with me?—is a half-truth. At absolute best it is a half-truth. I do not think there is any truth to it at all, but at best it is a half-truth, given your state of knowledge at the time.

Vice Adm. Shackleton—I do not agree. The minister had been told that children or a child had been thrown over the side.

Senator FAULKNER—But how did you know that?

Vice Adm. Shackleton—From my discussions with Admiral Ritchie and Admiral Smith I knew that. I knew from the media reports and I knew generally from the circumstances that that was what the minister had been told.

Senator FAULKNER—But you also knew a number of other elements. If the statement was to be a fair representation of the facts, don’t you think it ought to have included the fact that you knew that, from 7.45 on the evening of 10 October, the photos did not represent kids being thrown overboard? That did not go in the clarifying statement, did it?

Vice Adm. Shackleton—I saw no need to comment on the photographs.

Senator FAULKNER—Why? They were the evidentiary support, through the whole of this period, that kids had been thrown overboard. The reason people say, ‘Oh, we didn’t have to address that issue,’ is that the evidence was there—and the evidence was the photographs of the kids in the water. That was bodgie; the video did not show those events taking place and you knew, when you issued the clarifying statement, that there was no truth in the suggestions that kids had been thrown overboard in relation to SIEV4.

Vice Adm. Shackleton—But it is not my position to make public announcements on behalf of the minister.

Senator FAULKNER—Of course it is not; I appreciate that. But it is your position apparently to make public statements to say that you have been able to confirm what the Minister for Defence was advised, but you cannot tell us—

Vice Adm. Shackleton—No, what I said was: I confirm that the minister was told. That is what I said.

Senator FAULKNER—Yes.

Vice Adm. Shackleton—I did not say I reconfirmed it, but I knew that was the case to begin with.

Senator FAULKNER—Yes, but how could you confirm it when you cannot even remember who you confirmed it with?

Vice Adm. Shackleton—My point is that I was confirming this in the context of what I had been reported to have said that day, and I wanted to clarify it to make sure that people understood that I was not in the position of contradicting the minister.

Senator FAULKNER—Could you say to the committee now, Admiral, how the minister was advised that Defence believed that children had been thrown overboard? Even today can you say that?

Vice Adm. Shackleton—My understanding is that it went through the IDC. I go back to my original point. I am not in the operational chain of command, so I do not know what the CDF said to the minister. I do not know what Air Vice Marshal Titheridge said to the minister. But I had a very strong sense that in Defence the minister had been told that children had been thrown into the water.

Senator FAULKNER—A strong impression, but it goes back to the IDC?

Vice Adm. Shackleton—I had a strong impression, from the Strategic Command group and other work that I was involved in, that the minister had been told that there had been children thrown into the water.

Senator FAULKNER—But how were you informed about what happened or didn't happen at the IDC?

Vice Adm. Shackleton—When I discussed, on the afternoon of the 8th, with Admiral Ritchie how the information had moved around, it was his advice to me that Air Vice Marshal Titheridge had phoned through to the chairman of that committee and provided the information in that way.

Senator FAULKNER—Do you regret now the statement that you made did not include some of the other elements that would have thrown considerable light on this issue, given that you made a decision to issue a clarifying statement? With the benefit of hindsight, do you regret that that clarifying statement did not go to the issues of the photographs, the video and the question of whether or not children had been thrown overboard?

Vice Adm. Shackleton—Absolutely not. That was not my place. The minister had made it quite clear that that kind of information, that sort of public announcement and those sorts of details would be handled by him and his office. This was not something I had any freedom to deal with.

Senator JACINTA COLLINS—How did you know that the advice to the minister had never been changed?

Vice Adm. Shackleton—Hendy made it quite clear to me.

Senator JACINTA COLLINS—Solely from Hendy?

Vice Adm. Shackleton—Hendy said to me that—I think I used the words in my paragraph 1422—that he could remember the minister being advised by Navy people of this incident and that at no time had the minister been told otherwise.

Senator JACINTA COLLINS—So you confirmed with Ritchie—perhaps others—the nature of the original advice to the minister?

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—Did you not confirm with anyone whether that original advice had been changed?

Vice Adm. Shackleton—Hendy was essentially telling me that the advice had not been changed. He was the chief of staff—

Senator JACINTA COLLINS—You didn't confirm with anyone in Defence?

Vice Adm. Shackleton—No.

Senator FAULKNER—But Admiral Ritchie and the others knew, didn't they—they knew within two days that—

Vice Adm. Shackleton—Well, no—

Senator FAULKNER—Just hear me out. They knew within two days that the initial advice was known to be unsubstantiated and they knew within two days that the photos were out and out frauds as they related to an issue of children having been thrown overboard. They knew that—all of them.

Vice Adm. Shackleton—Is that a question?

Senator FAULKNER—There is a question mark at the end there somewhere.

Senator JACINTA COLLINS—Admiral, I go back to an earlier point. You sought confirmation of what Hendy said to you in relation to the original advice to the minister. Why did you not seek confirmation that that advice had changed?

Vice Adm. Shackleton—Hendy's conversation with me as the chief of staff to the minister said that the minister had not been told that anything had changed.

Senator JACINTA COLLINS—He might as well have drafted your correction then, if that is the only advice you are relying on for not saying more in this statement other than that you are not contradicting the minister.

Vice Adm. Shackleton—I had no reason not to believe Hendy.

Senator JACINTA COLLINS—You checked that what he was saying about the original advice was the case.

Vice Adm. Shackleton—In my conversations with people that day, by the time I was talking to Ms McKenry about what that media statement would or would not say—and this is the position I keep coming back to—the minister had been told that there had been a child or children thrown over the side and that advice had not changed. Hence, I wanted to make it clear that I was not contradicting what the minister had said.

Senator JACINTA COLLINS—Admiral, before Senator Faulkner follows through—

CHAIR—I think Senator Brandis is keen to ask some questions.

Senator JACINTA COLLINS—There is just one more point on this statement that I want to ask you about. Did you have discussions with Captain Mal Wright in relation to making a correction?

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—Did you draft with him a correction?

Vice Adm. Shackleton—No. Captain Wright participated with Ms McKenry's staff in crafting the short statement and participated with them, but it was McKenry's advice that I took.

Senator JACINTA COLLINS—It is just that Ms McKenry's statement to the Powell report indicates that Captain Mal Wright had brought a statement that had been prepared in Navy headquarters down to her office; so before we got to public affairs, Navy had already prepared a statement. Did you not assist in the drafting of that statement?

Vice Adm. Shackleton—I was talking to my staff, saying, 'These are the kinds of words that I think ought to be put together,' but the PACC organisation is the place from where all of that is managed, so that is where they went to gain endorsement and to improve it as it was.

Senator JACINTA COLLINS—Could we have a copy of that original draft statement?

Vice Adm. Shackleton—I honestly could not tell you if it still exists.

Senator JACINTA COLLINS—It may, though. I presume a discussion with Captain Wright would easily unearth a copy of that statement if it still exists.

Vice Adm. Shackleton—It might.

Senator JACINTA COLLINS—Would you take that on notice, please?

Vice Adm. Shackleton—Yes, I will.

Senator BRANDIS—I want to take you back to your statement to the media on 8 November, when you were in Perth for the departure of the *Kanimbla* and the *Adelaide*. As I understood your evidence, and please correct me if I am wrong, you arrived at the view that you expressed in the doorstep—that is, that there was no truth to the claims that children had been thrown overboard—on the basis of two sources of information: what Banks told you and the video. Is that right?

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—Are those the only two sources of information that you used to come to that conclusion?

Vice Adm. Shackleton—No, I had a conversation with the Maritime Commander on the day preceding, and he said it was his opinion that there were no children thrown in the water.

Senator BRANDIS—Remind me: the Maritime Commander being?

Vice Adm. Shackleton—Admiral Smith.

Senator BRANDIS—So Smith expressed his own opinion to you, but he did not purport to speak as an eyewitness, of course; he was merely expressing a conclusion rather than advising you of any facts.

Vice Adm. Shackleton—The only eyewitness in this instance—should there be one—is Banks or a member of his ship's company.

Senator BRANDIS—Quite; that is my point. Of course I accept that you would give some weight to the opinion of Smith, but he was not an evidentiary source, was he?

Vice Adm. Shackleton—Except that I think he had telephoned and spoken to Banks at sea.

Senator BRANDIS—But so did you the next day, so that is kind of the same source, isn't it?

Vice Adm. Shackleton—Yes.

Senator BRANDIS—The video—and I do not think this is controversial—does not show a child being thrown into the water. I do not think that is in dispute. But nor does it purport to show the whole incident, and it only shows the SIEV4 from one side.

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—It is no evidence that a child was thrown into the water, of course, nor is it evidence that a child was not thrown into the water; it just does not tell you one way or another.

Vice Adm. Shackleton—Certainly from the video you would not say that a child had been thrown overboard.

Senator BRANDIS—Of course not. My point in a sense is the converse: certainly from the video you could not conclude to the contrary. It lends no evidentiary support to the proposition.

Vice Adm. Shackleton—Yes.

Senator BRANDIS—But it does not contradict it.

Vice Adm. Shackleton—Correct.

Senator BRANDIS—And then there is what Banks told you. Your words—I made a note of them—were that Banks was quite emphatic, and he said to you that there was no doubt in his mind that no children were thrown into the water.

Vice Adm. Shackleton—That is right.

Senator BRANDIS—And that presumably had a significant bearing upon the conclusion you then reached and subsequently expressed in the doorstep.

Vice Adm. Shackleton—My view was that he was the man on the spot dealing with all of the circumstances, and he had had time to review the evidence as it had been accumulated in the ship post the event, in slower time. His opinion was now quite strongly that there had been no children thrown in the water.

Senator BRANDIS—Were you at the time aware of, or had you in fact read, Banks's statement of 11 October?

Vice Adm. Shackleton—No, I have not.

Senator BRANDIS—In Commander Banks's statement of 11 October, he says:

I DID NOT SEE ANY CHILDREN IN THE WATER.

But he also says, and this is quoting from paragraph 21:

21. I HAVE SINCE BEEN QUESTIONED REPEATEDLY ABOUT THIS EVENT—

That is, the question of whether or not a child was thrown overboard—

(AND TO A LESSER EXTENT OTHERS) AND I AM NOW SO FULL OF CONFLICTING INFORMATION OF WHAT WAS SEEN AND HEARD BY OTHERS AND ME AND STATED BY OTHERS AND ME THAT IT IS DIFFICULT TO RECALL WITH ABSOLUTE VERACITY.

Memory is a funny thing. Often the distance from an event lends a greater certainty to the mind of the witness, but the closer to an event a recollection is recorded the more likely it is to be accurate because there is no element of reconstruction or reflection. That is a fairly common phenomenon that I am sure you would have found in your own career. Would you agree?

Vice Adm. Shackleton—In this instance, where the passage of time may have changed a perception, that is certainly possible.

Senator BRANDIS—What strikes me as noteworthy is that, when he spoke to you on 8 November, a month after the incident, Banks was much more certain than he was on 11 October, three days after the incident.

Vice Adm. Shackleton—There are conflicting parts of all of this, as I have said in my remarks and evidence elsewhere. Silverstone said that he recollected that Banks had said that there had been a child or children thrown over the side, and I know there are some questions about the veracity of that particular statement.

Senator BRANDIS—Can I interpolate, Admiral Shackleton, that it is more than Silverstone recollecting; he has a diary note.

Vice Adm. Shackleton—I was about to say that sitting in the comfort of an office, that is not rolling around in the ocean with other people trying to get your attention, is a place where you could expect to record more accurately what somebody may have said to you rather than somebody who was not taking notes and had only half a mind on the conversation that he was having with you.

Senator BRANDIS—Absolutely.

Vice Adm. Shackleton—As I think I have said, it does not surprise me at all that there is a conflict over this issue in terms of what did Banks say and what didn't Banks say.

Senator MASON—You would describe it, would you, as part of the 'fog of war'?

Vice Adm. Shackleton—That term has been used. I think there is every chance that Commander Banks may have said it; I think there is some chance equally that he may not have said it.

Senator BRANDIS—When you spoke of the 'fog of war' most eloquently in your evidence, and which you have repeated in your opening statement today:

It is fair to say that, often as not, you are dealing with millions of shades of grey and it is only as events start to get to a point of culmination that they start to form up into a real pattern ...

That is, I suppose, your description of the same phenomenon that others would call the 'fog of war'.

Vice Adm. Shackleton—It is. You have all kinds of information, some of which makes sense and some of which does not, and you have to make judgments on what you see at the time. Doing nothing is not an option.

Senator BRANDIS—In any event, we will put these questions to Commander Banks in due course. But the short point is that when you spoke to him on 8 November you had not read his statement of 11 October and you did not know what he said in that statement.

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—Had you seen or were you aware when you spoke to Banks on 8 November of the statement made by the EOTS operator, Able Seaman Wade Theo Gerrits, on 7 October?

Vice Adm. Shackleton—No, I had not seen any of that statement.

Senator BRANDIS—In it, Able Seaman Gerrits says, among other things:

... I was on the Bridge manning EOTS ... During that time I witnessed and recorded ... SUNCS jumping off the SIEV by their own choice and I believe one child also went overboard.

You were unaware of that on 8 November?

Vice Adm. Shackleton—I was not aware of that particular statement. That is right.

Senator BRANDIS—Finally, by 8 November, had you had a conversation with Brigadier Silverstone about his conversation with Commander Banks of 7 October?

Vice Adm. Shackleton—No, I had no reason to talk to Brigadier Silverstone.

Senator FAULKNER—Vice Admiral, I would like to ask you about the ‘fog of war’, because I, too, am interested in this. I have read with interest what you said and I agree with Senator Brandis that what you said at the estimates committee about the ‘fog of war’ was most eloquent. Does the ‘fog of war’ lead one to a conclusion or suggestion that an initial report that you might receive from a commander—in this case it might be like Commander Banks, but someone at the frontline effectively—might often be incorrect or require further examination? Is that something that the ‘fog of war’ would lead you to be cautious about initial reports?

Vice Adm. Shackleton—Yes. Certainly if you know that the circumstances are very demanding and that the reports are what I would call ‘snapshots in time’, there is a reasonable probability that they will not be factually accurate.

Senator FAULKNER—Yes. So what kind of burden of proof do you think applies to corrections to commanders’ initial reports?

Vice Adm. Shackleton—They have the same burden of proof as to the formation of the original report in the first instance.

Senator FAULKNER—But what sort of evidence would you demand, given that you have stressed to us how cautious one needs to be about initial reports?

Vice Adm. Shackleton—I think you would be looking for correlation: you would be looking for events that make previous assertions, assumptions or statements have an increased degree of veracity. I am not sure where you are trying to get to, Senator.

Senator FAULKNER—I am interested in your view on this, because you raised with senators the issue of the ‘fog of war’. I am reminded about the CDF’s evidence and his statement—in which I think he described it as ‘a principle of war’—that the commander’s

initial report could only be contradicted by compelling evidence. There seems to be a bit of a difference here.

Vice Adm. Shackleton—I think what he means by compelling evidence is a reflection of the events and the synthesis of all of the information that you could provide for those circumstances, and the test would be: was the first statement was correct?

Senator FAULKNER—I have been told by people in Defence—and I am not an expert on this; I would not pretend to know—who basically support the view that you have expressed to this committee that a commander's initial report can only be contradicted by compelling evidence is basically a complete opposite to what every staff and command officer's working assumption might be. I do not know whether that is right or not but I am very interested, given the nature of the CDF's disparate views about the first reports, or what were allegedly the initial reports, from the *Adelaide*.

Vice Adm. Shackleton—We place great faith in our commanding officers to make calls as they see it and for those calls—by which I mean, reports—to be informed by all of their experience in interpreting the circumstances as they see them around them. So, when the report would have arrived with the CDF—and he obviously needs to speak for himself—he would have taken that report to have had great integrity and he would not have been easily persuaded to change that assessment, unless the commander himself was quite emphatic about it. But, even then, in the circumstances it is true to say that often the first call is the right call, even though doubts start to come into your mind later on. So I think CDF was presented with a real dilemma.

Senator BRANDIS—Admiral Shackleton, could I take up that very point, if I may. We speak about the first call being the right call, but the use of the word 'call' implies a judgment.

Vice Adm. Shackleton—Yes.

Senator BRANDIS—But here we are not talking about a judgment; what we are talking about is a description of what somebody saw, so the context which judgment requires is really irrelevant here. What is relevant is: did the man see what he says he saw or didn't he? Context which might affect judgment does not affect mere description. Would you accept that proposition?

Vice Adm. Shackleton—I think in these circumstances, where he would have been watching a boat with people moving around—and he may have seen something out of the corner of his eye or he may have seen something which he then said 'that represents somebody being thrown over the side'—I think that is both an observation and an assessment of what it meant. I think that there is a measure of judgment in that and it would have equally have been a measure of judgment as to whether he should report that at all.

Senator BRANDIS—Accepting what you say, as I do, nevertheless, whether it be an observation or an assessment, it is merely the description of an observed phenomenon—something somebody saw. And even though what he saw he may have seen imperfectly, the proposition I am putting to you is that he will never be in a better position to make that assessment or to say what he saw than he is at the moment he is seeing it.

Vice Adm. Shackleton—Agreed.

Senator BRANDIS—That is the distinction between narration and recollection. Narration does not depend upon memory and it does not depend upon reconstruction or it does not depend upon doubts, or a man working something over and over in his mind, whereas recollection does. Would you agree?

Vice Adm. Shackleton—I would agree with that.

Senator FAULKNER—Anyway, what I was trying to do—

CHAIR—I do not want to cut you off, Senator Faulkner, but we are getting into a situation where this is ping-ponging backwards and forwards, and I now want to clamp down a bit and give a bit of form to it. So let us finish off your questions, Senator Brandis, and let us do it without any interference from anyone else. Then let us go to the next questioner. I think we are getting down to ontological truth—whether you actually saw it or were you really dreaming! Commander Banks is waiting to come on.

Senator BARTLETT—Whether we all exist.

CHAIR—He is the person who was there; maybe these questions are best left to him. I am not saying they cannot be asked but, in weighing the value of them, maybe they are best left to him.

Senator FAULKNER—Mr Chairman, I thought there may well have been a different view about initial reports—and I still think there is—between Vice Admiral Shackleton and Admiral Barrie but the Defence experts can deal with that, and I certainly do not claim to be one of those. Vice Admiral, were any instructions issued by you, or the Navy, to Commander Banks and his crew before the Prime Minister's visit to HMAS *Adelaide*?

Vice Adm. Shackleton—None came from me and, as far as I am aware, there was none from anybody else either. I have interpreted that question in relation to this particular incident rather than any other form of instructions.

Senator FAULKNER—I was not specific because I was not sure what sort of instructions, if any, would have been given.

Vice Adm. Shackleton—The normal instructions would be related to matters of protocol and those kinds of things.

Senator FAULKNER—One of our terms of reference goes to the costs of the Pacific solution. Has the Navy been able to do a costing of Operation Relax?

Vice Adm. Shackleton—The Navy has been able to provide some estimates of the cost differential between what we had budgeted for under so-called normal circumstances and what we are finding our costs are in terms of the execution of the operation. So I cannot give you an

absolute cost of Operation Relex in a box per se. I am not quite sure where the estimates process is in terms of looking at what the difference is between now and then.

Senator FAULKNER—Are you able to provide that differential for the benefit of the committee?

Vice Adm. Shackleton—I would have to take advice on that.

Senator FAULKNER—If you wouldn't mind.

Vice Adm. Shackleton—By advice I mean I would have to seek the minister's agreement to table that.

Senator BARTLETT—Before I start my questions—I could have raised this point at the time but I did not want to be seen to be trying to interrupt the line of questioning—you mentioned before that people named adversely would be given the opportunity to respond. Can I clarify that that means the people on the various boats will get an opportunity to answer the allegations that were outlined today and the assertions that were made about their being evil people who engage in child abuse, moral blackmail and the like? It is a bit difficult when they are all locked away in a foreign land somewhere.

CHAIR—Outside of our jurisdiction—it is a bit difficult but, as I interpret the terms of reference, that is a relevant line of inquiry and we should apply our minds to how we conduct it.

Senator FERGUSON—Mr Chairman, I do not recall anybody referring to them as 'evil people'. Do you?

Senator BARTLETT—I do.

Senator JACINTA COLLINS—Yes, I do, Senator.

Senator BRANDIS—I think I did say that the conduct reported was evil.

Senator FERGUSON—If you heard them talk about evil people then perhaps you can repeat it.

Senator BARTLETT—Certainly I know the words 'moral blackmail' were used. Perhaps you can make a judgment and report about whether they should be condemned to hell, if that fits our terms of reference.

Senator JACINTA COLLINS—Such judgements are a positive, actually.

Senator BARTLETT—Can I ask briefly in terms of the other document that was brought forward by Senator Mason about the concern that was raised—quoting one of the people who survived the ship that sank—that there were Australian vessels in the vicinity that did nothing. Were you aware of that concern before we raised it today?

Vice Adm. Shackleton—Are you talking about the letter of 18 February from Mr Tony Kevin?

Senator BARTLETT—Yes.

Vice Adm. Shackleton—While I was aware that assertions had been made, that that event took place or that an Australian warship was close by, all of our records point to all of our ships being elsewhere doing other things.

Senator BARTLETT—So you had been aware of it previously and investigated it?

Vice Adm. Shackleton—When this allegation was made we checked all of our available information. There is nothing that indicates that we were closer than about 230 miles away.

Senator BARTLETT—Thank you. I appreciate that. It is handy to clarify that it had already been examined. We have heard, in the questions that have been put to you to date, about the impact on the crew's morale—I think 'morale' was the word used; you used another phrase like 'state of wellbeing' or 'psychological happiness'. Navy personnel had to witness children being dangled overboard and the like. This is a general question: I would be interested to know whether you have any comment on the impact on the satisfaction, if you like, of Navy personnel on the overall role they have now been given? As you said, it is a new style of operation; it is not something that Navy personnel are used to being involved in. I am not implying that Navy personnel collapse into a heap of tears every time they are faced with a difficult situation, but I presume that having to engage boats that are significantly overcrowded and marginally seaworthy with distressed people on board—women and children, and babies, in the case of SIEV4—would be difficult for them. Engaging with them generally, I presume, is something that would be fairly stressful for people.

Vice Adm. Shackleton—It is stressful and difficult. We have had to introduce new training to help equip our people to deal with it. We have not been used to this kind of close quarters work in the way that it is for quite some time. When the operation commenced we had not made sufficient preparations to deal with it. We were in catch-up mode insofar as the training of our people was concerned. We have now reached a point where that training is effective and it makes a difference with people being able to deal at such close quarters with people in these circumstances.

Senator BARTLETT—When was that training introduced?

Vice Adm. Shackleton—I would have to check.

Senator BARTLETT—After the SIEV4, for example?

Vice Adm. Shackleton—Can I get some advice on that?

Senator BARTLETT—Certainly. In your role as Chief of Navy, are you aware of dissatisfaction being expressed by Navy personnel, at whatever level, about having to perform this new role?

Vice Adm. Shackleton—There may well be a sense of dissatisfaction by people at the personal level, as other people in Australia themselves are entitled to their personal opinions, but the thing about the people in the Navy is that they have not allowed that to stand in the way of them doing their job.

Senator BARTLETT—I appreciate that probably in the Navy—or in the defence forces anyway—more than pretty much any other role in the country, people will follow orders regardless of how enthusiastic they are about them.

Vice Adm. Shackleton—I do not know whether the Navy follows orders any better than anybody else.

Senator BARTLETT—I will not engage in argument with you about that. Apart from the level of people personally thinking this is a bit rough, has there been concern expressed at a command level about the desirability of Navy being used in this way or the appropriateness of it in terms of that type of operation?

Vice Adm. Shackleton—I would not say at the command level. Obviously we are interested in the welfare of our people—and by ‘welfare’ I mean their wellbeing—and we do provide the opportunity for people to talk about their experiences to find a way to talk out that sense of upset or concern that they might have for the circumstances that they have found themselves in.

Senator BARTLETT—You talked at the start of your statement about your responsibility, including ensuring that the Navy is able to achieve its mission and being able to fight and win—obviously Navy is engaged in some other important tasks at the moment broader than the Pacific solution. How does the fact that the government is requiring the Navy to utilise some of its resources in this type of activity impact on your broader mission of being able to fight and win in other areas? Is it stretching your capacity?

Vice Adm. Shackleton—I would not—

Senator FERGUSON—Mr Chairman, if I can just intervene. I think this is getting very close to asking the admiral to comment on the Australian government’s policy—

ACTING CHAIR (Senator Brandis)—I am sorry, Senator Ferguson. Can we have the question again, Senator Bartlett, because Senator Cook—

Senator BARTLETT—We have lost a chair.

ACTING CHAIR—No, I am the acting chair. The chair is indisposed. Senator Bartlett, can I just hear the question again, so I can rule on it?

Senator BARTLETT—Sure. My question went to the admiral’s own comment about his responsibilities including ensuring that the Navy is able to achieve its mission of being able to fight and win, and it went to whether the fact that part of the Navy’s operations are being used in the Pacific solution had an impact on that overall mission in a negative way.

ACTING CHAIR—I think that is a permissible question. It is relevant to term of reference (d).

Senator FERGUSON—It has been rephrased slightly.

Senator JACINTA COLLINS—It is like an estimates question.

Senator FERGUSON—It has been rephrased, yes.

Vice Adm. Shackleton—The Navy has ways and means of working out how best to apply the resources against the tasks that we are given. In this instance, we have applied ships, people and helicopters to meet this task, and we are also meeting our obligations for ships in the Gulf and on occasion ships to go and arrest poachers down off Heard Island. It is fair to say that Navy is working quite hard, but so far we are able to meet our requirements, meet our obligations.

Senator BARTLETT—As I understand it, Navy vessels are still engaged in patrolling the waters in this region, even if the boats are not appearing at the moment.

Vice Adm. Shackleton—Yes, that is correct.

Senator BARTLETT—If this policy is to continue, this requirement for Navy to continue to do that, there have been comments, I think including from the current Minister for Defence, that you will need more resources. Is that the case? Part of what we are meant to look at is the costs across the board of the Pacific solution and, whilst I do not believe there has been any additional funding provided to Navy, obviously there are different definitions of the word ‘cost’ other than extra dollars and cents. If it is a long-term policy, is it—

Vice Adm. Shackleton—It depends on whether it becomes such a long-term activity. Obviously, we do provide ongoing advice to the minister about the cost of operations and the implications thereof—not just for the Navy but also for the Army, the Air Force and other elements of Defence. I think that that is done on a continuous basis. Right now, we have provided information to the minister on budget requirements, and that is being worked through the budget process.

Senator BARTLETT—I do not know if that came out in any of the estimates hearings, because I was not able to be at all of them. Mr Chair, would it be appropriate to ask the committee to request information from the minister on that point? I do not think it is appropriate to ask the vice admiral for it.

CHAIR—I missed the early part of what information you are asking for.

Senator BARTLETT—The advice that has been provided about costs and ongoing impacts in a budgetary sense.

CHAIR—I am sure that is within our purview.

Senator FERGUSON—It would have to be put to the minister.

Senator BARTLETT—Yes, that is why I am asking for us to do that. We have obviously seen an enormous amount of material about reports on the SIEV4 incident. Do all of the various SIEV incidents include that level of detail in reports of what happened at the time—that sort of minute-by-minute description?

Vice Adm. Shackleton—By and large, yes. The area where we might be different is in the amount of photography that we take.

Senator BARTLETT—That goes to my next question: are photos usually taken on these sorts of occasions, or was it because there was a rescue involved that there was extra—

Vice Adm. Shackleton—No. It depends on the availability of photography equipment, but our practice is to take pictures wherever we can.

Senator BARTLETT—You may not be the appropriate person to ask this—in which case, I am sure, you will let me know. Would that normally include assessment of the conditions of the boats and the conditions of the inhabitants—those sorts of details—as well?

Vice Adm. Shackleton—Yes.

Senator BARTLETT—In your opening statement, you talked about the line of command. In terms of the actual authority to make decisions, my understanding is that Commander Banks, in the SIEV4 example, would have needed authority to take people on board the *Adelaide*. If the vessel sank, he would obviously required to rescue people if they were in the water. But, prior to that, did he need authority from somebody else before taking people on board the Navy vessel?

Vice Adm. Shackleton—No. His instructions would have been to turn the SIEV around and try to get it to leave Australian waters. Only if the boat had sunk or become uninhabitable, or for lifesaving reasons, would he then have taken them on board the ship—which is what he did, in the end.

Senator BARTLETT—If there had been a desire to vary those instructions, what would the process have been then? Would he have made a request back through—

Vice Adm. Shackleton—He would have called the commander of the joint task force, Brigadier Silverstone, who, depending on what he thought was the nature of the request, might then have asked Rear Admiral Smith, and there would have been a progressive working up the line, depending on the level and the magnitude of the change that was being sought.

Senator BARTLETT—Are you aware of the submissions the committee has received from the Iraqi detainees on Manus Island who were on SIEV4, about their descriptions?

Vice Adm. Shackleton—No.

Senator BARTLETT—I do not think that we have published that yet, so it is a bit hard to ask you questions about what is in it. I should assure you that the detainees are full of praise of the actions of the Navy personnel. I will just briefly refer to their statements here. Obviously I do not expect them to have a full understanding of Navy processes, but they say that the people from the *Adelaide* told them that they had to get permission from the Prime Minister's office before they could take them on board. That would be a misunderstanding, I presume; the Prime Minister's office would not be involved in any operational decision like that.

Vice Adm. Shackleton—There were times when the decision processes went all the way to the interdepartmental committee as to what action could be taken in regard to each particular incident. Each incident was treated separately and differently, and not necessarily as one that would become a precedent.

Senator BARTLETT—I might ask other officers about that in a bit more detail when we get to them. You have mentioned—and you had some questions from Senator Faulkner, so I will not go over that—the media statement or interview you did on 8 November.

Vice Adm. Shackleton—Yes.

Senator BARTLETT—We had earlier questioning today, which you may or may not have heard, of the secretary of the department about the media policy or communications policy that was in place at the time.

Vice Adm. Shackleton—Yes.

Senator BARTLETT—Was that statement you made in accordance with those administrative guidelines?

Vice Adm. Shackleton—Yes, it was. I asked that question myself. The minister was in Stirling—the naval base—at the time, and I checked to ensure that the authority to conduct the doorstep interview had in fact come the right way. I was told through my PACC adviser that that had been done properly.

Senator BARTLETT—Right. Again, you would not be aware of this because it has been received but not published yet, but we have had a submission from the parliamentary press gallery about this. I will not read the whole thing into the record and require us to table it now. There is concern expressed there about what they call a form of censorship—their words; I will not go into that. They talk about things like the refusal to allow reporters on to Navy vessels. Is that a normal practice? Obviously, you do not let them wander on and off as they desire but in a circumstance where the ship stopped in that case in November and they were prevented access would that normally be the case?

Vice Adm. Shackleton—I guess the answer is that it is fundamentally at the minister's direction. The DI(G) that Dr Hawke spoke about today—the Defence Instruction (General)—has been rewritten to accord with Minister Hill's preferences in regard to public affairs and communications generally, which are different from what they were when Minister Reith was the minister. Our preference, wherever we can, is to be open with the public, but the

circumstances are that you would not want to put information into a public place which placed you at risk with security, operational performance and suchlike.

Senator BARTLETT—Do you think there was a risk there in relation to security issues or operational performance?

Vice Adm. Shackleton—In relation to what, sorry?

Senator BARTLETT—In relation to the media wanting to get access to the vessel in November.

Vice Adm. Shackleton—Our practice would be that when we are conducting operations it would not be typical that the media be given live coverage of what we were doing.

Senator BARTLETT—Right. I understand that these instructions have now changed, so to some extent it is a redundant question but I think it is germane because of the terms of reference of our inquiry. Again, within this submission there is an allegation made—and it does not quote people, so there are the usual issues of unnamed sources—that suggests that people within Defence responsible for doctrine and training report frustration at getting accurate internal accounts of what was involved in the Navy blockade in the Indian Ocean because of the very strict communications requirements that had been put in place. They say that ‘the culture of secrecy’—and these are their words—‘has gone too far when it harms the force’s own ability to find out what its members are doing and disseminate information so lessons can be drawn’. Do you accept or reject the assessment that because of the tight control of the minister’s office it did actually get to the level of impeding accurate internal information flows?

Vice Adm. Shackleton—With every operation there is a degree of operational security. The minister’s instruction in relation to public dissemination of information, as I saw it, was not getting in the way of internal communication for the conduct of operations. You had one question earlier about the Operation Relex and its costings. What I can tell you is that we have estimated it will cost an additional \$19 million this financial year. The full cost will not be known, obviously, until the end of the financial year. These figures are in the portfolio budget statement.

Senator BARTLETT—On the final page of your statement you talk about your visits to the people on board the *Adelaide* and you state that they were concerned about the way in which their efforts with SIEV4 had been portrayed in the media. Could you elaborate a bit further on the nature or extent of those concerns? I put it all in one question to save time, but you go on to talk about Able Seaman Whittle, who I think was the woman in the photo, if that is correct.

Vice Adm. Shackleton—She was the sailor in the—yes.

Senator BARTLETT—I remember reading, on the front page of some newspaper, about her annoyance. My recollection is that her annoyance was more at the government than at the Navy, but I may be remembering it incorrectly. Could you outline in a bit more detail the nature of those concerns that people had?

Vice Adm. Shackleton—They felt that they were doing a good job—which they were—and I think they were somewhat taken aback by the rather high-profile media position that the ship

had assumed over this particular incident. From their perspective, they were doing their job—no more, no less—and they wondered whether the Navy was coming in for any kind of criticism because of any lack of their performance. My advice to them was that that was not the case and that *Adelaide's* reputation as a ship was in as good a shape as it had been. I spoke to Able Seaman Whittle about these matters. She has no complaint with the way that the Navy has been doing business in relation to her and, indeed, frankly was somewhat embarrassed to find the stories in the paper.

CHAIR—Able Seaman Whittle distinguished herself on the occasion. Is she being recommended for any award?

Vice Adm. Shackleton—I would have to wait and see what the commanding officer of the ship wants to do. We treat those things on a case-by-case basis and we treat them with quite a high degree of confidentiality because, as you can imagine, quite a number of people get put up for awards that do not actually come about for one reason or another. So we do not want individuals to be disappointed.

Senator BARTLETT—Could you outline a bit more broadly the nature of Operation Relex, just to clarify it for me? It basically started from the time of the *Tampa*, when the Navy was engaged in this new type of operation?

Vice Adm. Shackleton—It emerged out of the government policy which itself emerged as a consequence of *Tampa*, and it has been continuing since.

Senator BARTLETT—I do not have an expertise in these sorts of specifics in the Defence area at all, but, when you establish an operation, do you develop a brief with guidelines and command structures and relationships to various bodies like the people-smuggling task force and that sort of thing?

Vice Adm. Shackleton—All of that.

Senator BARTLETT—And that is all put together in a single—

Vice Adm. Shackleton—It is done at several levels. There is the Canberra strategic level, where the government's objectives and policy issues are factored into what degree of freedom the Defence Force has and how it might relate also to Customs and other people. At the operational level, where Rear Admiral Ritchie is responsible, he would plan the operation in considerably more detail than we would here in Canberra. Then the Maritime Commander, being the lead component commander, would plan out his part of this and issue instructions in relation to everything from which ships are to be on station and when to providing directions in terms of where to patrol—which might be based on some intelligence or not—and the day-to-day management of the issues as they emerge.

Senator BARTLETT—Are there any particularly unique features of Operation Relex compared with other interception incidents, like the example you have given of the illegal fishing, for instance?

Vice Adm. Shackleton—The high degree of close contact with other people is what typifies this particular operation, but the Navy has not been in that business for quite some time.

Senator BARTLETT—This is the final area that I want to touch on briefly. Again, this is in another submission we have got that we have not published yet, but it talks about a media report from last year, so it probably does not matter. It refers to a media report purporting to quote sailors who were on the *Manoora*, detailing a range of alleged incidents—fairly strong allegations of misbehaviour on the part of various boat people on board. It talked about a total of 36 hours of video footage showing riots, fights and ship damage taken by maritime command for review and evidence. Are you aware of that footage and whether there has been an investigation into that within the Navy?

Vice Adm. Shackleton—What kind of investigation do you mean, Senator?

Senator BARTLETT—According to this:

The *Daily Telegraph* on 15 October last year reported that the Navy would investigate claims sailors on board the *Manoora* were assaulted by asylum seekers and, according to Mr Reith's spokesperson, the Navy would report to the minister when an inquiry was completed.

Are you aware of an inquiry?

Vice Adm. Shackleton—I do not remember the specifics of that. We certainly were keeping records, obviously, as the event unfolded and would have provided advice to the minister, although I cannot remember the specifics of what we said. There was some minor damage to the ship and it was quite difficult in terms of dealing with the people, which you would have seen on the media in the same way that a lot of other people did. Other than that, the ship was doing its job and did it well.

Senator BARTLETT—The term 'inquiry' was used by the minister's spokesperson but, whether it is an inquiry or just a report, was that done and provided to the minister's office? If it has, could we get the details of when that was provided and what sort of form it took?

Vice Adm. Shackleton—It may well have been a verbal report that said that there was nothing else to report, but we can check to see what the minister's office did ask of us and what we provided.

You had a question earlier about boarding party training, which is the training that we had introduce having now become involved in this kind of operation. Without trying to make it too technical, this kind of training was in the sort of training we provided to ships where we tried to work them up to the maximum level of operational capability. There are degrees to which we will work ships up, depending on the nature of the circumstances that they will find themselves in, but I think the person who is better able to describe this to you and give you the detail you want is Admiral Smith, who is the Maritime Commander.

Senator BARTLETT—Thank you, I will do that. Touching on this a little bit further, if statements by Navy personnel—sailors et cetera—were felt to have violated to the prohibition

contained in the administrative instructions about publicity et cetera, who would follow that up? Would that be something that you would ask to be followed up or is that done through—

Vice Adm. Shackleton—If there were sufficient evidence to identify who it was who had transgressed that particular Defence instruction, then I would probably instruct somebody to ask the individual the reasons why they did it. Or, another commander, such as the Maritime Commander, may take that initiative on his own.

Senator BARTLETT—You may need to take this on notice. The submission I was quoting from before talks about an article on 13 October last year on the front page of the *Daily Telegraph* about what was supposedly happening on the *Manoora*. It purports to quote sailors detailing suggestions that boat people had deliberately broken the arm of one of the girls on board, that there was covert surveillance of someone believed to be an agent with connections to Osama bin Laden and that a woman had tried to throw her daughter over the side of a landing craft. It then talked about the 36 hours of video footage of riots and fights and ship damage. Firstly, that sort of thing would, I think, contravene these instructions. Do you know or could you find out if there was any attempt to follow up that sort of release of information to the media?

Vice Adm. Shackleton—It depends on how the media got that information—whether it was just simply buying a sailor a beer down at the pub in Sydney or whether it was a deliberate statement, with forethought, provided by somebody else. My understanding of that particular incident was that it was journalists buying sailors a few beers to ask them what they did.

Senator BARTLETT—Do you follow up those sorts of examples?

Vice Adm. Shackleton—No, I would not.

Senator BARTLETT—Is that because you do not think it is important?

Vice Adm. Shackleton—If I followed up every media story about the Navy, I would never do anything else.

Senator BARTLETT—I know the feeling. Leaving aside the breach of guidelines, in terms of that particular story, are you the best person to ask about whether those allegations about those various events can be confirmed?

Vice Adm. Shackleton—I think you should ask Admiral Smith to describe those circumstances. I am sure he can give you a full description of them.

Senator BARTLETT—My final question goes to COMAST—that is Commander Australian Theatre, isn't it?

Vice Adm. Shackleton—That is Admiral Ritchie.

Senator BARTLETT—So, to some extent, I could ask him. But, given your role as Chief of Navy, I think it is relevant. It is about a brief in relation to requests from the Prime Minister

about the feasibility of the *Adelaide* taking a bunch of boat people—the SIEV4 people specifically—from Christmas Island to Cocos Islands. It details some concerns regarding transportation, not least of which are that you would exceed the life raft capacity of the vessel and a lot of hygiene problems. Obviously, that transportation did not go ahead but, nonetheless, the *Adelaide* had to take on board all of these people.

Those sorts of elements are obviously a potential issue with any vessel that is intercepted. How does the Navy deal with that problem—that with potentially every vessel they intercept they may end up having to exceed their life raft capacity? I understand that was one of the problems with the *Manoora*—it was not really set up for having a lot of people who were not personnel on board for a long period of time in terms of showers, toilets and the like.

Vice Adm. Shackleton—Typically, in terms of our lifesaving equipment, we carry about 110 per cent of what we think we might use, so there is some redundancy in that. In these cases, we would make a calculated risk as to what the size of the group of people was, how far we had to go, what the weather conditions were going to be like, what the material state of the ship was, and then make a decision after we had considered all of that.

Senator BARTLETT—But the fact is that, with potentially every vessel that is out there, every Navy ship that intercepts the vessel may be put in these sorts of circumstances.

Vice Adm. Shackleton—I would have to check, Senator, but it may well be that we are now carrying more life rafts than we had in the past.

Senator BARTLETT—If you could, that would be handy. That will do me.

Senator JACINTA COLLINS—Vice Admiral Shackleton, firstly I would like to go back to some of the issues you covered with Senator Cook. Please correct me if my understanding is not accurate, but Senator Cook asked you whether this operation had involved changes in operational imperatives, and you indicated no. Is that the case?

Vice Adm. Shackleton—Sorry, I was distracted, Senator. Could you run the question past me again?

Senator JACINTA COLLINS—Senator Cook asked whether there had been changes in the operational imperatives in this operation and you indicated, no, that was not the case.

Vice Adm. Shackleton—When you say ‘operational imperatives’—I thought you were asking me whether we had made changes to the way in which we did business.

CHAIR—I think I asked firstly about the rules of engagement and you indicated that you were not the appropriate person. Then I think I asked you if you would be in a position to comment on an element of the rules of engagement, and you said maybe. Then I think I put, in colloquial form, the question that—

Vice Adm. Shackleton—That is right—about people over the side and the like.

CHAIR—Was it in the rules of engagement that the Navy would wait for a vessel to sink before it would collect people from the ocean, or would it collect them—

Senator JACINTA COLLINS—And you indicated no.

CHAIR—if they were in imminent danger of sinking?

Vice Adm. Shackleton—I put the answer in the context of no in that when people are confronting a life-threatening set of circumstances and if the ship were clearly foundering, as did SIEV4 before it finally sank, then we would take people off the ship as it happened.

Senator JACINTA COLLINS—I would like to take you to Commander Banks's statement. He indicates that the decision to retain SUNCs in the SIEV for as long as possible was a deliberate strategy. Until a genuine safety of life at sea situation existed, SUNCs were not to be embarked in the *Adelaide*.

Vice Adm. Shackleton—That is right.

Senator JACINTA COLLINS—How longstanding is that deliberate strategy?

Vice Adm. Shackleton—I cannot give you the exact detail on that, but Air Vice Marshal Titheridge, Rear Admiral Ritchie or Rear Admiral Smith could. It probably came about right at the beginning of this operation.

Senator JACINTA COLLINS—Earlier today—and I will come to this a bit later as well—we were talking about an escalation in the behaviour of SUNCs. Has there also been an escalation in the behaviour of the Australian Navy?

Vice Adm. Shackleton—No. In order to meet the objectives, the intention was always, as far as is possible, to prevent the vessels sinking so that they could then be seaworthy enough to take them back to Indonesia.

Senator JACINTA COLLINS—Yes, but, as Commander Banks describes, there was a deliberate strategy to retain SUNCs in the SIEV for as long as possible. How longstanding was that strategy?

Vice Adm. Shackleton—Like I said, it probably came about as soon as we started doing this, and it would have been one of the rules of engagement, I imagine.

Senator JACINTA COLLINS—Of this mission?

Vice Adm. Shackleton—Yes. I cannot give you the exact answer to the question that you asked, but one of the other witnesses can.

Senator JACINTA COLLINS—I also want to take you to another issue related to this, because I think it draws out the problem between the Navy's role in implementing the government's policy and the Navy's role in dealing with situations of safety of life at sea. In

Brigadier Silverstone's statement, in discussion about the photos in their proper context, namely in involving sailors at sea in the rescue of SUNCs—I wish I could avoid using that word, but we would be here forever and a day if I elaborated each time—Brigadier Silverstone indicates a concern that 'some might say that through the ADF's intervention we have placed the SIEV and its occupants in danger'. Can you think of what Brigadier Silverstone might be referring to when he says that some might be concerned that the SIEV was put in danger by the actions of the ADF?

Vice Adm. Shackleton—I could only think he may be thinking about the public perception. It has never been our intent to put anybody in danger. We will obviously let the circumstances evolve as far as we think is prudent and safe, but, in the end, the majority of these vessels have been burnt or sunk or destroyed by their occupants.

Senator JACINTA COLLINS—In fact, Admiral Barrie himself reinforces this point in his statement. He indicates:

In the discussion with Mr Moore-Wilton who had wanted all the persons in the water to be placed in the HMAS ADELAIDE I made the point emphatically that we could not guarantee that all these people would end up in the ADELAIDE, rather, I insisted, our first priority was to use all available assets including support from Christmas Island to save lives by rescuing people from the sea.

This very high level discussion between Mr Moore-Wilton and Admiral Barrie, I think, highlights that tension, but are you aware of that tension at a number of other levels within the Navy?

Vice Adm. Shackleton—No, but there will obviously be a tension, because the commander at sea—the captain of the ship—is trying to follow through on his mission, which means keeping the SIEV afloat and serviceable for as long as he can, which might mean preventing people setting fire to it, damaging it, or in some other way disabling it, but he knows, ultimately, he may have to pick those people out of the water.

Senator JACINTA COLLINS—You say 'pick them out of the water', why not out of the sinking SIEV?

Vice Adm. Shackleton—That may well be the same thing.

Senator JACINTA COLLINS—This is one of the issues that I think is going to be an ongoing concern for this committee, because it does not seem as though it is one and the same thing. We have some submissions indicating that Navy has instructions to wait until people are in the water; we have Commander Banks's statement that it was a deliberate strategy to keep people on the SIEV for long as possible; and we also have—and this is a further piece of evidence relevant here—a report, which I think is the log of the boarding party on the *Adelaide*, which seems to corroborate the view put by asylum seekers that the Prime Minister's imprimatur was necessary before certain actions could be taken. In this boarding party log, for instance, at the time in which the SIEV was to be taken on tow—it is hard to trace the dates on these documents—we have an indication that the CO advised 'approval from PM of Australia to tow vessel to place to be determined'.

Vice Adm. Shackleton—I do not know that we have been operating under the personal direction of the Prime Minister. The CDF is the guy that gives the orders. He may have been receiving instructions from elsewhere, but—

Senator JACINTA COLLINS—I think that that earlier comment I referred to about the discussion with Mr Moore-Wilton and Admiral Barrie reinforces that point.

Vice Adm. Shackleton—Frankly, I do not think anybody in the boarding party was in any position to know who was giving any orders. They work for the captain of the ship, not the Prime Minister per se.

Senator JACINTA COLLINS—Precisely, but this is an indication that right down at the level of your seamen, there is this impression that the Prime Minister is pulling these levers.

Vice Adm. Shackleton—That may well be their impression, but they have plenty of impressions about who is pulling all kinds of levers. So I really cannot counter what you say.

Senator JACINTA COLLINS—Let us trace it back the other way, then. We have the boarding party which, from this evidence here, indicates that the commanding officer has advised approval from the PM of Australia to tow the vessel. We go to the commanding officer. The commanding officer indicates that it is a deliberate strategy to keep people on the SIEV for as long as possible.

Vice Adm. Shackleton—It was.

Senator JACINTA COLLINS—Then you go right up to Admiral Barrie, who indicates he had what looked like reasonably terse discussions with Mr Max Moore-Wilton—

Senator BRANDIS—Oh, come on Senator Collins!

Senator JACINTA COLLINS—I will read the exact words again for you.

Senator BRANDIS—‘Reasonably terse discussions’—Senator Collins, honestly and truly, don’t you think it is about time to stop improving the evidence?

Senator JACINTA COLLINS—Let us go back to the words:

In the discussion with Mr Moore-Wilton who had wanted all the personnel in the water to be placed in HMAS ADELAIDE. I made the point emphatically that we could not guarantee that all these people would end up in the ADELAIDE, rather, I insisted, our first priority was to use all available assets including support from Christmas Island to save lives by rescuing people from the sea.

If you want me to do the longhand version right through the next several weeks, I am happy to, Senator.

CHAIR—You do not need to reply, Senator.

Senator BRANDIS—I am not proposing to.

Senator JACINTA COLLINS—All of this information seems to indicate that, to my mind, there is a significant tension between those two imperatives: implementing government policy versus safety of life at sea situations.

Vice Adm. Shackleton—No, Senator, it would be quite clear to the individual on the scene, in that he will interpret the circumstances as he sees them but he ultimately knows, when it comes down to a lifesaving set of circumstances, that that is what he will do.

Senator JACINTA COLLINS—Let us go to that point, then, because I wanted to follow up on that point after we had addressed what I would refer to as the Titheridge report—the report that Senator Brandis went through in quite some detail with you. You mentioned in that discussion that you were aware of a report that was organised a bit differently or something—I cannot recall your exact words.

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—What did you mean, then?

Vice Adm. Shackleton—The information that was in the Titheridge report was also contained in a report that had been generated and prepared by the Maritime Commander. It had been slightly restructured, I think, in the Titheridge report to have a chronological sequence to it, rather than the structure of the maritime command report, which was more event by event.

Senator JACINTA COLLINS—What is the difference, in your mind, between ‘chronological’ and ‘event by event’?

Vice Adm. Shackleton—In this document here we are looking at incidents for each ship. For instance, if you go to enclosure 2 of HMAS *Arunta*, it is broken down into incidents: Incident One, Two, Three, Four and Five. I would have to check, but I think the one that came from the maritime command was instead structured in terms of SIEV 1, 2, 3, 4 and 5.

Senator JACINTA COLLINS—Could you provide us with a copy of the report from maritime command that you are referring to?

Vice Adm. Shackleton—I think I can, yes.

Senator JACINTA COLLINS—Did that report deal solely with child incidents or did it deal with other matters as well?

Vice Adm. Shackleton—We asked the Maritime Commander to report on any incident where a child was actually being dropped or thrown and any incident where a child had been threatened to be thrown or dropped.

Senator JACINTA COLLINS—So it also does not go to the broader behaviour of asylum seekers that we were discussing earlier—threats to selfharm, other issues?

Vice Adm. Shackleton—This is children only, but I am sure that when you talk to the Maritime Commander he can give you all the details of each event.

Senator JACINTA COLLINS—Yes, I know. I appreciate that. For instance, the logs of SIEV4 give you fairly good detail once you see all of the incidents together, not just these child only incidents. It gives you a much better feel for what was happening at the time. Admiral, further to the discussion on the Titheridge report, on how many occasions are you aware of a child or children being put over the side?

Vice Adm. Shackleton—Do you mean dangled? Dropped?

Senator JACINTA COLLINS—Into the water.

Vice Adm. Shackleton—You are going to have to be more specific, Senator—whether they jumped, whether they jumped into the water when somebody else was holding them or whether they ended up in the water because the boat sank?

Senator JACINTA COLLINS—That is an interesting point also, but let us deal with it from the asylum seeker end at the moment. On how many occasions did a child end up in the water through actions of either itself, other asylum seekers or crew of a SIEV?

Vice Adm. Shackleton—Senator, I will have to get somebody to go through the report and do some calculations for you.

Senator JACINTA COLLINS—From the Titheridge report it is fairly obvious to me on reading it for just half an hour that it was one.

Senator BRANDIS—Point of order, Mr Chairman: that puts a completely misleading proposition to the witness.

Senator JACINTA COLLINS—Senator Brandis, you have put enough misleading propositions to the witness and you have had ample time to do it.

Senator BRANDIS—Let me state my point of order.

Senator JACINTA COLLINS—No. I didn't interrupt you.

CHAIR—The meeting will come to order.

Senator BRANDIS—Let me state my point of order please, Mr Chairman.

CHAIR—Senator Brandis, you have a point of order.

Senator BRANDIS—Senator Collins directed a question to the witness in what I took to be deliberately vague words. She asked, 'On how many occasions does the Titheridge report indicate a child ended up in the water?' Admiral Shackleton, perfectly properly, said that he would have to go through it and consider it. And then Senator Collins asserted, quite forcefully,

that it indicated one. The Titheridge report, as it is now being called—it is in fact a briefing minute—indicates but one instance where a child, to use Senator Collins's words, 'ended up in the water'.

CHAIR—Can I ask you what your point of order is?

Senator BRANDIS—The point of order is that the assertion that has just been made to the witness for his comment in an interrogative way is simply false—plainly false.

CHAIR—If I have to worry about which questions are false then it opens up an entire Pandora's box. We have rocked along this afternoon and we are getting towards the end of a long and tedious session. I blame no-one for that; it is the nature of these proceedings, I imagine. No doubt everyone is getting a bit edgy, but we are coming to the end—we have an hour and a bit to go before we break for dinner. In these proceedings I have tried to give everybody a fairly loose rein so that there is no inhibition on people asking questions. I have been tolerant about that. I would rather be like that than at the end of the proceedings have someone believe that they had a burning question which I as the chairman did not enable them to ask. I will allow the question and we will proceed.

Vice Adm. Shackleton—I have some other information, if I could interrupt your flow. There was a question earlier on life rafts and capacities. I am advised that we have 150 per cent of life-saving capability on board, and at no time have we exceeded the lifesaving capacity of any of the vessels on which we have had survivors. In relation to the draft press release, which I think Senator Collins or Senator Faulkner asked about, there was no draft per se; it was done on a computer screen. It was changed from a draft to a final and it came out the way it did. It was done in conference with people sitting around a computer and talking to me on the telephone.

Senator FAULKNER—Do we know who was in the conference?

Vice Adm. Shackleton—In the conference I think there were Mr Murray Domney, David Spouse, Brian Humphreys, Jenny McKenry and Captain Wright.

Senator FAULKNER—And are the non-defence personnel all officers of the Department of Defence?

Vice Adm. Shackleton—Certainly the names that I recognise there are all Defence officers, yes.

Senator JACINTA COLLINS—I should have originally put fully on the record the statement made by Ms McKenry so you may need to reconsider the advice you have been given there in the context of what I will read to you now, because it still does not seem consistent with Ms McKenry's evidence, which is the concern. I will try to read all of the appropriate section here.

Vice Adm. Shackleton—Sorry, what page is that, Senator?

Senator JACINTA COLLINS—Do you have Ms McKenry's statement to the Powell report?

Vice Adm. Shackleton—No.

Senator JACINTA COLLINS—It says:

Alan Hawke advised me that the government was advised that children were thrown overboard. Peter Hendy contacted me and said he believed there needed to be a clarifying statement by CN and that he would leave that to us. He asked that a copy of the statement be sent to Arthur Sinodinos in the PM's office. In the interim CAPT Mal Wright brought a statement that had been prepared in Navy Headquarters down to my office.

Vice Adm. Shackleton—I guess we will have to bounce that against the latest advice and get back to you with some third advice.

Senator JACINTA COLLINS—Let me read you the full bit of this relevant section so that we do not need to do this again:

It did not accurately address advice to the Minister re children being thrown overboard. With Mal Wright, Brian Humphreys and David Spouse in a room I contacted CN on his mobile and walked him through a short statement that addressed the issue of previous advice to the Minister.

So it sounds like your advice there pertains to the second component of the situation being referred to by Ms McKenry, but not the first.

Vice Adm. Shackleton—Yes. I guess in that case I never saw the draft. As I say, I do not know if there is one that exists. I think I am reading from the same paper that you are reading from.

Senator JACINTA COLLINS—But did you talk to Captain Wright?

Vice Adm. Shackleton—Captain Wright was certainly part of the conversation I had with Ms McKenry, because it was—

Senator JACINTA COLLINS—But previously to that?

Vice Adm. Shackleton—I may well have done.

Senator JACINTA COLLINS—So there may well have been an initial draft arising from a discussion between yourself and Captain Wright, which he then took to Ms McKenry's office?

Vice Adm. Shackleton—I could ask.

Senator JACINTA COLLINS—Was there additional information—

Vice Adm. Shackleton—No.

Senator JACINTA COLLINS—or are we back to where we were? Perhaps it will make it easier if I rephrase the question. In enclosure 6 there is reference to an incident where a woman dropped a child into the water. Aside from this incident and aside from children ending up in the water once their boat had sunk, are there any other incidents that you are aware of where the child ended up in the water?

Vice Adm. Shackleton—My initial answer is I am not sure, but I would like to check. I am not trying to be difficult but I come back to the point about how they actually got into the water in the first place.

Senator JACINTA COLLINS—Yes. Well, we went through this document in a fairly detailed way earlier.

Senator BRANDIS—SIEV10—

Senator JACINTA COLLINS—That was after their ship had sunk.

Senator BRANDIS—Thirty-three from SIEV10 ended up in the water after they sank the ship.

Senator JACINTA COLLINS—You have had your turn, Senator Brandis, for goodness sake!

CHAIR—Order! Senator Collins has the call. Proceed, Senator Collins.

Senator JACINTA COLLINS—So, Admiral, from having gone through this document in a fair amount of detail earlier today, is there another such incident that I have overlooked?

Vice Adm. Shackleton—Probably not, given that these reports are all pertaining to incidents where these sorts of incidents were specifically asked for—in terms of ‘Tell us about incidents where children were involved?’ and this is the result of that work.

Senator JACINTA COLLINS—We go on to the next issue, which is children in the water as a result of their ship sinking. There is some suggestion in relation to the case of SIEV4 from Commander Banks’s statement that it is not clear that it was actually sabotage that led to that boat sinking. But it is also obvious from the photography involved that those people, including children, were allowed to get to the stage where they ended up in the water before they were saved. Can you respond to the statement by the asylum seekers which is that they are being made to enter the water before the safety of life at sea situation is being addressed by the Navy?

Vice Adm. Shackleton—That does not sound right to me. If there is a safety of life at sea situation, I would expect the commanding officer to deal with whatever he has to deal with. It is his judgment in the end. It is his judgment as to whether a safety of life at sea situation exists or does not. Sometimes that will get you right down to a boat looking pretty shaky, and it may not sink. Some of these things float with a very low freeboard. It is very much his call.

Senator JACINTA COLLINS—Can it get down to the situation of people’s lives still not being at risk if they are in the water and there is a big ship next to them from which people are able to jump in and save them?

Vice Adm. Shackleton—If they are in the water and their boat is still floating, we will pick them up and put them back on their boat.

Senator JACINTA COLLINS—What if their boat is three-fifths submerged?

Vice Adm. Shackleton—If it is still floating and it is not sinking, we will put them back on their boat.

Senator JACINTA COLLINS—So how do you define when a ship is sinking?

Vice Adm. Shackleton—When it is going under the water.

Senator JACINTA COLLINS—To what level?

Vice Adm. Shackleton—It depends entirely upon the circumstances. If there is a swell—if there are waves—and the boat has low freeboard and it is taking water over the side and you can see that it is progressively getting lower in the water, you have a boat that is sinking on you.

Senator JACINTA COLLINS—Was the boat sinking in the SIEV10 incident, when the children were taken with adults into the water?

Vice Adm. Shackleton—What enclosure number are we looking at, please?

Senator JACINTA COLLINS—Because the order of this is not quite clear, I am going to have to struggle to find that too. But Senator Brandis kindly told me it was SIEV10.

Senator BRANDIS—It is in enclosure 5.

Senator JACINTA COLLINS—It is in 5.

Vice Adm. Shackleton—It says here that the people abandoned ship en masse. I would have to go and ask who was there at the time, or whether the Maritime Commander had more evidence as to what the state of the boat was at the time. It says here ‘as a result of the torching and subsequent sinking’, which says to me that they sabotaged it.

Senator JACINTA COLLINS—It says that 33 children under the age of 12 were recovered from the water, but what it is not clear about is when these children actually entered the water—at what stage.

Vice Adm. Shackleton—They may well have jumped off the boat to get away from the fire that they had started.

Senator JACINTA COLLINS—Yes. Alternatively, for instance, in the case of SIEV4, they may well have been taken into the water to get away from a boat that was about to sink. You would not want to drag them under the water, which is why one of the crew from the *Adelaide* jumped into the water, as I recall.

Vice Adm. Shackleton—But you have the same set of circumstances: the boat is sinking.

Senator JACINTA COLLINS—Pardon?

Vice Adm. Shackleton—The boat was uninhabitable; they had started a fire.

Senator JACINTA COLLINS—Yes, but if you are a parent with a child, you do not want that child to drown and you are on a ship that is sinking then would you not try to take that child away from where it is possibly going to be drawn down with the ship?

Vice Adm. Shackleton—Of course.

Senator JACINTA COLLINS—Of course. So you would take that child into the water at a relatively early stage to ensure that the child would not be drawn down with the ship?

Vice Adm. Shackleton—I think that, in the case of these particular sized vessels, the chance of that happening would have been low. But you as a parent would also be making a decision as to when you jumped into the water.

Senator JACINTA COLLINS—That is right; that, too.

Vice Adm. Shackleton—And that is the decision of the individual.

Senator JACINTA COLLINS—As I understand it, one of the crew of the *Adelaide* actually jumped into the water because they were fearful of that occurrence.

Vice Adm. Shackleton—As I understand it, they jumped into the water to rescue people who were already in the water.

Senator JACINTA COLLINS—Yes, but too close to the ship that was becoming submerged.

Vice Adm. Shackleton—I do not have that detail with me.

Senator JACINTA COLLINS—Okay. Do you know on how many occasions children have ended up in the water as a result of this government strategy?

Senator BRANDIS—For goodness' sake, why do you use a deliberately vague expression such as 'ended up in the water', when it is perfectly clear to you, Senator Collins, from your own questions that there are a variety of causal factors here and a variety of methods by which this has happened?

Senator JACINTA COLLINS—There was only one occasion when a child was put in the water by an asylum seeker—one occasion. On the rest of the occasions children ended up in the water when their ship was sinking—

Senator MASON—When they sank their own boats, Senator Collins.

CHAIR—Order! Senator Collins has the call. I do not have a point of order in front of me.

Senator JACINTA COLLINS—And we have the evidence from Commander Banks that the decision to retain SUNCs in a SIEV for as long as possible was a deliberate strategy, and it was a deliberate government strategy.

Senator FERGUSON—Mr Chairman, on a point of order: it is not in order for the senator to ask the vice admiral to comment on government policy. One of the stipulations you made at the start of this hearing was that witnesses are not to be asked questions on government policy.

Senator JACINTA COLLINS—It is not a question on government policy, Senator.

Senator FERGUSON—It is.

Senator JACINTA COLLINS—No, it is not.

CHAIR—It is true, Vice Admiral, that you are not to answer questions on government policy, but you may be asked questions about what led to the government policy. I read out the process at the beginning.

Senator FERGUSON—I think it is a question on government policy, Mr Chairman, with due respect, from the way it was framed.

CHAIR—I note the point of order; I think you can proceed, Senator Collins.

Senator JACINTA COLLINS—Vice Admiral Shackleton, we have covered the point of the tension between Navy's role in implementing government policy and Navy's role in dealing with safety of life at sea issues.

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—To get over Senator Ferguson's point, let me ask this question in another way: as a result of a deliberate strategy to leave asylum seekers on these SIEVs for as long as possible, on how many occasions did that result in children ending up in the water?

Vice Adm. Shackleton—From my notes, there are three SIEVs which sank as a result of the actions by the people on those boats sabotaging them to the point where they burnt and sank.

Senator JACINTA COLLINS—Which were they, Vice Admiral?

Vice Adm. Shackleton—I think they were SIEVs 4, 7 and 10.

Senator JACINTA COLLINS—SIEV4 is questionable, though, isn't it?

Vice Adm. Shackleton—No, not from our perspective.

Senator BRANDIS—Hardly!

Senator JACINTA COLLINS—It is from some of the evidence in the statements. You should read some of it.

Vice Adm. Shackleton—My understanding is that, in the case of SIEV7, a child was dangled and either dropped or thrown—and that is debatable.

Senator JACINTA COLLINS—Yes.

Vice Adm. Shackleton—There is SIEV10, which burned and sank. I think somebody said that 33 children under the age of 12 were recovered from the water by *Wollongong* and the Customs vessel.

Senator JACINTA COLLINS—So there were 33 on SIEV10; there were I cannot recall how many on SIEV4, but I think quite a number of children ended up in the water on that occasion; and was it only the one from the SIEV7 incident or did children end up in the water later?

Vice Adm. Shackleton—I will have to go through and look at the numbers again.

Senator JACINTA COLLINS—Vice Admiral, are you aware of any other incidents where the safety of asylum seekers became an issue in the Navy's dealing with SIEV incidents?

Vice Adm. Shackleton—The safety of these people is always an issue for the Navy.

Senator JACINTA COLLINS—We have the child incidents; are you aware of other incidents where there has been, for want of a better word, a negative result from Navy's handling of these cases in terms of the safety of the asylum seekers?

Vice Adm. Shackleton—Frankly, I do not know what you mean by the question, because at no time have these people been threatened, in a safety sense, by Navy's actions. But your question seems to be saying that they have.

Senator JACINTA COLLINS—No, I am not saying that at all.

Vice Adm. Shackleton—Could you please give me the question again.

Senator JACINTA COLLINS—Have there been any injuries or deaths from these SIEV incidents?

Vice Adm. Shackleton—There were two deaths; I am not sure about injuries.

Senator JACINTA COLLINS—So there have been two deaths. What incident did that relate to?

Vice Adm. Shackleton—SIEV10, which burnt and sank.

Senator JACINTA COLLINS—In the SIEV10 incident, do we know for how long that ship was sinking?

Vice Adm. Shackleton—Senator, I do not have the figures and facts in front of me, but the Maritime Commander, who is sitting behind me, does. Is it appropriate to bring him to the table at this stage?

Senator JACINTA COLLINS—He is a witness a bit later. Are you suggesting that I go through the detail of this with him?

Vice Adm. Shackleton—I am. I can get some written notes from him, if it satisfies your immediate needs.

Senator JACINTA COLLINS—I am happy to wait until I talk to him, because I want to be able to go into some very clear detail. You alluded to something a moment ago, and I want to be very clear that there is no misunderstanding on that point. I am in no way suggesting that the behaviour of the Navy has been anything other than admirable in dealing with these situations. What I may be suggesting is that a policy which involves keeping these people on sinking ships for as long as possible may have a detrimental impact on the safety of the asylum seekers, and that is what I intend to explore when I go to the SIEV10 incident.

Senator BRANDIS—What is the Navy supposed to do if they sink their own ships?

CHAIR—Order! You are out of order; come on, let's get going.

Vice Adm. Shackleton—Perhaps I could answer it in this way; a message was sent in September last year which said:

In the event of UBAs jumping from an otherwise seaworthy SIEV, the UBAs are to be rescued and returned directly to the SIEV. In the event of a SIEV sinking, either by design or by accident, survivors are to be rescued and treated as survivors at sea.

That is the policy.

Senator JACINTA COLLINS—But in the light of, as I have gone through with you, some of the indications of the pressures or the tension there, during this inquiry we need to question what the definition is, for instance, of when a ship is sinking and to what extent commanders such as Commander Banks believe that they must keep people on a ship.

Vice Adm. Shackleton—That is his judgment. He is the man on the spot; he is the person that will decide when it has reached the point from which it moves from one to another.

Senator JACINTA COLLINS—Yes, and until we can get to the detail of the SIEV10 incident, some of that is going to be a bit difficult.

There is only one other area that I wanted to move on to in relation to your comments. In your statement today, you repeated what you have said in earlier statements, and I take you to 1.4.14, where you say:

Banks told me that he reported the incident to COMNORCOM ... via radiotelephone on the 7th when Silverstone called him from his HQ in Darwin.

You do not go into what the nature of that advice was at that point, but at 1.4.17 you say:

Subsequent analysis of the activities undertaken by the crew of *Adelaide* changed the original assessment by Banks.

In my mind, there is still a question about what that original assessment was. Is that not the case in your mind?

Vice Adm. Shackleton—I guess there is a question of what Banks said. I guess I deconstructed it as follows: Banks was under a great deal of stress—and by that I do not mean that he was unable to deal with it, but he had a lot on his mind and he was pretty busy. Silverstone was sitting in an office where it was a lot easier to write down and take notes of a conversation. Silverstone had no reason whatsoever to phone somebody else and say that there had been children thrown in the water unless he had good reason to do so. So there is a correlation between what he heard and what he did in that context. Banks would have wanted to get off the telephone as quickly as he could and get back to doing what he had to do in terms of his ship. A few days after that, he went through the incident in slow time and took witness statements and, I guess, looked at the videotape himself and came to the conclusion—in fact, as I now know it, he can't remember saying to Silverstone that there were children in the water and was not aware of the concern that it had caused until some days later. In my discussion with him, he was a bit ambivalent as to whether he could have told Silverstone one thing or the other.

Senator JACINTA COLLINS—Sorry, when was that conversation?

Vice Adm. Shackleton—He was ambivalent in that he would have told Silverstone that—

Senator JACINTA COLLINS—Sorry, when was that conversation that you are referring to at the moment?

Vice Adm. Shackleton—That was the one that I had with him on 8 November. So I looked at this in terms of the balance of probabilities of the circumstances in which each of those individuals found themselves and I would still say that there is a very high probability that Silverstone's recount of the conversation is more accurate than that of Banks, but it might not be.

Senator JACINTA COLLINS—But it might not be?

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—And after that discussion with Banks on 8 November, you then said to the media, 'Our'—and I presume you mean the Navy—

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—'advice was that there were people being threatened to be thrown in the water. And I don't know what happened to the message after that.'

Vice Adm. Shackleton—That's right.

Senator JACINTA COLLINS—Thank you. That concludes my questions.

CHAIR—I have a few questions to tidy up some things that are still alive in my mind as a consequence of what has been a long session. Somewhere during this hearing—and it may be that unfortunately you have drawn the short straw—we probably need some clarifying advice from an authority on the guidelines about safety of life at sea. What is required of the Navy or any skipper of a vessel in the event that life at sea is at risk? My understanding is that this is encoded—it is in legislation based on the law of the sea to which we are a signatory—and it is easily discoverable. Are you the right person to ask to provide this information to the committee?

Vice Adm. Shackleton—I am certainly one of the people you can ask. Whenever there is a disaster or a circumstance declared whereby a ship declares itself in distress and requires assistance, there is a process of search and rescue arrangements in Australia, and the Navy will participate in that. If we are in sight of a vessel which is in distress then we are bound to provide assistance. In this case, these vessels were declaring themselves to be in distress, but when we took close inspection it was found from a seaman and a mariner perspective that that was not to be the case. So we found ourselves dealing with people who were declaring themselves in distress when it was our professional judgment that the ships were capable of floating and moving, and that the distress call was not in fact a distress call. As I say, that required the professional judgment of each commanding officer to say whether he would treat it as a distress set of circumstances or not. I think, in the end, as you have heard me say, where people were jumping or climbing—however they were getting into the water—from a vessel that we regarded as serviceable and sound, which could float and move, we would put those people back in that boat. Where the boat was incapable of floating and the lives of individuals were clearly at risk, we would rescue them in the normal course of events, which is what we did on every occasion.

CHAIR—The point here is that it is for the judgment of the skipper of the vessel coming to the aid of the distressed, or allegedly distressed, vessel to make that assessment.

Vice Adm. Shackleton—In this set of circumstances it is unique, in that you normally do not expect somebody to release a distress call unless they are truly in distress. In these circumstances, we were finding that that was not the case.

CHAIR—I do not want to put you on the spot but, for example, was it appropriate for the skipper of the *Tampa* to make a decision about whether the people whose call he answered were in distress and then to collect them?

Vice Adm. Shackleton—Yes, it was.

CHAIR—According to the law of the sea or the safety of life at sea regulations, whatever they are—maybe there is a document you could give us for background advice of the committee—what is required then of the rescuing vessel? Is there any requirement? Is it that they are supposed to deliver those people to a safe destination?

Vice Adm. Shackleton—Yes.

CHAIR—Would it be open therefore to the vessel to have delivered them to Indonesia, for example?

Vice Adm. Shackleton—Should that be where the government wanted them to go, yes.

CHAIR—If it is easy to establish what the rules and regulations are of safety of life at sea, it might be of some use to us. I get a feeling that this might be a subject debated during this inquiry.

Vice Adm. Shackleton—I will get from our lawyers the appropriate material.

CHAIR—Thank you. For these vessels—the SIEVs—it is my understanding that they are not flagged, they have no national flag.

Vice Adm. Shackleton—They arrive without a national flag, yes.

CHAIR—So they are not identifiable at sea. You can probably work out by deduction where they are from, but there is no identifying ensign.

Vice Adm. Shackleton—Other than, I think, some of them have names painted on them.

CHAIR—And registrations?

Vice Adm. Shackleton—Not normally.

CHAIR—They are not registered vessels?

Vice Adm. Shackleton—Not normally, no. As often as not, these are derelict ships or derelict vessels which have come into the possession of the people who have essentially provided them for a one-way trip.

CHAIR—Are they crewed?

Vice Adm. Shackleton—Yes.

CHAIR—And there is a skipper?

Vice Adm. Shackleton—It is sometimes hard to define what a skipper is in this context, but there is usually a crew who sometimes stay with the vessel the whole time or sometimes try to get off the vessel.

CHAIR—If there are crew and if there is someone in charge, you would normally expect that the skipper would be in charge of the vessel and the crew would be answerable to the skipper. The cargo—in this case, human cargo—might have a view, but it is for the skipper of the vessel to exercise decisions about the safety of the vessel. They are the normal circumstances.

Vice Adm. Shackleton—They would be the normal circumstances.

CHAIR—Is this analogous to a normal circumstance?

Vice Adm. Shackleton—I think in these circumstances you are dealing with people who have been told to deliver their human cargo to Australia, no matter what. If that includes sinking the vessel then that includes sinking the vessel.

CHAIR—As far as the skipper or crew of the vessel are concerned, if they were in an Australian jurisdiction, they would be committing a breach of Australian law as people-smugglers and would be able to be charged in an Australian court, facing heavy penalties. It would be reasonable to assume, in those circumstances, that they would want to hide their identification and mingle with the rest of the passengers.

Vice Adm. Shackleton—Yes.

CHAIR—When you collect—and I am not referring to any particular incident—passengers from these vessels, are you able to distinguish who are the crew and who are the passengers?

Vice Adm. Shackleton—Generally when you have got Iraqi or Afghani people, the Javanese stand out.

CHAIR—That is a yes; you can identify them.

Vice Adm. Shackleton—Yes, you can.

CHAIR—Going to SIEV4, were you able to identify the crew and skipper of that vessel?

Vice Adm. Shackleton—Let me check for you, Senator. I think we could, but I will check.

CHAIR—It is a relevant question in terms of what the vessel did, how it responded to signals, and who were the responsible people in charge of the vessel.

Vice Adm. Shackleton—Yes.

CHAIR—I think there is a merging between the passengers and the people in charge of the vessel at this stage.

Vice Adm. Shackleton—Yes.

CHAIR—While that is being checked, on taking possession of a SIEV—and SIEV4 was taken under tow—

Vice Adm. Shackleton—Yes.

CHAIR—is any survey, or assessment, done on the seaworthiness or otherwise of a vessel and on what navigational instruments it may have—the state of its engine, or the water facilities and food requirements on the vessel?

Vice Adm. Shackleton—The boarding party, when it goes on board, essentially commandeers the ship—and that, as much as anything else, is to protect the ship from further damage. At that stage of the game, a seaworthiness assessment is made, a mechanical engineering assessment is made, a navigational equipment assessment is made and that will be there as information. Where we take a ship back to Indonesia, we essentially navigate on its behalf, and we leave it within sight of the Indonesian coast. In the case of SIEV4, there would have been repeated efforts to keep the vessel seaworthy. Eventually it was taken under tow and then it sank.

CHAIR—I think the reports that we have in the appendages to the Powell report—and maybe even the other report—go into some detail as to what actually happened—

Vice Adm. Shackleton—Yes.

CHAIR—in putting the boarding party on board, leaving people in charge of the vessel, trying to fix the engine, taking it under tow, trying to pump water from the hold and the bilge of the vessel and so forth.

Vice Adm. Shackleton—Yes.

CHAIR—In relation to that survey of the seaworthiness, or the assessment of its motoring capacity, navigational capacity, food and water facilities, is an on-the-spot assessment done or is there a written report about it in the case of this SIEV or in the case of SIEVs generally?

Vice Adm. Shackleton—I would have to check to see if there was any written report done but certainly an immediate on-the-spot assessment is made.

CHAIR—A competent officer, knowledgeable about these things, would cast a weather eye on these things?

Vice Adm. Shackleton—There would be an engineer inside who would have a look at the engine and others would look at the hull and so forth. These things are not typically in good shape when they sail from Indonesia.

CHAIR—No.

Vice Adm. Shackleton—It also depends on whether they deteriorate en route. But we also find they do smash their own navigation equipment communications, if they have some, and machinery. The intention is not to go back.

CHAIR—You described the ships earlier as ‘derelict vessels’. Is that a description that you would stick with?

Vice Adm. Shackleton—‘Derelict’ might be a bit strong, but I would regard them as well past their economic life.

CHAIR—They are not robust seagoing vessels; they are more like frail craft, are they?

Vice Adm. Shackleton—These things have not been well maintained.

CHAIR—No. You and I would not go to sea in them.

Vice Adm. Shackleton—Absolutely.

CHAIR—In the case of SIEV4, do you know if it was taking water to any extent?

Vice Adm. Shackleton—It started to take water and the pumps could not keep up with it.

CHAIR—So the water gained above the capacity of the pumps to reduce it.

Vice Adm. Shackleton—Yes.

CHAIR—Therefore the vessel was filling with water over a time.

Vice Adm. Shackleton—Yes.

CHAIR—I think it is true at some point, isn’t it, just harking back to the reports—and this is something that Commander Banks can tell us more about—the passengers on board tried to bail their boat, as did the sailors on board from the *Adelaide*; is that right?

Vice Adm. Shackleton—I would have to check the detail of that.

CHAIR—Were they out of sight of land when all this occurred? Were they in the deep blue sea?

Vice Adm. Shackleton—They were out there, yes.

CHAIR—The weather conditions in the photographs we have seen, and the sea state depicted in those photographs, look relatively calm, but there were reports that the sea, at some stages, was rough during the course of this operation. Is that true?

Vice Adm. Shackleton—I would put that question to Commander Banks. The sea in the photographs, as you say, looked reasonably calm, but it can blow up and calm down again quite quickly.

CHAIR—It was right on the edge of the cyclone season, wasn’t it?

Vice Adm. Shackleton—Yes. In relation to the question you had earlier, there was nobody on SIEV4 who claimed to be the crew or the master. Once we were on board, *Adelaide* detected three or four crew who could be identified on racial grounds, only in the context that they

looked different, but you would have no way of proving that they were crew per se. They may have been other 'cargo', as it were, that were picked up in Indonesia. All the others, I am told, did have a master and crew. Some were flagged and a few were registered.

CHAIR—Some were flagged? Under what national flag, do you know?

Vice Adm. Shackleton—Indonesian.

CHAIR—I imagine those that were registered were probably registered as Indonesian vessels.

Vice Adm. Shackleton—Again, I would have to check that for accuracy.

Senator FERGUSON—Was the SIEV4 taking water when the *Adelaide* first made contact with that boat or did that only happen after some acts of sabotage?

Vice Adm. Shackleton—I would like to get to Commander Banks to—

CHAIR—How would the *Adelaide* know what was happening before it—

Senator FERGUSON—I am just saying: did it appear to be taking on water?

Vice Adm. Shackleton—When they went on board, they would have been in a position to make an assessment as to what it was doing, and I think Commander Banks is in the best position to give that detail.

Senator FERGUSON—I am happy to wait.

CHAIR—All I am saying is that I do not know how the *Adelaide* would know what was happening before it took possession, but that is another matter. Where were we, Admiral? You were saying that some of those vessels, or at least one or a couple of them, were flagged and some of them were registered. Do we know whether that registration reflected a current survey certificate?

Vice Adm. Shackleton—You are getting into detail I do not have the answers to, but I can find out for you.

CHAIR—It is just that that may well be relevant. If there is a surveying authority that approved these vessels as seaworthy—one presumes they would be Indonesian—it goes to the condition of the vessel, which may be an issue that we would wish to pursue.

Vice Adm. Shackleton—The condition of the vessel and the status certification of it might be two different things.

CHAIR—Yes, but my understanding is that, before issuing a survey notice, or a licence, a licensed surveyor has to sign off and say that this vessel is, according to him, seaworthy.

Vice Adm. Shackleton—I am not sure of that procedure.

CHAIR—In Indonesia?

Vice Adm. Shackleton—I do not know if that procedure is there.

CHAIR—Anyway, it is a minor detail. It is not one that I want to pursue now. We were talking about the people who, by their racial characteristics, could be identified as possibly crew, as different from those who were identified as asylum seekers. Has anyone from SIEV4 been charged with people-smuggling?

Vice Adm. Shackleton—Not to my knowledge, but I can check for you.

CHAIR—When the racially distinct group—I hope we are not getting into improper ground here—or this group of people that you could distinguish were taken on board the *Adelaide*, were they interrogated to see if they were crew?

Vice Adm. Shackleton—They were all taken, as I understand it, to the forecandle, at the front end, and made to be as comfortable as it is possible to be up in that part of the ship. Whether anybody was interrogated per se or not I do not know. We would obviously want to try and find out who the relevant people were but, in terms of interrogation, we do not generally have that sort of practice as part of our activities.

CHAIR—I see. But it would be normal, wouldn't it, in boarding a vessel, to ask who the skipper is?

Vice Adm. Shackleton—Yes.

CHAIR—It would be normal to find out who was in charge of it. Was that done?

Vice Adm. Shackleton—I do not know.

CHAIR—Our next witness, who I understand is gnawing on a pizza at the moment, may be able to tell us.

Senator JACINTA COLLINS—The log says it was done.

CHAIR—It was done. Right. The Navy personnel had some relatively long exposure to the people on SIEV4, as they did all those things that we talked about earlier. They took it under tow, so you had a tow crew on board the vessel while that was done—

Vice Adm. Shackleton—Yes.

CHAIR—so that the tow could not have been separated, I imagine—a tow watch or something. You had people on board—in the boarding party—to work on the engine, as I understand.

Vice Adm. Shackleton—Yes.

CHAIR—You had people on board to help pump the vessel. I think you had marines on board to keep relative order. Is that true?

Vice Adm. Shackleton—I would have to check whether *Adelaide* had Army people on board. I am not sure. I will get somebody to bring me some information on that in a minute.

CHAIR—Did any of the asylum seekers on board have any weapons? Did they brandish any weapons towards the Australian Navy?

Vice Adm. Shackleton—Not that I am aware of.

CHAIR—Did they seek to harm them in any way?

Vice Adm. Shackleton—Not that I am aware of. It is SIEV4 you are talking about in particular?

CHAIR—Yes, I am. This is the primary focus of our inquiry but our inquiry has, as Senator Brandis has rightly said, under motion from him been broadened and we may have to look at these. I hope we do not, but I get a feeling we may end up looking at all of these damn things separately.

Vice Adm. Shackleton—Okay.

CHAIR—If I can turn for a moment to your statement on 8 November, which in part—

Vice Adm. Shackleton—I am told that there were no Army personnel on board *Adelaide* for that particular incident.

CHAIR—There wasn't? Okay. So a marine would be an Army person, would they? They would not be a Navy person?

Vice Adm. Shackleton—No. We do not have any marines.

CHAIR—Okay. Is that a British phenomena, is it?

Vice Adm. Shackleton—The Americans, the British, the French and a whole bunch of people have marines. In these operations, we are often supported by Army personnel who embark for this particular activity.

CHAIR—Let us not get involved in that or we will be accused of having a discussion. In your statement on 8 November, you said in part, and I have got this part of it in front of me:

The Maritime Commander kept me verbally apprised of the incident as it unfolded until it had stabilised, but at no time can I remember him saying to me that people had not been thrown into the water.

Do you recall that part of your statement?

Vice Adm. Shackleton—Yes.

CHAIR—This was the part of the statement that had been worked over, I think, by the public relations division in consultation with you, isn't it?

Vice Adm. Shackleton—This is the press statement you are talking about of 8 November?

CHAIR—Yes.

Vice Adm. Shackleton—Yes. I spoke to the PACC people to put together the words that were released as a statement in which I said I did not contradict—

CHAIR—I think you have repeated that several times today. We do not need to go there again. My only point in mentioning it is therefore these words were considered words; they were not off the top of the head or volunteered on the spot.

Vice Adm. Shackleton—They were considered in the context of what I thought I knew at the time.

CHAIR—Yes. Why then was it considered to—and I am curious about this—use the expression 'but at no time can I remember him saying to me that people had not been thrown into the water'. That is to state a negative.

Vice Adm. Shackleton—Yes. I guess my point was that the Maritime Commander might have said that people were thrown into the water and I was writing these words in relation to the Powell inquiry and the Powell report.

CHAIR—But this was on 8 November.

Vice Adm. Shackleton—Yes. Sorry, no. On 8 November, I made those remarks that ended up in the media—I do not know what happened to the message after that. I had been talking to the Maritime Commander the day before—in other words, 7 November—during our trip from Adelaide to Perth about what the videotape showed and brought up to date on the events surrounding this particular issue. But at the time, way back in October, the Maritime Commander and I would—sometimes frequently, sometimes not so frequently—talk on the phone about the particular events as they unfolded. I guess what I was trying to portray was that I did not come in my own mind to understand that people had not been thrown in the water until 8 November. Although the Maritime Commander might have told me prior to that, if he did, it did not register in my mind, because in our own way we had become used to this sort of behaviour. It did not surprise us that these sorts of things were being done.

CHAIR—Can you remember the Maritime Commander telling you that people were thrown in the water?

Vice Adm. Shackleton—No.

CHAIR—Therefore he comes forward—

Vice Adm. Shackleton—But nor can I say that I can remember him also saying that they were not.

CHAIR—Well, this was the clarifying statement.

Vice Adm. Shackleton—Sorry, are you talking about my opening statement today?

CHAIR—No, I am talking about what you said on 8 November.

Vice Adm. Shackleton—On 8 November what I said—I do not have the media statement here—was to the effect that I did not contradict the minister.

CHAIR—I want to come to that. Why didn't you contradict the minister?

Vice Adm. Shackleton—Because Defence had told the minister, via that convoluted loop that we described earlier, that children had been thrown into the water, and I was not contradicting that advice.

CHAIR—But you knew—Senator Faulkner took you through this earlier today—that people had not been thrown into the water.

Vice Adm. Shackleton—At that stage of the game, on 8 November, I was of the opinion that people had not been thrown into the water. But I did not know what advice had subsequently been provided to the minister during my absence from Australia. I guess that is in part why I was a bit surprised at what Hendy said. I had to revert back to what I knew the minister had been told, to the best of my ability.

CHAIR—But why? If you are sitting there and you know that what the minister is saying is not true, why do you have to then fall into line and not contradict him?

Vice Adm. Shackleton—It was not a case of what the minister thought was true or not; it was a case of what the minister had been told. I did not know what the minister had been told, other than that children had been thrown into the water.

CHAIR—We are misunderstanding each other, Admiral. You knew that they had not been; why didn't you simply say they had not been?

Vice Adm. Shackleton—My opinion at that stage of the game, on 8 November, was that they probably had not been thrown into the water. What I did not know was what the CDF was talking to the minister about—and it was his position to talk to the minister about it. I had not talked to the CDF since I had returned to the country, so I did not know what the minister had been told in the interim. It was not my place to make public statements about these sorts of issues in this particular instance unless the minister gave me approval to do so.

CHAIR—But you had made a public statement a day or so before.

Vice Adm. Shackleton—That same day I made the comment, which the media picked up on, about what I had said, yes.

CHAIR—So you had made a statement. Whether or not you should have is an interesting issue, but you had in fact made a statement.

Vice Adm. Shackleton—I had been authorised to talk to the media about the departure of the *Kanimbla*, the *Sydney*, the *Adelaide* and the like. I made those comments—which were probably inappropriate at the time—and hence I made a clarifying statement later.

CHAIR—I know it has been a long day, and let us pray it will shortly close, but I thought that on several occasions throughout the day you had said that it is not your place to contradict the minister. Why not? If you know that what the minister is saying is not true then why wouldn't you contradict him?

Vice Adm. Shackleton—But you see, Senator, I did not know that to be not true, because I did not know what the minister had been told. My clear recollection, albeit gleaned from various sources, was that the minister had been told that there were children thrown over the side. When I spoke to Hendy, he was very surprised that I had made the remark that I had, which gave me a clear indication that there had been no change—in fact, he said there had been no change to the advice to the minister—so I was in the position of not knowing what the minister had said and I was not about to make public statements contradicting what either the minister or anybody else had said.

CHAIR—What did you do to find out what the minister knew?

Vice Adm. Shackleton—At that stage of the game, I did no more. The videotape had been released into the public arena. I made the assessment that the minister knew, obviously, what was on that tape. If he were going to ask any more questions then he would direct those questions at the CDF.

CHAIR—This is where I have some problem, Vice Admiral, to be honest with you. You knew, and I think Senator Faulkner brought this out earlier, that the report was that no children had been thrown in the water, that the photographs that had been exhibited in the media which purported to be evidence that children had were not true—they were of another event—and that the video was inconclusive because it was filmed on one side of the vessel when clearly people were leaving the vessel from the other side. So you had in your possession pretty decisive information about what had happened and, while I can understand that you did not know what the minister knew, it seems to me that you were much closer to the source and did know. Is it because of this order that authorises people who can and cannot speak about these things you felt you were outside of those orders?

Vice Adm. Shackleton—At that stage of the game, yes.

CHAIR—Were you motivated more to comply with those orders than you were to say anything that you thought might offend the minister?

Vice Adm. Shackleton—I was in one sense conscious that I needed to correct the public record in terms of what the media were portraying as myself contradicting the minister, which was not what I intended to do nor do I think I did in the overall scheme of things. The other was the clear direction from the minister's office that matters concerning this would be dealt with by his office.

CHAIR—Was that direction from the minister's office a decisive consideration in your mind?

Vice Adm. Shackleton—Only in the context of it not being my place to be making public comments about what I might advise anybody about this particular issue. But it was clear in my mind that, if I had made a statement—whether it was true or not—that was being construed as contradicting what the minister had said then I had an obligation to do something about that.

CHAIR—This order that we referred to earlier—I think I took Dr Hawke through it, because his signature appears on it, which has now apparently been repealed—

Vice Adm. Shackleton—The Defence instruction, you mean?

CHAIR—Yes, that is what I am referring to. It places a pretty strong straitjacket on who can and who cannot comment and puts the minister at the apex of that. When you say you do not feel you can contradict the minister, would you contradict a minister if you believed that that minister was misrepresenting facts that were injurious to the Navy?

Vice Adm. Shackleton—I do not think that I would be doing that publicly: I would want to make sure that the minister had been provided with the full, frank advice of the organisation. Then it would be up to him to decide to correct the public record.

CHAIR—In your discussion with the minister's office, did you take care to make sure that he was provided with the full facts of the circumstances?

Vice Adm. Shackleton—I guess I did not talk to Hendy about what I had seen on the videotape. I was of the view that certainly the media adviser in the minister's office knew of the disconnect between the photographs and what they represented.

CHAIR—You were satisfied that the media adviser in the minister's office knew of the disconnect; that is to say, he knew that the photos as they had appeared in the media were not of the event that they were alleged to be of?

Vice Adm. Shackleton—In my mind, I was satisfied.

CHAIR—You were satisfied about that?

Vice Adm. Shackleton—Yes.

CHAIR—Did you regard, when you were satisfying yourself about that, that, if you had told the minister's staff, that was good enough and that you did not have to then find out what the

minister's number was and tell him? Was telling the minister's staff as good as passing the message to the minister?

Vice Adm. Shackleton—That was, by and large, the impression that I worked on.

CHAIR—I will not spend long on this point, because I think Senator Collins has covered it. I am a bit worried, though, about how you weigh the value of information, how you assess information. We are told that, on the one hand, this is what Commander Banks said and, on the other hand, this is what Air Marshal Silverstone said.

Senator JACINTA COLLINS—Brigadier.

CHAIR—I have to make a blanket apology to the military that I am not all that literate in ranks; I do apologise.

Senator JACINTA COLLINS—It was not the Air Force; it was the Army.

CHAIR—I am doubly criminal.

Vice Adm. Shackleton—No offence taken, Senator.

CHAIR—My honour is offended if I have, in any way, misrepresented Brigadier Silverstone. I must say that I have never met an umpire who, after the event, thought on reflection that he got the call that he made at the time wrong. But you seem to be saying—I do not want to put words in your mouth, and please correct me if you think that this is wrong; I just want to get it clear in my head—that Commander Banks, when he offered the advice that he did to Brigadier Silverstone as to what was happening, may not have been focused on accurately providing that advice but 'may have had half a mind on other matters'—I think they were your words. Why do you hold that view?

Vice Adm. Shackleton—I have a strong sense of how busy he was and I have a strong sense of what he was doing at the time.

CHAIR—He is a competent officer?

Vice Adm. Shackleton—He is a competent officer.

CHAIR—Everything that I have seen about him indicates that he is an extraordinarily competent officer, and I think he has conducted quite a heroic and praiseworthy effort, particularly in doing what he has done with SIEV4. You would have to say that this man is an exemplary officer, wouldn't you?

Vice Adm. Shackleton—What I have to say to you is that there is nothing that I have said, that Silverstone has said or that Banks has said that I find contradictory. I am saying that the circumstances at the time may have resulted in Banks believing that he had seen and therefore said something; Silverstone recorded what he thought he had heard, but Banks in the end may not have said that. Someone is going to have to ask Silverstone why he wrote down what he did.

CHAIR—And we should ask Banks.

Vice Adm. Shackleton—Exactly.

CHAIR—When he is done with his pizza, after dinner, we will. But it is the process that worries me. As an experienced officer running his ship, the guy in the front line, who is eyeballing the action, who is the actual witness, has a range of responsibilities. He has a second in command to relieve him of some of that while he is involved in an incident such as this, where he is required to divide his attention between the maintenance of the ship and the oversight of the actual incident. This is an experienced officer. Why would his oral eyewitness evidence be questioned?

Vice Adm. Shackleton—I do not think it is. What you have here is an extension of what he was seeing and his synthesis of all of that, sent by a phone call to Darwin; from there, it gets into the system and it gets right to the very top very quickly. He may not have realised that he said what he did; in fact, all things point to that being the case. He did not know that the conversation that he had with Silverstone resulted in what it did, which was ultimately public announcements by Minister Ruddock. He was in the position of trying to deal, in real time, with the circumstances that he was in; what the rest of the world was doing was immaterial at that stage.

CHAIR—So, in getting to the way in which this is appraised and weighed by the people at headquarters, if a commander on the spot and governing an incident says certain things, higher up the command chain the weight given to that—I am struggling to try to understand this concept—is less than to what someone interposing themselves between the commander and more senior officers thinks?

Vice Adm. Shackleton—The answer is it depends. At each level through which information passes we try to apply the experience of people who have probably got more experience than Banks to assess: does this look right and feel right in the circumstances we are in or should we wait until we get some more information that might corroborate this? Do we ask some more questions to clarify it before we pass it further up the line? If we pass it further up the line, do we just put some caveats on it that say this has been uncorroborated and is still to be proven to be true?

Senator FAULKNER—Commander Banks clarifies it himself, doesn't he? The ship are aware of the false news reports or the misrepresentation of the photographs and they act to clarify it. This is one of the key points, Vice Admiral: there was a failure at some level in relation to the wrong story emanating from somewhere in Defence at some time—and there are two reports and any amount of evidence we have had on that—and one thing that is absolutely clear is that Commander Banks and a range of other more senior officers in the Navy and Defence try to fix it. They do, don't they? They actually try to fix it, but it does not suit the government for this particular information to get out in the public arena, because the photographs are the evidentiary support that children were thrown overboard—and that is the problem.

Vice Adm. Shackleton—The sequence of events, as I understand it, was that the Maritime Commander called Commander Banks on the telephone, which resulted in that signal that Banks sent from the *Adelaide* on about 10 October, which contained the summary of times and

an assessment that the *Adelaide* made. I said in my opening remarks I do not understand, from my perspective, why that did not go all the way up in a different kind of way. Other people are going to have to answer that question.

Senator FAULKNER—But you do accept that, if the source was Commander Banks—which is a colossal ‘if’ and qualification—there is no doubt Commander Banks takes significant action to correct it as soon as *Adelaide* is aware of the misrepresentation? You would have to accept that, wouldn’t you?

Vice Adm. Shackleton—I think the fact of the matter was that Commander Banks had not realised how his conversation with Brigadier Silverstone had been interpreted and thereby passed on, which had created the effect that it had.

Senator FAULKNER—Sure.

Vice Adm. Shackleton—It was not until the Maritime Commander said to him, ‘I want an assessment of what you have seen and what you now think of it, and send me that assessment’—which was what was done.

Senator FAULKNER—That is right. They are aware of the press reports and also, of course, senior officers have taken some sorts of steps to ensure that the truth comes out.

Vice Adm. Shackleton—Yes, that is right.

Senator FAULKNER—So whatever criticism can be directed to Navy or Defence at the beginning of this story, about the false information, the misunderstood information or the differences of view, as I said to you I think at the estimates committee some weeks ago, at least you have to say that Navy and Defence did what they could within days—literally, within 48 hours—to try to correct this.

Vice Adm. Shackleton—That is correct.

Senator FAULKNER—But of course those photographs were supposed to be supporting evidence for claims that kids were thrown overboard, and it did not suit the minister and it did not suit the government for those corrections to go into the public arena. That is my concern.

Now roll forward one month to November and to the issue that I spoke to you about earlier, when you produced your statement confirming—though you do not know with whom—that the minister was advised that Defence believed children had been thrown overboard. That statement, as I said—and I do not say it lightly—is at best a half-truth, because there is so much more that could have been confirmed. You could have said in your statement, ‘I also confirm that within days of receiving this advice the minister was advised there was no evidence to suggest that children had been thrown overboard.’ You could have added, ‘The minister was also informed that the photographs which were released as evidence that children had been thrown overboard were taken a day after the alleged incident.’ I think that is a reasonable point for me to make to you. And no brief goes from you, as I understand it, at any point to the minister that corrects this.

Vice Adm. Shackleton—The point that I tried to make earlier was that I had been out of the country for nearly three weeks. I spoke to Banks, I saw the video and I knew what I knew about the photographs. It was my expectation that the sit rep that was produced by the *Adelaide* would have found its way into the advice given to government. I do not know why that did not get there.

Senator FAULKNER—It seems to me that Commander Banks realised what had happened, he took action, as did some other senior officers in Navy, and, it seems to me, he was let down somewhere, in the chain of command possibly but certainly in the political interface, the government interface, with Defence. And neither you—and I am not saying you personally; I am thinking of you here as Chief of Navy; I appreciate that for that period you were not in the country—nor anyone else saw fit to communicate information to government that you were aware of from, I think, 7.45 p.m. on the evening of 10 October in relation to the photographs, for example. It is those sorts of issues that do require some level of explanation, going to the questions that Senator Cook asked.

CHAIR—We are over time now, and I had actually hoped to complete this, but if you will bear with me I have just two more questions. First, I started this line of inquiry because I was worried about, or trying to understand, how the Navy—or the armed forces—assesses information and what weight it gives to it. It seems that what is being said here is that a front-line officer's view of what is happening is not necessarily what, at a higher level, would be taken as being the case.

Vice Adm. Shackleton—No, I think, if anything, the CDF's actions place it in context, in that he put great faith in what was said. I think what is being missed here is that the way that Commander Banks's observations reached the outside world was via Brigadier Silverstone. There are comments that Commander Banks did not say that; Brigadier Silverstone obviously thinks he did. That was the way that the message entered the system. It was handled in various ways, and it resulted in the action that it did. Nobody is saying Commander Banks got it wrong. For a long time, people believed that Commander Banks did in fact make that statement, and it may well be that he did. I do not think that anybody is ever going to know whether he did or he did not.

Senator FAULKNER—But you do know he tried to fix it.

Vice Adm. Shackleton—Absolutely. I have got no problem with it.

Senator FAULKNER—Whoever made the mistake, we know this: Commander Banks and some others tried to fix it.

Vice Adm. Shackleton—And I think that is the point.

Senator FAULKNER—That is the point I make.

CHAIR—That is one of the points of this inquiry, that within five hours of this event allegedly occurring the Prime Minister and the minister for immigration made remarks about it to the media but then for another month the fax never got through the network, and that raises

the big question of why not. And—this is where I was going to finish—to use a technical phrase, it looks like there has been a stuff-up of some sort. Is that your view?

Vice Adm. Shackleton—It is probably as good a way of describing it as you will get.

CHAIR—Is the Navy going to fix this? Put it the other way around: what would have been the perfect way of handling this?

Vice Adm. Shackleton—Again, you have to put it into context. It is easy to have 2020 hindsight.

CHAIR—But now we have the luxury of it.

Vice Adm. Shackleton—It would have been better not to have put it into the interdepartmental committee until somebody had had a chance to think it through.

CHAIR—And is there some safeguard now that will not occur?

Vice Adm. Shackleton—There is always a chance that something will slip. It depends on the nature of the operations.

CHAIR—That goes to the question of the alleged information getting out. What do you think should happen in terms of corrections?

Vice Adm. Shackleton—There is already work taking place internally as directed by CDF to look at these issues and how we manage information in Defence. I do not think there was a problem with the command and control per se—that worked. Where we could be criticised in some areas is the management of information associated with this, the way it was handled and the number of loose connections there were surrounding both the photography and the voice transmission between the ship and the shore.

Senator FAULKNER—I would not expect politics to be a top-of-the-mind issue for you—and I am not critical of you or anyone in Defence in that regard. Do you understand that it is a significant issue that the understanding for a month before a federal election was held, the knowledge—firstly, that children were not thrown overboard and, secondly, that the photographs purporting to be the evidentiary support that children had been thrown overboard did not actually relate to that incident—was not corrected in that one-month period? For those of us around this table and in this building who have, if you like, the political processes as a front and centre issue, that is a very significant failure. I wondered whether you would accept that failure of process—failure to correct the public record in the atmosphere of an election campaign—was something that ought never happen in this country.

Vice Adm. Shackleton—Senator, you are asking me to comment on political process and I do not think I want to do that. What you have is the absolute right of a government, and through it the minister, to establish the ground rules by which the department and the organisation are going to work. That is what the minister established. There was no room for me or anybody else for that matter to go out and make public statements which contradicted or in some way took on the government. That is not our business, and I do not think that anybody in this country would

like that either. But what I do not know is what the CDF and the minister were talking about throughout this particular event. My recollection is that the CDF did discuss with the minister the nature of those photographs. What I do not know is why the public record was not changed.

CHAIR—It is possible that you and I might disagree, Admiral, but, if a government says something that is clearly wrong, and you know it is wrong, I would have thought there is an obligation to correct it with the government promptly and to make that clear.

Vice Adm. Shackleton—Senator, that may well have happened.

CHAIR—The other reason behind my questioning is that, for all I know, we may be at a state of war or engaged in a military conflict in the Gulf and, if this can happen on an issue of high readiness for the Navy, what could be done to repair it, to make sure that, with the heightened attention to defence matters in the current global situation, we can all rest in our beds and that this will not happen again in any other respect? That is the basis of my questions. I guess we will just have to leave it there. Are there any further questions?

Senator MASON—I have further questions of Admiral Shackleton but it will take about another 10 or 15 minutes.

CHAIR—Then the question is: do we do to Admiral Shackleton what we did to Dr Hawke?

Senator BRANDIS—We will be here for half an hour. Let's break.

Vice Adm. Shackleton—I am happy to keep going if others are.

CHAIR—What we are debating is whether we all go to dinner and bring you back afterwards, or whether we continue and exhaust you now.

Vice Adm. Shackleton—If it is only 10 minutes—

Senator FAULKNER—I would be minded to go with whatever suggestion the admiral has, because he is the one who has not had an opportunity to leave the table.

Vice Adm. Shackleton—We will all have to send out for pizzas, I think is the answer.

Senator FAULKNER—Admiral, everyone here has had an opportunity to leave the table at times during your evidence. You have not had that courtesy, so I would be minded to fall in behind whatever the admiral says.

Vice Adm. Shackleton—I am happy to keep going.

CHAIR—You are happy to keep going?

Vice Adm. Shackleton—Yes.

Senator MASON—Briefly, you said I think in response to some questions from Senator Collins that the RAN, in relation to these SIEV incidents, in no case were responsible for creating a safety of life at sea situation. Is that right?

Vice Adm. Shackleton—Yes.

Senator MASON—When the boats sank—SIEV4, SIEV7 and SIEV10—who created the safety of life at sea situation in those cases?

Vice Adm. Shackleton—It is my opinion from reading the material that the individuals on board those boats did.

Senator MASON—Senator Bartlett referred to a document from the asylum seekers detained in the Lombrum detention centre, Manus Island, Papua New Guinea. I would like to ask you a couple of questions about that and ask you to comment on some paragraphs in that particular email. I think Senator Collins also made a brief reference to it, but certainly Senator Bartlett did.

CHAIR—What is it?

Senator MASON—It is a submission to us from the Iraqis detained in Lombrum detention centre, Manus Island, who were in effect the people on the SIEV4 boat.

CHAIR—You have handed that to Admiral Shackleton.

Senator MASON—You have before you, Admiral, an email from the Iraqis detained in the Lombrum detention centre, Manus Island, Papua New Guinea, dated 13 March 2002; is that correct?

Vice Adm. Shackleton—Yes.

Senator MASON—I will take you to the third paragraph of that particular email. I might refer you to some parts of this document and then ask you to comment on certain passages.

On the 7th October 2001 at approximately 3.30-4.00 am the Australian frigate Adelaide (01) fired warning shots to try and scare us and to force the captain to stop the boat. They called to us in English and Arabic demanding us to stop the boat so they could give us supplies that we needed.

Then the rest of the paragraph is about the fact that the boarding party boarded the SIEV4. The next paragraph commences:

There was a navigator officer and the wheelman—

from the *Adelaide*—

that forcibly took over from the Indonesian crew and changed course to the opposite direction, then all the passengers knew that they were lying—

that is, the people in the boarding party—

to us about providing supplies, while their main purpose was changing our course towards Indonesia.

Do you think that members of the RAN were lying in that context?

Vice Adm. Shackleton—I would have to get somebody to verify that people from the *Adelaide* said that they were going to stop so that they could give them some supplies. I do not know if that is true or not.

Senator MASON—I will go to the next paragraph which commences:

By using the maximum speed can get from the engine they pushed the speed levers heading toward Indonesia,—

‘they’, of course, refers to the boarding party—

causing a heavy unnatural smoke getting out from the engine to the women’s section, bridge and outside the accommodation causing asphyxia for the passengers, especially the women and children.

The boat kept on moving and after sometime the engines sound start to splutter until it went out completely. We couldn’t hear the engines anymore and there was no more smoke.

It was then that the Australian marines moved out the boat in a rushing way as if they were escaping and we were left by ourselves about 10 to 11 am, 7th October. After that the Indonesian crew told us they think we are in international waters and the engine was broken, water pump and rudder too. The Australian navigator left us a small compass ...

The next paragraph reads:

All the passengers were shocked when remembering the claims of the Navy who firstly offered to help and provide our needs such as food and water and now they had deserted us, left alone in the middle of nowhere and the wide ocean in front of us, with the terrible condition of the engine and water leaking through the boat, because the pumps connected to the main engine were stopped and no more fuel left to operate the portable emergency pump.

Vice Admiral, my question to you is: what would you make of any suggestion that the sailors of the *Adelaide*, the boarding party in particular, were responsible for the failure of the engine, the water pump and the rudder to work?

Vice Adm. Shackleton—I find it a bit surprising because I thought that the people from the *Adelaide* in fact had tried to repair the mechanicals in this particular boat so that it was serviceable and could continue on its way. I cannot answer this; I would have to get assistance from Commander Banks to deal with this.

Senator MASON—I may ask him some questions about that. The last reference is on page 4 of the document—I do not think it is actually marked page 4, but it is the fourth page:

After a while events were happening rapidly, the boat went down and we were dropped into the ocean with all our possessions which included money, jewellery, personal belongings, documents, etc. Whilst many of our personal belongings were simple things, they mean a lot cause they were the most precious we were able to bring. All these were possible to be saved if the decision to abandon ship was taken earlier. With the help from the Navy nothing would have been lost.

Do you accept, as the head of the Navy, the responsibility for the sinking of SIEV4?

Vice Adm. Shackleton—No.

Senator BARTLETT—Mr Chair, firstly I want to say that I do not think that these people are saying that it was the Navy's fault the boat sank. Either way, can I ask, given that you have quoted from it extensively now, that this submission be published and made public as well?

CHAIR—Is there any objection?

Senator FAULKNER—I do not mind, but I think we have to deal with a whole range of submissions and I am just worried about picking submissions off one by one. You know what my general approach is, as all committee members do: I believe in releasing submissions whenever humanly possible. So I have got no problem with Senator Bartlett's proposal. There is a whole raft of material here that we have to deal with, and there is a bit of a weakness in one or two submissions being made public and not others. I am keen to see as much as we can make public put into the public arena. I just say, in relation to this: sure, let us make it public, but let us also deal with the other things as soon as we reasonably can.

CHAIR—I think that is good counsel in the sense that we have a body of submissions which, for all I know, any member of this committee may well want to tender in evidence or quote from extensively. I think it would be much better if we gave holistic thought to what we do about all of them. But, we did set a precedent earlier today and I have a proposition before me from Senator Bartlett. I did not understand you to oppose the proposition.

Senator FAULKNER—Certainly not. I said my general approach is always to say yes, let these things be made public, but there is a lot of other material that we will have to try and deal with quickly. I hope other committee members would agree with that.

CHAIR—I do want to say that it is desirable to make that decision fairly quickly because this is getting to a point where things are trickling out by happenstance rather than by considered decision. Is there any objection to releasing this?

Senator MASON—No.

CHAIR—There is no objection so it is so ordered. Are there any further questions?

Senator BARTLETT—There is a suggestion it might be helpful for Commander Banks to get a copy, because I would certainly be interested in—

CHAIR—It is now released and I think the secretariat could make a copy available to Commander Banks.

Senator FAULKNER—Could we have a very brief private meeting about the release of other submissions?

CHAIR—I wanted to have—I foreshadowed this after afternoon tea—a quick housekeeping meeting before we adjourned for dinner.

Senator FAULKNER—That would be great.

Vice Adm. Shackleton—I have one more piece of information which I would like to give before you close.

CHAIR—This is a very appropriate time to do it.

Vice Adm. Shackleton—In answer to Senator Collins, who was asking about draft media releases by Captain Wright, my advice here is that he took several handwritten notes to the meeting with him and on completion these notes were disposed of. Frankly, this is not something I would expect anybody would have kept a record of.

CHAIR—Thank you very much, Vice Admiral. It has been a long afternoon; we have enjoyed your company.

Proceedings suspended from 6.51 p.m. to 8.17 p.m.

BANKS, Commander Norman, Royal Australian Navy

CHAIR—The inquiry into a certain maritime incident will come to order. I now call to the table Commander Norman Banks. Commander Banks, I think I can speak for the entire committee when I say that we have a high regard for the work that you have done and we respect the role that you have played. I think I can speak for the entire committee when I say that we would like those views conveyed to your ship's complement as well.

Cmdr Banks—Thank you very much. I shall do that.

CHAIR—I will ask Senator Bartlett to commence the batting. Before I do that, though, I have just one question: were any children thrown overboard?

Cmdr Banks—I was going to make a statement, if I could, and I will answer that question.

CHAIR—Please proceed to make that statement.

Cmdr Banks—Distinguished senators, I am Commander Norman Stewart Banks. I am an officer with 25 years service in the Royal Australian Navy. Since 6 July 2000, I have had the privilege to command the guided missile frigate HMAS *Adelaide*. I expect to relinquish that command in the normal course on 26 June 2002. I make this statement in my capacity as the commanding officer of HMAS *Adelaide*.

I also wish to advise the Senate that I make this statement of my own volition. I have not been coached, instructed or directed in any guise, direct or implied. To the contrary, and as is my norm, senior officers have consistently instructed me to open with a straight bat.

As a career professional, I would ask the honourable senators to respect that I am unashamedly apolitical and that I cannot and will not make comment on matters of government policy. As a loyal servant, I will desist from any comment that could be remotely construed as critical of my senior officers—officers for whom I have a tremendous professional and personal respect.

I will, however, speak freely about the events of 6 to 10 October 2001 and the circumstances surrounding what became known as SIEV4—suspect illegal entry vessel—or, as you know it, ‘a certain maritime incident’. I wish to also emphasise that the specific detail of events of that time have, to some extent, been superseded in my mind by many other, more recent activities.

To bring some situational and factual awareness back, I have had recourse to refer to notes and signals taken at the time but retained in HMAS *Adelaide* throughout. I have also refreshed my memory since the ship's return to Australia on 13 March 2002 by a cursory review of the Bryant, Powell and *Hansard* reports—documents I had not seen until I returned to Australia.

Nevertheless, it is also apposite to say that the events of SIEV4 were by their very nature extremely significant and, even without the subsequent furore and the repeated investigations,

the rescue of 223 unauthorised arrivals by HMAS *Adelaide* would always have stayed in my immediate recall as a most memorable incident. Believe me, I have relived the events of that period in early October thereafter and many times since.

Wherever possible, I have tried to avoid being influenced by media comment—being absent from Australia for the period 31 October to 13 March has made that task a little easier. I was in Australia during the period 6 to 8 November. Access to domestic public information is not easy on a deployed warship. Whilst I have had some information passed to me, I have not had the full story that everyone else in Australia has seen in the various media articles.

All statements I make are of my own making and have not been reviewed by other witnesses. I can make no comment on the Pacific solution, as I have had no involvement in that matter and I have only been involved in SIEV4.

As part of my preamble, I should also advise that until 2000 I worked at Strategic Command in the Australian Defence Headquarters organisation on the Operations staff and had dealings with illegal immigration policy matters. I dealt with the issue as a staff officer, Maritime Operations, and attended the Prime Minister's task force interdepartmental committee in 1999 and 2000, representing Major General Keating. Accordingly, I have worked alongside a number of the key players involved in that policy matter at the working level, including Ms Bryant, Ms Halton, Mr Farmer and Mr Jordana. I have also met Senator Collins before, when she kindly visited HMAS *Adelaide* for a short sea ride—I think it was in May—but that was well before SIEV4. I know of Mike Scrafton from his days in Defence but not since. I have also hosted Senator Hill on board in his capacity as the new Minister for Defence. Obviously, I know all the senior military officers involved in this matter. Apart from that, I have had no involvement with other people on this matter, and I stand here largely with my own information.

I now intend to outline a short and largely chronological description of the events that summarise the involvement of HMAS *Adelaide* in the interception, detention, escort and tow of a 20- to 25-metre wooden-hulled type III Indonesian vessel that became known by the department of immigration identifier SIEV4, and the subsequent rescue of 223 unauthorised arrivals when that boat unfortunately sank in the vicinity of Christmas Island on 8 October 2001.

It would not be a Senate appearance by me without photographs. I now intend to supplement that statement with some photographs from the 420 taken on board HMAS *Adelaide*. These are a 'best of' selection which in my mind will set the scene and add some context to your deliberations. With your leave, I present those photographs.

CHAIR—As there is no objection, leave is granted.

Cmdr Banks—I have two sets of large photos. They are numbered 1 to 31, and I will draw attention to them as we go through. I have a set here as well, and I have a copy of them on disk if they need to be reproduced.

CHAIR—I am not sure how we are going to manage this, but I am sure we will.

Cmdr Banks—HMAS *Adelaide* deployed on 16 July 2001 for a series of exercises to promote regional engagement in South-East Asia. On 17 September 2001, *Adelaide* was diverted to Operation Relex. We departed from Singapore and sprinted through the Indonesian archipelago to join HMAS *Arunta* for a handover of humanitarian aid stores and an S70B helicopter. On 19 September, HMAS *Adelaide* chopped operational control to Commander Joint Task Force 639, and *Adelaide* assumed duties as the western surveillance and response group and commenced a maritime surveillance and response patrol in the vicinity of Christmas Island. The Operation Relex mission was assumed without the benefit of any pre-briefs, and the ship and I read into the task vide DISCON—defence integrated secure communications network—messages which were addressed to the ship.

In summary, HMAS *Adelaide* had been directed by Commander Joint Task Force 639 to conduct a maritime surveillance and response patrol to contribute to a whole of government approach to deter unauthorised boat arrivals—UBAs, as they were then known—from entering Australian territorial waters. I was also directed to prevent potential illegal immigrants—henceforth referred to as ‘unauthorised arrivals’—from gaining access to the Australian migration zone by containing them in designated locations and providing humanitarian assistance until their transfer to transportation for onward movement out of the Operation Relex area of operations could be provided. I was further directed to achieve this mission without loss of life or serious injury to any party.

On 22 September, Commodore Jim Stapleton, RAN, relinquished duty as Commander JTF 639 and COMNORCOM, Brigadier Mike Silverstone, assumed duty as Commander JTF 639. He operated from our joint staff headquarters in Darwin. Brigadier Silverstone’s ‘Commander’s intent’ was to conduct surveillance and response operations to contribute to a whole of government approach to deter unauthorised boat arrivals from entering Australian waters. This was to be achieved by intercept and warning-off on the high seas. If the unauthorised arrivals gained access to the Australian contiguous zone, a boarding party was to detain the SIEV, sail it to the outer edge of that contiguous zone and, if safe, release it. Should the SIEV re-enter the zone then a boarding party was to detain the SIEV and crew and take them to a designated holding area, contain the situation and manage the unauthorised arrivals in a compliant state, pending a government determination on transfer and/or transportation. At no stage were unauthorised arrivals to have access to the Australian migration zone. The mission was to be achieved without loss of life or serious injury to any party.

Throughout the period the Commander Joint Task Force 639 and I discussed the operation and the contingency plans with his staff and indeed with the commander. This was usually done by telephone, and daily ‘fireside chats’, as we came to know them, were held by telephone between me and the commander and, I believe, between the commander and the other commanders. In response to direction, *Adelaide* developed a comprehensive plan for a mass embarkation of unauthorised arrivals based on a safety-of-life-at-sea incident—most probably either a sinking or a sunken SIEV.

Adelaide had calculated the possible number of unauthorised arrivals the ship’s fore-castle deck could accommodate with a rehearsal using the ship’s company. Whilst 300-plus was within our capacity, I had also spent considerable time trying to carry the message that *Adelaide* was a frigate and did not have the capacity or the capability to sustain unauthorised arrivals on board other than for a very short period. I viewed our role as an intermediate transport ferry vice a

holding hulk ship. With a designated troop carrying capacity, *Tobruk* and *Manoora* had the better capability to role shift to support an embarkation of unauthorised arrivals. Certainly, by 6 October, I considered that *Adelaide* was well prepared for any such humanitarian task that might arise, albeit only an ad hoc solution with a short duration being in our retinue.

On Saturday, 6 October, at about 1350G—the time zone that takes place in Christmas Island—and in response to shore based secret intelligence cuing, HMAS *Adelaide*, with a Royal Australian Air Force P3-C Orion aircraft, call sign MARINER 1, assistance intercepted a critical contact of interest with approximately 50 persons visible on deck 100 nautical miles north of Christmas Island. *Adelaide* assumed the on-scene commander and manoeuvred to shadow the CCOI, critical contact of interest, to maintain on-the-horizon radar-visual contact and to be ready to pass deterrence warnings by long-range rigid hull inflatable boat—henceforth referred to as RHIB. The 20 to 25 metre wooden hulled vessel initially flew an Indonesian national flag and was on the high seas well north of Australia's area of jurisdiction but was tracking south at about eight knots. There was every expectation that this was a SIEV bound for Christmas Island. Of note, the P3-C reported the personnel on board were all wearing life jackets.

That evening sunset took place at 1754G. The interception, shadow and delivery of the department of immigration warnings phase of the mission proceeded largely without incident and routine reports were signalled to all the relevant operational authorities in accordance with well-established maritime interception operation standard operating procedures. Of note, the unauthorised arrivals displayed visible and oral aggression and would not accept delivery of the DIMA warning notices. I reported that in one of my sit reps. That evening I was directed to acknowledge receipt of instructions on how to handle SIEV4. I was to deter the SIEV and its passengers from seeking access to Christmas Island. Again, secret reporting confirmed that. In doing so, I was to take every reasonable means to achieve the mission without needlessly risking the safety and wellbeing of my crew, the ship—that is, *Adelaide*—and the lives of the unauthorised arrivals on board the SIEV. I was also authorised to exercise my judgment to board, but only when so ordered by the Commander Joint Task Force, and to remove the vessel from the Australian contiguous zone and, if need be, to detain and escort the SIEV to the vicinity of Christmas Island. But in no way was I to allow the unauthorised arrivals access to Christmas Island.

The long-range RHIB insertion confirmed the vessel was a SIEV and it was considered to be the *Olong* vessel that I had been advised had departed Indonesia on 5 October. Based on information from the unauthorised arrivals, the RHIB boarding party had revised the number of unauthorised arrivals to be in the order of 208 personnel, all of Middle Eastern and/or Iraqi origin. Just about all the personnel seen, or at least 80 per cent, were wearing life jackets. A more accurate count of the souls on board was not possible, given that it was night-time, the long-range RHIB team had not boarded the vessel, as we had no authority to do so, and the information was freely provided by the passengers and therefore assumed to be reliable. The unauthorised arrivals comprised a 50:50 ratio of males to females with at least eight to 10 children sighted. One very small child, an infant, was visible, and a second small child was seen holding a sign that read 'SOS'. Identification of the crew—presumed to be Indonesian—was difficult and not really effected until 8 October. *Adelaide* determined the vessel was seaworthy and that an in extremis or safety of life at sea situation was not evident. *Adelaide* maintained a shadow role and awaited direction from Commander Joint Task Force 639. Again a number of sit reps were exchanged.

Commander JTF 639 staff issued photos of the SIEV—the unauthorised arrivals—passed digitally by HMAS *Adelaide* via JCSS imagery, which was also presumably obtained from the P3 flight earlier. One of the photos is numbered one and it shows a number of, in your vernacular, SUNCs—I think the term now is ‘unauthorised arrivals’—being viewed from the long-range RHIB. You can see its darkness and you can see they are wearing life jackets. In this photo you can see no signs of distress. This photo is provided in the context of the life jackets and the fact that the initial operation took place in darkness.

Senator FAULKNER—Where did you say that photo was taken from?

Cmdr Banks—It was taken from the long-range RHIB, the 7.2 metre boat, adjacent to SIEV4. This photo was actually taken from the starboard side of the SIEV. Due to the height differential you can see that the RHIB crew are actually looking up into the SIEV, which was part of the problem in getting them on board subsequently.

From the experience of the initial long-range RHIB, it was considered that any subsequent boarding would be problematic and that a non-compliant action, potentially employing the graduated use of force, was likely to be necessary. Commander Joint Task Force directed that I equip and prepare the boarding party to achieve the task of successfully boarding the SIEV at the first attempt. At 0130G, the RHIB from *Adelaide* was again alongside the SIEV, with a boarding party at the ready. At 0139G, on Sunday, 7 October, the SIEV altered course towards Christmas Island, the lights of which were now becoming visible on the horizon. We were getting the loom of Christmas Island on the horizon. By 0230G, the SIEV entered the Australian contiguous zone. From 0300G, warnings to heave-to were passed in English and Bahasa by radio and loudhailer both from *Adelaide* and the alongside RHIB, and communications were also attempted in Lebanese and Arabic by a sailor of Lebanese origin. My boarding party log would refer to that in detail.

After telephone conversations with, and approval from, Commander Joint Task Force 639, I commenced action to compel the SIEV to heave-to to allow my boarding party to embark and eventually commenced firing aimed small arms—5.56 mm Steyr—and 12.5 mm .50 cal machine gun warning shots ahead of the vessel at 0359G on 7 October, and again at 0409G, 0416G and 0420G. The SIEV was, at this stage, well inside the Australian contiguous zone, approximately two to three miles from the Australian territorial waters of Christmas Island, and proceeding directly towards Christmas Island at about seven knots. I need to emphasise that only aimed shots were fired directly into the water, an area 50 feet to 75 feet ahead of the vessel. A searchlight was used to illuminate both the weapon firer and the area in the water ahead of the vessel where the rounds were to land. This ad hoc process was introduced by me to clearly show my intent.

Warnings on loudspeaker continued throughout. The vessel did not heave-to and at 0430G the *Adelaide* manoeuvred more aggressively close to the vessel to slow it down. This facilitated a distraction and allowed an assault type non-compliant boarding, using the RHIB, to be effected whilst the vessel was still under way.

Having conducted a successful insertion of the boarding party in darkness, between the time 0439 and 0442G, I directed the vessel to turn towards Indonesia and, as directed by CJTF, prepared to provide any necessary but basic humanitarian assistance to calm the unauthorised arri-

vals. Should the vessel not continue to return to Indonesia, I was to provide sufficient delay to allow authorities to prepare Christmas Island for possible reception of the unauthorised arrivals. The boarding party of nine estimated there were 250 unauthorised arrivals on board. This number was also proven incorrect. The boarding party reported that they were angry, disappointed and making veiled threats to commit suicide, gesturing with wooden sticks and being very vocal. One unauthorised arrival jumped overboard but was promptly recovered by the RHIB. The SIEV was eventually turned around and ground made to the north. I reported that in one of my sit reps.

At 0539G, sunrise took place. The second photograph, and photos Nos 2 to 9 show the sequence of events in relation to the man overboard. Photograph No. 2 clearly shows it is daylight, but the photo has been enhanced, in the sense of contrast and brilliance, to allow you to see what we saw. This period was the period of morning twilight, so darkness had become dawn and was becoming sunrise, but the ambient light was such that it was all clearly seen by the naked eye. You could also see from here that the visibility was very good. I think there was a report somewhere that I could only see 200 yards or 300 yards if I was lucky. That is erroneous. I could see for several miles. Photo No. 2 also shows some of the SUNCs on top of the coach-house preparing to jump overboard.

Photo 3 shows a number of heads bobbing in the water and the RHIB in attendance. The RHIB already has one or two people embarked, who are wearing orange life jackets—the same life jackets from the earlier SIEV photo—and there are four heads in the water about to be recovered by the RHIB. Photo 4 is a general photo of *Adelaide* getting much closer now that this event has taken place. There I am trying to provide more presence and assert my control. You can see that there are a number of people on the coach-house—some of whom subsequently jumped—and the beginning of the stages of a man dressing child in a life jacket at the aft or end of the coach-house about 2 or 3 metres from that aerial, Senator Collins. Photo 5 again shows that in a little more detail as *Adelaide* got closer.

In photo 6, you can see the difference in the light as the photos have been adjusted. Photos 7 and 8 are of similar events. I would ask the Senate to note in photograph 8 that at that stage, whilst the boat was seaworthy, I had some concerns about it. You can see water coming out over the deck and running down the ship's side and you can also see that the boarding party are very crowded by the large number of SUNCs present and that the SUNCs are beginning to cause damage to the SIEV—the gateway is removed. And in photo 7 there are some items being discarded overboard.

CHAIR—In photo 7 you can see water coming from the decks, as well.

Cmdr Banks—Yes.

Senator JACINTA COLLINS—Commander, is the child still at the top?

Cmdr Banks—Not in photo 8. In photo 6 the child is still sitting on the coach-house. In photo 7 the child has been returned inside the coach-house and those are some of the unauthorised arrivals who came up and helped move that father—the man I assume to be her father—and child back inside.

Senator JACINTA COLLINS—Do you know which rail the child was held over?

Cmdr Banks—It would be on the starboard side aft, immediately adjacent to the coach-house where those people were standing. If you look at photo 6 you can see quite clearly that she was sitting on top of the coach-house adjacent to the starboard side railing. It may be an optical illusion for you—it looks like the port side. It was actually the starboard side that she was on. The photo was taken on the port side.

Photo 8 shows one of the males preparing to jump. I do not have a photo that shows that he actually jumped. Photo 9 shows *Adelaide's* RHIB returning to *Adelaide*. I think we had just embarked the medical sailor and our intent was to take him back to the SIEV. It shows two of the people recovered from the water in the RHIB. Both are male, both are Middle Eastern and both are wearing life jackets. There is some conjecture and one is assessed as possibly being a youth. His age was never verified. There was conjecture that he may have been a teenager—13, 14 or 15. Other people said he was a 17-, 18- or 19-year-old. One or two people thought he may have been in his early twenties.

I guess some of my photos are out of sequence now. After first light the first man overboard took place at 0506 and others between the times 0543 and 0556G. Fourteen unauthorised arrivals jumped or were thrown overboard. I use the words 'thrown overboard' here advisedly. Those were the words that were used in my signal and reported repeatedly. They jumped or were thrown overboard in a series of voluntary actions by the unauthorised arrivals. All were recovered by *Adelaide's* RHIBs and returned to the SIEV. What is not shown in the photographs is that I had two RHIBs in the water and I used both RHIBs to recover the people. An FFG is normally only fitted with one RHIB but we were able to acquire two RHIBs by a deft deal and I am very grateful that we had two RHIBs for that operation. I do not believe that it would have been successfully concluded without the presence of a second boat.

Commander JTF 639 was informed of this action, of the people overboard and their recovery, by telephone and signal. A second boarding party of nine was inserted to better restore control and, hopefully, to prevent a mass exodus to force a safety of life at sea situation, a consideration which was very much on my mind. In my sit rep message No. 9, and in the boarding log, I did not make mention of a child held over the side incident, as I viewed this event largely as an inconsequential incident in the overall scheme of things.

The SIEV continued northward, with *Adelaide* in a close escort role, to the outer limit of the Christmas Island contiguous zone. The ship provided some medical assistance, and the boarding party revised the number of souls on board to 186; this number was, eventually, also proven incorrect. Photograph No. 10 shows a shot from the coach-house, looking down into the SIEV, showing the starboard side aspect. The sailor in grey overalls is the ship's medical sailor. He is providing aid to a number of people. In the foreground you can see an IV drip being hung up on the coach-house, and the line into the wrist of the woman lying down with a life jacket. That was repeated for a number of people who were alleging they were dehydrated; they were treated by our boarding party and their medical teams.

Efforts to provide assistance, such as water, were not welcomed. Indeed, on occasions, the water that we provided was thrown overboard by the unauthorised arrivals on receipt. Again, I reported that in the signal. With 200-plus irate personnel on board and a boarding team of 18, all

operating in a small and very unfamiliar vessel, it was not a surprise to me that the vessel was continually being sabotaged. The steering and the engines were disabled at various times. Vandalism and arson had been conducted, and continued. However, ground was made northward, and the boarding party were extracted from the SIEV at 1029G, as the SIEV exited out of Australian jurisdiction 24 miles from Christmas Island. The SIEV and the SUNCs were directed to Indonesia. They were shown a chart, and I also provided a hand-held compass to assist them with that. They had earlier thrown their own compass overboard.

Having returned the boarding party to *Adelaide*, *Adelaide* remained outside the nominal visual range and used EOTS, the electro-optical tracking system, to observe the SIEV, which was now, again, dead in the water about five nautical miles from *Adelaide*. My primary focus here was an expectation that the SIEV was generating a safety of life at sea situation, and I retained a reasonable concern for the unauthorised arrivals' safety, noting the deteriorating afternoon weather and the general state of the vessel, whose steering was certainly tenuous. We had gone to some lengths to help repair that steering, but it was, arguably, still a tenuous steering system.

While the mission had been accomplished and the SIEV had been deterred from effecting an entry into the Australian contiguous zone, and I had done that without injury or loss of life, I was not comfortable that a win-win situation had been achieved. With a number of women and children on board the SIEV, and the state of repair of the steering and the engines, a distress call was expected sooner or later. Concerned about that seaworthiness and, to some extent, situating the likely appreciation that the boat would eventually declare itself in distress, I remained out of obvious visual range but took station a prudent five nautical miles clear of the SIEV, such that I maintained radar and EOTS surveillance and that could be continued.

I was not surprised that, at about 1.39G—correction: at approximately 1330G; I am having a great time with these times, and I understand that we will all have difficulty with times—on 7 October, the SIEV hoisted a signal consisting of a square flag with a ball, or something resembling a ball, hanging below it. Additionally, several unauthorised arrivals were slowly and repeatedly raising and lowering their arms outstretched to each side. Photograph 11 is taken somewhat after that time, because I am quite close to the SIEV. You can see a man waving a white flag, and the people waving to us. Unfortunately a still photograph does not quite show the waving, but they were gesturing.

In accordance with the international conventions, I took this to be an international distress call and had this verified by my navigator and my on-watch PWO. As reported in signal messages, and in discussions with the commander, CJTF 639, the SIEV was considered a vessel in distress and a decision was made to tow the SIEV to Christmas Island to await government determination. The boarding party insertion and subsequent tow proceeded without incident until the afternoon of Monday, 8 October. Throughout, the unauthorised arrivals were almost delighted to be in our care, and the mood and bonhomie had decidedly changed. Disturbances and aggression were no longer evident.

Photograph 12 shows just the moment before we passed the tow to SIEV. You can see in the background the SIEV, the water containers, and all those items are back on board. She is displaying a distress symbol, the white flag with a black ball, and we are preparing to tow the SIEV. I have a towing line flaked out on *Adelaide*'s flight deck and we are manoeuvring to pass

that tow. The vessel was towed for a period of just over 24 hours without incident. A good tow was maintained and a speed of advance of two to three knots was made. The vessel was towed back into the Christmas Island contiguous zone but remained out of sight of land throughout. At night-time the loom of lights were visual but during the day it was pretty hard to see the land from the cloud and their lower elevation. Food, water and humanitarian aid, including medical checks, were provided. *Adelaide* set up a racetrack north of Christmas Island. I wanted to maintain my situational position whilst determinations were made.

On Sunday, 7 October, *Adelaide* was informed that the ship would return to Fleet Base West and prepare to redeploy to the Middle East as part of an ADF contribution to the international response to global terrorism. That information was formally confirmed on 8 October. I mention this in a contextual sense as this next deployment was also very much in the forefront of my mind throughout the ensuing events of SIEV4. I had been aware of the possibility that the *Adelaide* would redeploy, or could redeploy, from 5 October.

After repeated efforts to stem the water ingress to the SIEV's hull, and largely without warning, at 1700G on Monday, 8 October, the SIEV began to rapidly sink in a position 16 nautical miles north-west of Christmas Island. Photograph 13 shows the vessel from about 200 yards from the *Adelaide*. You can see there that the vessel is much lower in the water than it was in earlier photographs. You can see the towline is still in the water—the tow is slack—though we stopped the tow to pass a peri-jet hose—the peri-jet is a pump on board *Adelaide*. We exhausted portable pumps. I then took the unusual move of passing hoses to the SIEV, put those hoses in the SIEV and used the pumps on *Adelaide* to discharge the water from the SIEV. As you are aware, that was ineffectual in the end, although for some time it actually stopped the water ingress and reduced the water ingress. However, circumstances did change at 1700.

The next photographs, 14 to 23, go through the subsequent sinking of the SIEV. The tow was stopped and the embarked Navy steaming party of 11—the number had been increased to 11; we were actually about to serve up the evening meal—effected what I called a 'controlled abandon ship' from SIEV4. *Adelaide* launched six 25-man life rafts and, with two 7.2 metre RHIBs already in the water, commenced a rescue of the unauthorised arrivals, all of whom were in the water. I will talk through some of these photographs if I can beg your indulgence.

Photograph 14 shows that the vessel went bow down very rapidly. You can see the sea-state a little clearer in this shot—and there is a slight sea-state—showing that the boat was taking water over the deck. Some of the luggage started to float out of the SIEV and the people—in a natural panic—began to move around the SIEV and affect the vessel's stability. I think I have timings for these photos as well.

Photo 15 was taken in the afternoon of 8 October. It shows the SIEV is now nose down and the forward RHIB has just extracted an infant from the port side of the SIEV. The bow of the vessel is intact and it is clear evidence that the tow had not caused the vessel to break up. I believe that one of the press reports was that we pulled the bow off the vessel. I also wish to emphasise the point that the infant was extracted to the RHIB. People on board the SIEV were concerned. They passed the baby to our RHIB and we took it away as one of the first people off the SIEV.

Photo 16, taken shortly thereafter, shows the vessel settling bow down. Clearly the vessel is now sinking and personnel are getting ready to be evacuated firstly to the RHIBs. Lots more of their personal luggage is floating away and, indeed, becoming flotsam and jetsam.

Photo 17 shows the situation deteriorating. People have now taken to the water and a safety of life at sea situation has clearly unfolded. The order to launch life rafts was given well before that.

Photo 18 shows the vessel listing heavily to port. Most people are now off—many are still in the water but most are now off the SIEV.

Photo 19 shows one of the life rafts, reasonably crowded with the unauthorised arrivals. For information, the orange life jackets are those that were provided with the SIEV. The yellow and sort of green coloured ones are those that were provided by *Adelaide*.

Photo 20 shows the SIEV now settling again bow down and listing this time to starboard. Four of the life rafts are in the water and there is evidence that part of the boat had begun breaking up. That photo was taken some time between 1730 and 1800.

Photo 21 is a rather moving photograph of a small infant having been placed in the life raft before other people got into the life raft to move the child out. You can see my crew standing by to assist and, indeed, one of the SUNCs standing by to assist.

Photo 22 shows a life raft alongside *Adelaide* and the SUNCs disembarking on to the ship using one of our ladders. We put a ladder in the water, we put a cargo net in the water, we put a Billy Pugh rescue strop in the water, and we had a Nowra strop in the water. So we were trying to bring people on board in four or five different ways.

Photo 23 shows the three life rafts and the RHIB alongside, and the rescue progressing in what I would still call a controlled manner, using the cargo net. The ship's preplanned mass embarkation plan was implemented. By 1841G, 223 unauthorised arrivals had been recovered from the water and had safely embarked on the forecastle of HMAS *Adelaide* where they were dried, clothed and fed. No injuries were sustained by *Adelaide* or, indeed, any foreign national personnel.

Photos 24 to 27 show the processing of the SUNCs on board. Photo 24 is of a small child being rescued from the water and being taken on board. We set up a processing line to deal with the situation. That is a terrible term, but there was a process to go through. You can see that is a young child. The photograph is of the famous A.B. Whittle carrying a baby on board.

Photo 25 shows a distressed Iraqi woman—I would estimate that she is middle-aged. She was absolutely exhausted from her ordeal and there she is being comforted by one of her crew. Of note, in the background are the sanitary hygiene arrangements that we built in situ at the time to deal with those people being on board. We built four small toilets. I am probably in contravention of some maritime pollution regulation but I will accept some criticism for that. Photo 26 shows another small child being processed.

CHAIR—I doubt it. As far out as you were in the Timor Sea, I do not think you would be in contravention.

Cmdr Banks—I stopped pumping poo over the side well clear of the 12-mile limit.

Photo 27 again shows more of the processing and it shows the ship's company in a very controlled and methodical manner going about that process of providing assistance to these people. In case I do not get asked later on, I probably want to emphasise here that the attitude of the ship's company changed significantly from the beginning of this operation to the situation we are now in. There were some comments early on about 'Why are we doing this?', some derogatory comments about people from other countries and perhaps some comments which could be construed as being from the White Australia policy, in a general sense. We emphasised to the ship's company that these people were indeed human beings first and that, whilst we could not understand their plight, we had to treat them as refugees.

I was particularly proud of that shift in attitude of the ship's company when this situation developed into a humanitarian assistance task—of how they performed a miracle and they went about their business in a very humane and compassionate way and everyone chipped in and lent a helping hand, beyond their specialisation and their training and their category, and just got on with the job. It was some time later, when it had all stabilised, that we noted that nobody had whinged about the fact that they had not had a meal—this is the ship's company—that they had not had a break. They had just got on with it. We were well into darkness when people started to think, 'Perhaps we ought to settle down to our own lives.' It was quite a shift in attitude, and one I am particularly proud of—the way people performed.

As I said, the performance of the ship's company of *Adelaide* to make this rescue happen was unparalleled and can best be described by the simple superlative 'superb'. It was very much a validation of their training, their commitment and their professionalism. A number of the ship's company acted selflessly and several—seven, to be exact—entered the water to assist and, on occasion, help rescue the unauthorised arrivals. The photographs of A.B. Whittle and Leading Seaman Cook Barker are indicative of that effort, but many more of team *Adelaide* contributed than just those seen in the two much-publicised images. I have deliberately not presented the photos of A.B. Whittle and Leading Cook Barker tonight.

To my personal relief, the unauthorised arrivals' leaders confirmed there was no loss of life and, importantly, that no-one was missing. This also gave the first opportunity to accurately validate the number of unauthorised arrivals embarked in SIEV4 and then embarked in *Adelaide* and we went to great lengths to validate that number—223. It was with great trepidation that I signed off on that number. I think I did two full checks to make sure that number, 223, was correct.

Photos 28 to 29 show a significant change. Photo 28 shows a very happy and smiling family reunited and at peace on the forecastle of *Adelaide*. I believe that photo was taken on 9 October. As you can see, it is just a little crowded. Photo 29 is taken at the same time, on 9 October. It is a 23-day-old infant wrapped in a towel. The towel was provided by us; the nappy was provided by us; the baby's bottle and the formula were provided by us. I think the lady holding the bottle is a SUNC who is wearing combat coveralls that we provided to all of them. That is the 23-day-old infant that I referred to in the ill-fated Channel 10 comments.

The unauthorised arrivals were accommodated on the forecastle deck, an exposed deck of HMAS *Adelaide*. A makeshift hoochie was rigged to provide shelter and, as I pointed out earlier, flush toilets—in a most liberal definition—were jury-rigged. All the unauthorised arrivals were issued with sleeping bags.

Photograph 30 is taken from the bridge on the morning of 9 October. It shows about a third of the SUNCs asleep; the other two-thirds are obscured by the angle and the makeshift awning over the launcher. As you can see, they are all (a) outdoors but (b) in sleeping bags and relatively comfortable under the circumstances. Photograph 31 shows them several hours later settled down for the day, another day spent on board *Adelaide*—and indeed this may actually be 10 October—as we are preparing to enter Christmas Island to disembark them. CJTF 639 directed *Adelaide* to remain at sea overnight on 8 October and prepare to effect the transfer of the unauthorised arrivals at 0800G on Tuesday, 9 October to the authorities on Christmas Island. I was given authorised messages on that.

In response to a command of CJTF 639 request, I also produced a preliminary investigation report to the key players to address reasons why SIEV4 sank. This directive to disembark the unauthorised arrivals was deferred until 1200G and eventually rescinded until Wednesday, 10 October. In the interim, at 0930G, I gave an unauthorised telephone interview with a Channel 10 staff member that later drew attention to the rescue photographs. Shortly thereafter, and again on 10 and 11 October, I was instructed by Commander JTF 639 and also by the Maritime Commander Australia that I was not to communicate outside the military chain of command on this operation or on any related issues. This took the guise of telephone conversations, general statements and a number of signal messages. New and clear guidance on operational security and public affairs was formally issued by Commander JTF 639 on 12 and 14 October.

Australian Federal Police and Australian Customs Service officers from Christmas Island were embarked in the afternoon of 9 October, and preparations and processes to transfer the unauthorised arrivals were developed. On 10 October I was directed to stop releasing digital photographic material. In the early morning of Wednesday, 10 October, I was directed by CJTF 639 to liaise with the Administrator and the Australian Federal Police to discharge the unauthorised arrivals to Christmas Island, and *Adelaide* secured to the buoy at Flying Fish Cove at about 1400G on Wednesday, 10 October. By 1700G all 223 SUNCs had been transferred to the custody of the Australian Federal Police. Thereafter, *Adelaide* reconstituted the depleted life raft capacity and I prepared to return to Fleet Base West for our next tasking.

In response to questions raised by *Adelaide*, CJTF 639 and the Maritime Commander Australia about media misrepresentation, and at the direction of CJTF 639 and the Maritime Commander, I gathered testimony and passed a series of statements from the ship's company of HMAS *Adelaide*. On 10 October, I passed 15 statements by secure email. On 10 and 11 October I passed these statements to my bosses. These statements were made by people who had witnessed the man overboards or aspects of the man overboards on 7 October. This was done to put to rest false media claims that children had been thrown overboard.

I also produced a chronology of events, or narrative, for the interception and boarding phase, including the man overboard incidents. A chronological review of the EOTS video footage, a summary of the distress, tow and the loss at sea of SIEV4 and an initial investigation—a report 'Why SIEV4 Sank'—were all provided. EOTS videotapes, with footage of the intercept, the

boarding, the man overboard, the tow, the sinking and the rescue phases, were dispatched by express courier mail to the Maritime Commander Australia on the ship's return to Fleet Base West on Sunday, 14 October. A copy had earlier been transferred to the Australian Federal Police at Christmas Island, and I cannot recollect whether it was on 9 or 10 October.

In summary, by 10 October, and certainly by 11 October, it was clear to the Commanding Officer *Adelaide*, Commander JTF 639 and the Maritime Commander Australia that no children had been thrown overboard and that no children had been recovered from the water. In my mind, this would never have been an issue and had not been raised by me. No signal messages originating from HMAS *Adelaide* had ever referred to an incident involving children overboard. To my knowledge, the first written indication of children being put over the side was mentioned in a CJTF 639 general guidance message about future boardings of SIEVs late on 7 October. That statement in itself was accurate and I did not query it.

Throughout this operation, to my knowledge, the only contact outside the immediate military chain of command by me was with the Administrator, Christmas Island; the Harbourmaster, Christmas Island; a Channel 10 researcher or reporter, the Australian Federal Police detachment at Christmas Island; the Australian Customs Service detachment at Christmas Island; and a DIMA representative at Christmas Island.

The then Minister for Defence, Mr Reith, and the Prime Minister, Mr Howard, visited HMAS *Adelaide* on 24 October to farewell the ship's company as *Adelaide* prepared to deploy to the Gulf. Whilst Operation Relex and the *Adelaide*'s role were discussed in very general terms, the details of the SIEV4 incident were not discussed. During the period November to January, whilst on station in the Arabian Gulf, I contributed information by email, DISCON message and occasionally by telephone to the numerous investigations, inquiries and general questions which had arisen from the SIEV4 incident.

Whilst I communicated with the Maritime Commander, Admiral Smith, routinely as my operational commander and my administrative authority; with Major General Powell and his staff in late November and early December; with Ms Bryant in December and January; with the Chief of Navy, Vice Admiral Shackleton, on 8 November so 25 December only; with Air Commodore Ekin-Smyth in February 2002 only; and with the Chief of Defence Force, Admiral Barrie, on 17 January and 24 February 2002 to assist with these investigations, at no stage have I communicated with the office of the Minister for Defence nor have I been contacted by any political party or member of any political party or, indeed, any government official. With the exception of an authorised press conference on Wednesday, 13 March 2002, I have had no dealings with the media, tempting as that might have been on occasions. I have zealously adhered to Operation Relex operational security guidance issued by Commander JTF 639 and acknowledged formally by me on 13 October 2001.

In closing, I remain extremely proud of the contribution of the ship's company HMAS *Adelaide* to the safe and very effective interception and boarding phase but, most importantly, to the courageous rescue of 223 people from the Indian Ocean on 8 October. Their professionalism, spirit and compassion certainly came to the fore when asked to stand tall and do their duty when SIEV4 sank. That there was no loss of life or injury is testament to their training, their skill and their personal efforts as individuals and as team *Adelaide*. I am also proud of their sustained ability to concentrate on the task at hand and not be distracted when their name, their involve-

ment and their reputation were, on many occasions, called into question by the media over the months since SIEV4. Throughout the 24-day Operation Relex patrol and the following 125 days on Operation Slipper deployment, they have done the Navy and Australia proud. That concludes my rather longwinded opening statement, but I did that in the context of allowing the facts, as I see them, to be presented for the first time to be aired publicly and, as my note says, I have a copy of the statement to offer to the committee.

CHAIR—Thank you very much, Commander Banks. We have been provided with your statement prior to its conclusion, although I for one chose to listen to your words rather than read them. I can see why you chose to make a statement—it is a very comprehensive and full one indeed, and I thank you for that. I note for the record that you are joined at the table by another officer. I assume he is a legal adviser.

Cmdr Banks—Yes, he is. He is Commander Peter Baston, who has been provided by the Navy to provide me with legal and contextual advice.

CHAIR—You may be aware that the committee thinks that it is probably not necessary but, if that is your wish, we are happy to comply.

Cmdr Banks—If I could add, it was not my requirement, either. Throughout I have tried to convey that if you are telling the truth you do not need assistance from a lawyer, but I was provided advice that in the contextual sense it was prudent to have somebody advise me on where things sat in the chain.

CHAIR—Sure. By way of explanation from the committee, people appearing before the committee may ask the committee to bring with them legal advisers and the committee may then approve. In our discussion we did not think it would be necessary—I think that was our general view—but we were of the view that if it should be requested we would comply and grant the request. I think that clears that point up. Senator Bartlett.

Senator BARTLETT—Thank you, Chair. Thank you, Commander Banks, for that statement and for hanging around patiently all day to be able to give it. Firstly, before I start, are you aware that the committee has been provided with your response to the scoping questions for Major General Powell's inquiry?

Cmdr Banks—I was led to believe that was the case.

Senator BARTLETT—That has not been publicly released yet, and I understand there are some sensitivities about it, so I will try to take those into account, but I do want to refer to parts of it at the same time. Firstly, listening to your statement and the various things that you have been asked to do subsequent to this event, predominantly it appears to clarify the confusion about differing understandings of what happened. It seems to me as though you have basically had to put in quite a lot of time, including—from one of the annexures at the back—your last night in Australia before you left the country for however many months you had to spend putting together more material for various people to verify what happened. Given the amount of time you have put into all that, does it surprise you or frustrate you that there still seems to be that level of confusion, right up to the level of the commander of the Defence Force, until

February or, indeed, even this morning the secretary of the department was still saying that he is not definite that children were not thrown overboard on this occasion?

Cmdr Banks—It does surprise me. I believed that the information was there that set the truth out, but equally I have not been surprised that we have gone to this level of inquiry. Back in October I conversed with members of the ship's company before we got back to Fleet Base West saying this would probably go to a joint standing committee because of the gravity of the events.

Senator BARTLETT—Attached to your statement there are about five or six pages which are headed 'unclassified'. It looks like a dot-point record of various visits—at least it is attached to the statement I have got.

Cmdr Banks—It is a statement?

Senator BARTLETT—Attached to the copy of the statement you just gave us.

Cmdr Banks—I guess pages 29 to 34 are my notes, but I am happy to tender them.

Senator BARTLETT—It looks like they have been accidentally, anyway.

Cmdr Banks—That is all right.

Senator BARTLETT—We can hand them back if you prefer.

Cmdr Banks—They are my bullet points if I am asked certain questions about certain dates.

CHAIR—Perhaps we should hand them back.

Cmdr Banks—As I have said all along, I have no bombshells or surprises or great revelations to make, so there is no harm in those being tendered. I see Senator Collins is smiling.

CHAIR—It is just that someone zealously provided us with your bullet points.

Cmdr Banks—That is okay. As I said, there is nothing I believe to be contentious or any great revelations to be made.

Senator BARTLETT—Even without the bullet points at the end, in your commentary and your statement about the visit of the Prime Minister and the Defence minister before the *Adelaide* left for the Gulf, nobody actually raised the issue. There were already, from the other evidence you have given, concerns way back on the 9th, 10th and 11th that there were incorrect reports about what had happened. Nobody, either from the Prime Minister's or the Defence minister's or even apparently the crew of the *Adelaide*'s side of things, raised this apparent misunderstanding. Is that the case?

Cmdr Banks—There were a number of things happening. After 14 October, Operation Relex was something that was history in the minds of most people on *Adelaide*. We were concentrating very much on the future. We had been told—it does seem a little dramatic at times—that we were preparing to go into harm’s way and that we were deploying to a war zone. That had a tendency to shift people’s focus from the past to the future. I had been told that the Prime Minister, the Governor-General, the Maritime Commander, the Chief of Defence Force and the Chief of Navy were all planning to visit *Adelaide* and farewell us at various times. I do not think it was until probably about 20 October that I was made aware that the Prime Minister and the Minister for Defence were coming to farewell us, and I do not think that was confirmed as an absolute until probably the 22nd. I attended some briefings on 23 October to prepare for that visit—and by ‘briefings’ I mean people talking about his agenda, the arrival times, the security arrangements and how the media were going to be entered onto the base and brought onto the ship. At no stage was I given riding instructions that we were not to discuss SIEV4. We viewed the Prime Minister’s visit as very much a farewell for Operation Slipper, and that was the spirit in which we entered into that visit.

I gave some instructions to the ship’s company about speaking freely and honestly if they had the opportunity to speak to either of our distinguished guests. I did ask them not to concentrate on the contentious issue of conditions of service for our forthcoming deployment. I was disappointed that actually one of the ship’s company did ask that question and railroaded the Prime Minister for a few minutes on the subject of access to flights, telephones and things—clearly something that could not be answered by the Prime Minister; in fact it had not been resolved by the department but it was resolved in time. Most people, including me, were a bit flummoxed by the visit of the Prime Minister. A lot of small chitchat took place. Most of it was to do with how people were feeling about the future, not about the past. We spent some time joking about the cricket, it being a subject dear to the Prime Minister’s heart. He, in a private address to the ship’s company—but it was covered by aspects of the media—spoke about the great job the ship’s company had done during Operation Relex to rescue the 223 people and how he expected we would continue that during the next deployment. He then took questions on a media call on the forecandle. He was on board for about—I would have to check my notes—45 minutes or 50 minutes—an hour, according to my notes. It went by fairly quickly and we really were focused on Operation Slipper. I was prepared to answer questions on Operation Relex if they were raised, but they were not raised.

Senator BARTLETT—Is it not appropriate for you to raise them yourself, or it was not in the front of your mind because you were focusing on your next engagement?

Cmdr Banks—I was certainly very focused on the next deployment. I was very focused on making sure the protocol and everything went right. I was very focused on micromanaging the event to be a successful event. It was a pretty impressive day to have the Prime Minister and Mrs Howard come down to farewell the ship’s company. They spent a considerable time just walking around, mingling with the ship’s company—one on one, one on two and in small groups—trying to get people to open up to them and talk about how they felt. I thought they achieved that. I was not at every conversation. I did stay on the Prime Minister’s tail throughout that, and he spoke about a whole host of things, but it was not a question and answer session about Relex; it was really about how people felt about the future and small talk about the cricket.

Senator BARTLETT—From your statement and other material that has been provided to us, you had obviously already provided statements or information to various people up the chain of command about what had happened, and you were aware that there had been some uncertainty about a ‘child overboard’ incident. Was that still a source of concern to you or was that pretty much someone else’s problem by then?

Cmdr Banks—I had reported the truth, as I saw it, up the chain. In a disparaging way, I guess, I believed that not all you read in the papers was the truth and that it would not necessarily always be reported in the media. I had no idea what information had been conveyed upwards outside my immediate area. It was not my position to comment on that.

Senator BARTLETT—In some of the documentation we have got there is an email you sent to Jenny Bryant on 4 January in relation to her inquiries. At the end of that email you said:

What concerns me is not so much what the Brigadier—

that is, Brigadier Silverstone—

or I said or recollected as ever having said. Rather the subsequent use of that information by other agencies is the prime cause of concern.

Can you clarify what you mean by ‘concern’ in terms of the subsequent use of that information by other agencies?

Cmdr Banks—Let me have the opportunity to just check what I did say in that report and the context before and after that. I think I was unaware that all these emails had been included in that report. There are lots of surprises today. I have not seen the Bryant report in its entirety. Let me just read this for a second. The subject of the conversation between the brigadier and me is obviously an area of some contention. I do not ever recollect having used the phrase that I have been reported as saying that children were thrown overboard. All the initial parts of the reports and Ms Bryant’s investigations and the subsequent emails were largely a ‘I said, he said, I did not think I said that’ argument, and that is probably the context that this was written in. I am trying to read this at the same time as we talk. I certainly spoke to the brigadier on several occasions on that day. I certainly recollect speaking about ‘man overboards’, people being in the water, and I certainly recollect talking about the child being held over. The exact wording that I used I cannot recollect.

Senator BARTLETT—I understand that and I would almost be surprised if you could. I heard some talk this morning that was almost poetic about the ‘fog of war’ et cetera. What I take from your statement there at the end of that email correspondence, as you have said, is not so much what you said or he said. Personally, I can very much understand people misreading or mishearing or having different impressions from conversations all the time. So I do not see that is a problem. But what you said next was that the prime issue of concern is the subsequent use of that information by other agencies. It is not so much what you said or he said; it is what other people have done with what you and he have said that seems to have been what you have expressed as the prime issue of concern. I wonder whether I could draw you out a bit more in terms of what types of use gave you concern and the nature of that concern.

Cmdr Banks—I am still trying to find the exact words; is it halfway down?

Senator BARTLETT—It is the very last paragraph of that email. I am happy to hand it over if it makes it easier.

Cmdr Banks—I have got a copy here now. Whether I said that or not, and whether the brigadier recorded it accurately or not, was inconsequential, because by 11 October we had all agreed that there were no children thrown overboard. What annoyed me was that throughout this whole period nobody else called back to ask for the information. I had spoken to Admiral Smith and Brigadier Silverstone in telephone and written guise and it had been, to my recollection, conclusively agreed that no children had been thrown overboard. Whether they took that same conclusion away, I do not know. But in my mind, at 11 October, I was adamant that no children had been thrown overboard.

Thereafter—and I would like to stay away from political statements, but perhaps it is inevitable on occasions that I cannot—I then felt, in the ensuing period, that the issue of children being thrown overboard was now a media and political stunt and that if anybody wanted to verify the veracity of the information perhaps I should have been questioned to provide corroboration of what did or did not happen, and that is the tone in which I was writing to Jenny. I did not realise that all these one-on-one emails were going to be there. I guess also to set the context it would be important to say that I am probably defensive by nature and was quite defensive of the ship and what had happened, and that defensive tone is coming out here. I am sure most people would probably say that is an accurate statement of my nature.

Senator BARTLETT—I appreciate that. Just building on your comment about people wanting to get the facts of the matter, there was a clear way of being able to do it. I guess that is what, in part, we are doing tonight in going back to the source. I think that is why we have asked you to be one of the first witnesses. You mentioned in your opening statement your conversation or interview with Channel 10, on 9 October I think. Your outlining of that is also provided in the documentation you provided to Major General Powell. Firstly, it seems that you were obviously directed afterwards, ‘Do not do that again, please,’ by a few people, in terms of speaking directly to the media. We have had some evidence this morning, which you may or may not have heard, where we explored the administrative guidelines in relation to media commentary that were in operation at the time. Is it your understanding that that interview you gave breached those guidelines?

Cmdr Banks—Yes, it is. It would be correct of me to fall on my sword and say that one area where I have erred was I gave an unauthorised media conversation on 9 October. To put it all into context, I had received media training as part of my preparations to command *Adelaide*. I was not an authorised spokesperson in the strictest sense of its definition. The brigadier and I had had a conversation on that day, and I think the two of us have a different recollection of that conversation as well. From my view, we were talking about the likely media interest to be shown to *Adelaide* on the arrival at Christmas Island for the disembarkation of the unauthorised arrivals, which was planned for 8 o’clock or 9 o’clock on the morning of 9 October. The brigadier was not keen for me to speak to the media, and I took that to be at Christmas Island. I am sure when you speak to him he will say that he was inferring that across the gamut. I misinterpreted that and I clearly got that wrong. But at the time that Channel 10 rang me, they caught me by surprise—I was in the shower.

Senator BARTLETT—I know the feeling.

CHAIR—I think that has happened to all of us.

Cmdr Banks—The telephone rang. The telephone does not normally ring that much, but during SIEV4 it seemed to ring a bit more often than normal. The call was transferred by the Officer of the Watch on the bridge. He said, ‘Sir, there is a telephone call for you.’ I had the conversation in my towel, looking out the scuttle. I was surprised. When the lady concerned introduced herself I thought she said she was a staff researcher. I cannot swear whether she said she was a staff researcher or a staff reporter. She asked me some very quick questions: who I was, and had we rescued these people from the water. I answered those questions truthfully. She asked me a couple of questions about—I will have to check the statement—more policy related issues, and I then gave her the line that I was not authorised to make comments about those sort of things, but, yes, I had pulled these people out; I had held a child. She asked me about getting photographs of the ship, and I think I told her that they might be available on the Web or through Defence channels. I also mentioned that we had photographs of what we had done. I made an undertaking to provide those photos to her, and we terminated the telephone call. On the sage advice of my XO, who said, ‘You might want to think twice about the photographs’—we actually had about 10 photographs prepared—we thought twice about it and decided that sending photographs to Channel 10 was probably not a good career move, and we decided not to.

CHAIR—You probably caused this journalist to win the Walkley Award by taking a phone call in the first place.

Senator BARTLETT—In the statement you provided to Major General Powell, you said that you advised the reporter you were unable to comment other than on the facts, and that you simply provided an outline of what you had done and how many people you had rescued, and indicated there was no injury or loss of life and people were generally in good health.

Cmdr Banks—I do not regret what I said in the statement. I regret making the statement.

Senator BARTLETT—I appreciate that, but I am just going to the fact that what you did actually say was pretty much—I hesitate to say bland—pure factual information about what happened, how many people were rescued, that nobody had drowned, and everybody was in reasonable health, which does not sound to me like bombshell, earth shattering information. The directives about public or media commentary came into force, I think, in August. You are saying that your interview with Channel 10 contravened those directives. Would your interview have contravened the directives that were enforced prior to August? Would you be able to assess that?

Cmdr Banks—I do not recollect ever having read the directive to the detail that I can recall it. I recently read the 18 August directive, and the other day I asked when that directive arrived on the *Adelaide*. I believe the directive arrived in Adelaide some time in early September.

Senator BARTLETT—That is partly why I asked. If you were used to the old one, and this new one had only just arrived, then it may well be a different story. But, just going a bit further in the information you provided to Major General Powell, when you were asked of any subsequent misinterpretation of information, you said you became aware of a misinterpretation about children overboard on viewing the Internet and seeing newspaper headlines. Then you

say, 'I took no personal action to remedy this, primarily as I was directed not to.' Who directed you not to?

Cmdr Banks—We had taken action in discussions with CJTF 639 and the Maritime Commander to clarify that there were no children thrown overboard. That was done by telephone and then by signal. Thereafter, I took no personal action because I had been directed by both officers, verbally and in writing, that it was not my job to do so—that I had presented the information and thereafter it was outside my realm.

Senator BARTLETT—Just to clarify that—I am still getting used to all of these various titles and things: that is Brigadier Silverstone?

Cmdr Banks—Brigadier Silverstone and Admiral Smith.

Senator BARTLETT—And they both said, 'Don't do anything to correct that; that is not your job. We'll handle that.'

Cmdr Banks—Yes.

Senator BARTLETT—They did that in writing and verbally?

Cmdr Banks—Correct.

Senator BARTLETT—Just flowing on to another bit that asks about any restrictions that were placed on you, you stated there that CJTF 639—which is Brigadier Silverstone; I think I have finally figured that out—directed that the ship's company DRN email be turned off, so that basically all email communications in and out would be prevented, except for very specific limited operational emails. Is that a normal type of situation, that the ship's email be closed down?

Cmdr Banks—That is not an easy question to answer with a yes or no answer—and certainly not with the word 'normal' invoked in it. Defence provides the email. It is for Defence communications. It has been used for personal communications by everyone. Indeed, it is a great morale booster to be able to email. But in an operational context, where a situation requires that operational security be maintained, the Internet email DRN—Defence Restricted Network, I think, is what it stands for—needs to be controlled so that people do not privately send operationally sensitive emails out of a ship.

The policies are generally developed by each ship, and for Operation Relex we followed that policy quite closely. The guidance is pretty broad; the execution was developed locally. It is a matter of just turning a switch off, and, if you want to transmit queuing certain emails, saying, 'I want to send those six,' and having somebody send those six. So I was able to send certain emails, but at the time we were so busy we generally did not have many emails to send. Some of those emails were about Relex—setting it up for other ships—some were discussions about a future deployment, but all of the ships' company's emails were turned off to prevent the ship's company being able to email private comments, attach photographs. I do not think they would, but if somebody wanted to send something to Channel 9 they could have done that.

During Operation Slipper, we maintained a similar level of control but in a different way. We gave very clear instructions to the ship's company on what could and could not be communicated, but we kept the email pipeline open. But I did have people review the email traffic to make sure that operational security was not being violated. I made the decision, I think it was on 10 October, to resume normal email flow in the ship because I had a clear conflict between the need to allow people to prepare for the next deployment and the operational security of Relex, because clearly we had now landed the SUNCs—that aspect was over; it was on the front page of most papers—and I made a statement by signal that I was restoring full email connectivity.

Senator BARTLETT—Just a little bit further on again in your information that you provided to Major General Powell, in the section on post-action events, there are two bits in there: one, it does not give a date but it says that the ship was visited by the PM, the Minister for Defence, the CN—I think that is the commander of the Navy—and MC Australia, which would be—

Cmdr Banks—Admiral Smith.

Senator BARTLETT—Is that the visit we were talking about before—the one with the Prime Minister before you headed off to the Gulf?

Cmdr Banks—We had several visits. The Prime Minister, Mrs Howard and the former Minister for Defence, Mr Reith, visited on 24 October. The Governor-General, Dr Hollingworth; Chief of Navy, Admiral Shackleton; and the Maritime Commander, Rear Admiral Smith, visited on 8 November. Minister Reith was supposed to visit that day. He only visited *Kanimbla*. I also had visits at sea from Chief of Navy, Chief of Defence Force and subsequently the Minister for Defence, Senator Hill, and later on, Chief of Navy and the Maritime Commander.

Senator BARTLETT—In terms of testing that against what you have said already this evening, to read the sentence completely: 'The ship was visited by the PM, Minister for Defence, Commander of the Navy and Maritime Commander Australia and all visitors discussed aspects of the operation to varying degrees.' This is Operation Relex. Earlier on you were saying that the Prime Minister and the Defence Minister on their 24 October visit did not particularly discuss operation Relex at all.

Cmdr Banks—My recollections of the conversations are not 100 per cent absolute. Minister Reith, early on when he arrived, shook my hand and made some general remarks about a good job. He had written a letter of praise to the ship. He spoke about a dinner we had had in Darwin in February and asked questions—how do you feel? That was the general thrust of those discussions.

Towards the end of the time on board, the Minister for Defence, Mr Reith, wanted to show the Prime Minister our hangar—the aircraft hangar on the ship—to talk about accommodation for unauthorised arrivals. I was caught unaware of that requirement and was a little embarrassed because the hangar was untidy—that would be a polite term. With the short notice of the visit, we had moved lots of things from places and hid them. The hangar was an obvious place to hide some of those things and I was not particularly keen to show the Prime Minister of Australia a

dishevelled hangar which contained all the flotsam and jetsam that we could not stow elsewhere—and indeed all the stores we had been trying to embark on the day of his visit.

The minister—insisted is the wrong word—implied that it was pretty important the Prime Minister see the hangar. I took the hint. The Prime Minister, the Minister for Defence and I went into the port hangar, which was the lesser of the two evils, and I quickly showed him that the space available in that hangar was clearly insufficient to physically accommodate SUNCs full stop and certainly for any period of time. I interpreted that as being a need for the Minister for Defence to show to the Prime Minister a situation that I was not aware of. But it obviously had something to do with the accommodation of unauthorised arrivals on frigates.

Senator BARTLETT—Can I go to material that was provided to PM&C, which was the extract from the ship's log from 6 October to 7 October. A lot of entries caught my eye but one in particular was at 1549 of the second day.

Cmdr Banks—Could I take that time again, please?

Senator BARTLETT—1549.

Cmdr Banks—On 6 October? I have more logs—

Senator JACINTA COLLINS—We have two. I do not know how many you have got.

Senator FAULKNER—There are no logs in parliament.

Senator BARTLETT—*Adelaide* boarding logs of 6 and 7 October.

Cmdr Banks—6 October at 1549?

Senator BARTLETT—I am fairly sure it is 1549 of the second day.

Cmdr Banks—On the 7th or the 8th?

Senator BARTLETT—I think it would be the 7th. It is near the end—about three pages from the end.

Cmdr Banks—Okay.

Senator BARTLETT—As I understand it, just to give some context, it is talking about the BPO, the boarding party officer. Is that what it stands for?

Cmdr Banks—Yes, it does.

Senator BARTLETT—It is talking about the BPO investigating the situation on board, observing unauthorised arrivals et cetera, and then at 1549 it says, 'The CO'—that is you, I think, the commanding officer—'advised approval of PM of Aust to tow vessel to place to be

determined'. Is that what it says—that the Prime Minister had to provide the approval to tow? Is it a normal thing for the Prime Minister to involve himself in operational matters like this?

Cmdr Banks—I will answer that in two sections. I will answer the statement here, and then I would like to put some context around it. This is third- and fourth-hand information in this log. That originated from a telephone call I believe with Commander JTF 639, who advised me that this was a big deal and that the Prime Minister would make the decision where we would take this vessel.

Senator BARTLETT—So decisions being made about your actions in terms of the authority and how you were advised came direct from the Prime Minister in relation to this incident?

Cmdr Banks—It did not come direct from the Prime Minister; it came from the Prime Minister down the chain of command.

Senator BARTLETT—I did not mean that he rang you up and told you what to do, but he was the one that made the call.

Cmdr Banks—That is what I was led to believe and that is what I said earlier in my statement: that the mission was to deal with this in accordance with government policy and that we were to deter the unauthorised arrivals from entering Australia—I am just trying to find the other words—'pending a government determination on the transfer and transportation'.

I will set the context of these logs, because I think they will get discussed at some length. What you have there is a summary of a variety of logs. It is a summary that I put together for the Powell and Bryant reports, because they could not have these documents when we were in the Gulf. I think at one stage we thought about safe-hand mailing them, but that takes a long time—weeks—and, as you are aware, with the Heathrow heist, guaranteed safety is not always delivered. It was easier for me to retain the logs and provide an official extract. I sat down and took what I considered to be the relevant information out of the varying logs and put together a narrative of the various things. The official log is the ship's log. It is compiled on the bridge by a junior officer under the supervision of the Officer of the Watch, and it is the ship's official record of major events. It is drawn from the Officer of the Watch notebook, which is exactly that—a notebook. The Officer of the Watch then takes the significant events out of the notebook and puts them into the ship's log. The ship's log would have data on the ship's track—where it is going, what it is doing, the weather, when the ship altered course—so, navigationally, the track of a ship and its major activities could be reconstructed.

Senator FAULKNER—Is that always filled in by pen script?

Cmdr Banks—It is always by pen script. Some of the traditions continue. It is always done in pencil and it is always signed by the responsible officer. I would love to be able to spend more time to go through the log and teach people how to write it better and correct it, but in this day and age we just run out of time to do some of those things. That is partly why I made that summary, so that the material that may not be relevant was out of it—not so much the ship's log; that was the primary document. There was an ops room narrative which was compiled in the ship's operations room, which is immediately below the bridge—

Senator JACINTA COLLINS—What did you call that?

Cmdr Banks—The ops room narrative. It was compiled by a junior operator on a headset who was taking snippets of information as he or she hears them and/or as he or she is told by the PWO to make an entry. Again, that is a manuscript record. There was a handover log between the warfare officers of their recollections and key thoughts, and the boarding log. The boarding log was developed for the boarding scenario—we do not normally run that. When we went to boarding stations, one of the junior officers—a midshipman, in this case—grabbed a pencil and recorded key pieces of information, as they heard them, in the log.

Senator FAULKNER—Just for background, I am just interested—is that done from the *Adelaide*? Would that always be done on the *Adelaide* itself as opposed to by anyone in a RHIB, for example?

Cmdr Banks—The RHIB does not have the capacity to do anything.

Senator FAULKNER—Exactly—so you have got a junior officer filling that out, contemporaneously with these events, on the deck, basically—or on the bridge, or whatever?

Cmdr Banks—Yes. They are hearing information over broadcasts, over the radio and conversational information—and, on occasions, I am saying, ‘Make an entry’. I did carry a dictaphone with me, which was a voice activated dictaphone. I experimented with it and I found that it was much easier to operate using the voice activated switch off, and the deliberate action of turning it off and on. In the preliminary phase of the boarding I religiously picked it up and said, ‘Starship Enterprise; Time’, and made a comment. As the pace of events picked up I omitted to do that. The last entry on that tape was probably about the time that I got authorisation to conduct the boarding.

Senator FAULKNER—Would these only be your entries as commanding officer, effectively, or would that junior officer be able—with either the advice of other, more senior officers, or as a result of what they might see or hear—to record other events?

Cmdr Banks—The Officer of the Watch—the officer responsible for the ship—me and the navigator would be key contributors to the information herein. But, also, they would use their eyes and ears and put entries in themselves. They would hear conversations and summarise those and, indeed, if they saw anything, they may record that.

Senator FAULKNER—I am sorry, this is neither here nor there, but I am just interested. Would you put anything in after the event—when the RHIB gets back to the *Adelaide*?

Cmdr Banks—No.

Senator FAULKNER—So they are all contemporary events, effectively?

Cmdr Banks—The word ‘real time’ is a little bit too modern for this but they are, in the true sense, real time. If you read them you will see that they have not been doctored, they are—

Senator FAULKNER—No, I am not suggesting that—I was just interested in the way they were compiled.

Cmdr Banks—Mandraulically!

CHAIR—On a note of information, I might just say that I have been advised that copies of these will be available to the committee. Apparently, photocopies of your log have been with the Minister. They have now been cleared, and I understand that they will be made available to the committee.

Senator FERGUSON—Chair, I want to ask questions on two responses, but I do not want to interrupt Senator Bartlett. You have still got a number of questions to ask, have you?

Senator BARTLETT—Yes.

Senator JACINTA COLLINS—Are you still doing the clarification?

Senator FERGUSON—It is just that there are a couple of responses that I wanted to pursue.

Senator FAULKNER—I am sorry, I may have waylaid Commander Banks here—

CHAIR—I suspect that all of us have questions for Commander Banks.

Senator BARTLETT—Just clarifying that entry a bit further, it says that the ‘CO advised approval from PM of Aust to tow vessel to place to be determined.’ Was the PM’s approval about starting to tow, or was it about where it would go? You basically had to wait for the approval before you could start towing. I presume that the main direction would be away—it probably did not matter where, as long as it was away, in the short term. If it says ‘to place to be determined’, how do you know where to start towing it?

Cmdr Banks—The determination, I think, at that stage was whether we were going to tow it to Christmas Island, Cocos Island or back to Indonesia.

Senator BARTLETT—But basically the authorisation to tow was one that was provided or required from the Prime Minister or the Prime Minister’s office?

Cmdr Banks—I was expected to be given guidance about that. I had the authority and the right to make a determination for the safety of life aspect of what I was going to do. Whilst a distress had been indicated, it was not my opinion that this was an immediate distress incident. I sent a team across to view the state of machinery in the SIEV, with a view to seeing whether we could get it all going again and whether we would take the vessel back out to Indonesia, whether we would stay with it or indeed whether I had to tow it. Those determinations were being made by government, but rest assured if I had felt the need at the time to take action based on safety of life at sea issues, I would have taken those actions. A decision to tow the vessel and take it to Christmas Island was subsequently made, and we effected that tow.

Senator BARTLETT—Just going to one of your other bits of information you provided very early on in your answers to the scoping questions, there are a few statements that follow on reasonably closely from each other. You outlined, probably in shorthand, what you have outlined in greater detail this evening in your opening statement about the chain of events—

Cmdr Banks—Which section of my—

Senator BARTLETT—Right at the start of your record of events—the scoping questions in the routine inquiry into Operation Relex. It starts with a record of events. The first question is:

I seek your knowledge and comments about the events of 6 - 8 Oct ... what is your knowledge of ... the facts and circumstances leading to the sinking of SIEV IV ...

You detailed in a page or two—a briefer version of what you went through this evening—the interception of the vessel, the vessel not heaving to, the firing of warning shots and those sorts of things. At the end of that you say:

Whilst the mission had been accomplished—

I presume that is the mission to prevent them from entering Australia—

and the SIEV deterred from effecting an entry ... I was not comfortable that a win-win situation had been achieved.

I think you used these actual words in your opening statement:

With the number of women and children onboard ... and the state of repair to the steering and engines, a distress call was expected sooner or later.

Just under that, in response to a question about the cause of the sinking of the vessel, you have made what looks like an extract from a report to Brigadier Silverstone. You said:

The vessel was only ever marginally seaworthy and was carefully sustained in this condition due to the efforts of the RAN (a priority aim was to keep the SUNCs in the SIEV vice to contemplate an embark in Adelaide). The vessel was unsafe for sea and would have failed any mariner safety compliance inspection ... The SIEV also had no liferafts.

... The vessel was significantly overcrowded and the movements of 223 people (often excited) created a significant momentum in the vessels righting motion.

As I read that, you are saying that it was only ever marginally seaworthy; it was really unsafe for sea and would have failed any mariner compliance inspection; and it was significantly overcrowded. You only really kept it marginally seaworthy because of the efforts of your crew. Up above you have stated that a distress call was expected sooner or later. But still at this stage, either your feelings or your orders were that the primary objective was to stop them entering Australia and to try to find a way to turn them back. It seems to me that once a vessel is in that condition, why wait for it to sink? Wouldn't it have been easier—I acknowledge the magnificent efforts of people in rescuing everybody without loss of life—to get them all off before the thing sank rather than wait for it to sink, as it almost inevitably seemed likely to do? How could it be contemplated that anything else could be done with it? It does not sound from those descriptions that it would have been safe to wave it off back to Indonesia, assuming that it was of a mind to.

Cmdr Banks—In the ideal world it would have gone back to Indonesia; that would have been an ideal outcome. Our mission was to deter and deny entry to Australia. If the vessel had left Australia and gone back to Indonesia, that would have been a mission success. The boats are bought and used as a one-way transport arrangement. I do not believe that they get these vessels with a view to having them do return journeys. You could see where the end state was going to be—that we would end up, I believe, in a safety of life situation. But we were not going to get to that stage until we had effected our mission. Our mission was clear: it was to deter these people from making an entry into Australia's contiguous zone and indeed the migration zone.

From the photographs, you can see the vessel was clearly overcrowded. It would be a statement of conjecture as to whether it was seaworthy, but I would contend that it was marginal at best in its visual presence that you could see from those photographs. I had a team of people go on board to assess its seaworthiness. We certainly were not doing it from a Lloyds register viewpoint; we were doing it from a safety viewpoint—do we have to play our hand now and rescue these people and declare a mission failure, or do we continue with efforts to achieve a mission success, which was to deter these people from entry to Australia?

That team viewed the vessel and made the determination that the vessel was marginally seaworthy. Remember, the vessel had journeyed from Indonesia, it had sustained eight knots, its engines were continuing to run, it had sufficient fuel and it had ample water. Whilst those situations existed, it was a vessel that was free to ply on the seas. My own judgment was that sooner or later this situation was not going to be—I think I used these words—a win-win. We were going to get the vessel out of Australia's contiguous zone, but I felt that we were going to end up with a safety of life at sea situation because very quickly the vessel stopped. We had left the vessel with its engine running and its steering intact, a tenuous jury rig arrangement. The vessel's bilges were not dry, but there was no significant water ingress. We gave them a compass and we gave them clear directions of where to head back to Indonesia.

Very shortly after the boarding party had left the vessel and I took station five miles over the horizon, it was very quickly evident that the SIEV had again stopped and they were making no effort to continue north towards Indonesia. When I wrote that situation report about the win-win, I was trying to draw attention to the fact that, yes, I had achieved a mission success—they were outside Australia's contiguous zone—but clearly we were not going to get them back to Indonesia, and I believed that very soon I would be back there involved in a—

Senator BARTLETT—I am not wanting you to pass comment. I recognise you were operating under orders. I am just wanting to push this in terms of where that line is drawn about the safety of life at sea situation versus—I do not know whether 'primary objective' is the right phrase—your mission aim of preventing entry. When do you make a decision that you are facing a safety of life at sea situation? Those extracts I have just read out about marginally seaworthy, significantly overcrowded, the photos you showed us earlier on—from, I think, a day earlier than that report was written—with the deck already awash—

Cmdr Banks—Those people had made that determination themselves. When they departed Indonesia, they had made the determination that the vessel was seaworthy. They embarked on a journey in a vessel at sea over a long distance with food, fuel and water and lifesaving equipment to satisfy their requirements. When I boarded them, we made the determination that,

whilst it was not to Australian standards, the vessel was not in an immediate risk of sinking. It had power and it had steering, it had sufficient fuel and it had sufficient water.

Senator BARTLETT—You would have been aware, via reports from your boarding party, that there was a three-week-old infant on board—that sort of situation?

Cmdr Banks—Yes, I was.

Senator BARTLETT—You were saying that at one stage you gave the people on the vessel a compass and it moved away a bit. Did you follow it, or did you stay and observe it from a distance?

Cmdr Banks—We gave them the compass because they had thrown their own navigational equipment overboard. I felt it difficult to send a vessel back to Indonesia without some form of navigation equipment onboard. We spent some time searching high and low for a compass that we could afford to give them. We gave them an orienteering compass that somebody actually owned. We did not have a compass that we could give them. We gave them the compass because I felt it was my duty to give them some form of navigational direction.

They were escorted to a position just clear of 24 miles north of Christmas Island. We then recovered the boarding party and brought it back to Adelaide. I have some chartlets with the exact positions which I could tender. We let the vessel go right on the boundary of the contiguous zone at 1026G. The vessel, with the combination of its dying engine movements, the wind and whatever current was there, ended up about a further five miles north in the space of three hours. It had predominantly drifted that far. My summary is that, once we took the boarding party from the SIEV, the people on it disabled their engine and their steering and had no intent to continue back to Indonesia, nor did I really expect them to do that.

Senator BARTLETT—In terms of your operational obligations, if the vessel had kept going off into the distance towards Indonesia, are you required to follow them at a distance or observe them?

Cmdr Banks—No, I was not required to follow them at a distance. I made a judgment that I felt, in this situation, it was prudent for me to remain within the immediate area so that I could provide some surveillance. The distance was chosen because it would be difficult for them to see me. A warship on the horizon in grey is quite hard to see, but with radar and EOTS I would be able to see them. I felt comfortable that I was meeting my broader obligation, as a humanitarian effort and under the safety of life at sea convention, to remain in their immediate area, but I was also achieving the operational aim, which was to let them clear the contiguous zone and to return to my maritime surveillance and response mission—an each-way bet.

Senator BARTLETT—Once they were continuing on—assuming that they did not disable their engines or the engines did not stop working and that they kept going—

Cmdr Banks—They were on the high seas and they were responsible for their own navigation and destination.

Senator BARTLETT—With the specifics that you were talking about as to where it was intercepted—there are a lot of different terms like the contiguous zone, territorial waters and those sorts of things which I keep getting mixed up; it is actually relevant to a separate issue of a communication from the United Nations High Commissioner for Refugees to the immigration department, which I will not ask you about—was the vessel intercepted or did it actually enter Australian territorial waters at some stage?

Cmdr Banks—The vessel was intercepted about 100 miles north of Christmas Island. *Adelaide* maintained a shadow role over the horizon. We sent a long-range RHIB in to deliver the DIMA warning notices. That was done in a way trying not to reveal that there was a warship nearby. The tactics were to try to prevent these people generating a safety of life situation in the middle of the ocean and saying, ‘Here’s the Australian Navy; we’ll all jump overboard,’ by our playing a cool hand and staying clear but, at the same time, advising them that, if it were their intent to go to Australia, this is what would happen. We did that by launching the RHIB from one direction and having the RHIB approach from another direction and at no stage showing *Adelaide* in the visual horizon of the SIEV and the SUNCs. I did that with my nav lights off, staying about nine or 10 miles clear. We continued to shadow the SIEV in towards Australia—again, on the high seas, outside Australian jurisdiction—and then made efforts to deliver the second set of warnings when it was evident to us that the vessel was indeed bound for Australia, Christmas Island. After the vessel had entered Australian jurisdiction by crossing into the contiguous zone, I sought approval to board the vessel inside the contiguous zone. We effected that boarding just before it entered Australian territorial waters.

Senator BARTLETT—Did the boat at any stage enter Australian territorial waters?

Cmdr Banks—I would have to go back and reconstruct the whole lot. One of the reports was that we were a mile or two inside Australian territory; the other was that we were a mile or two outside it.

Senator BARTLETT—Could you take that on notice?

Cmdr Banks—I can take it on notice, but at no stage did the vessel enter the Australian migration zone.

Senator BARTLETT—If you could specify about the territorial waters, that would be appreciated. One of the questions that was asked by Major General Powell concerned the cause of the sinking. You went through some of the statements I read out before about the state of the boat and, at the conclusion of that, you said that the balance of probabilities suggests that the vessel began to sink due to its inherent unseaworthiness, exacerbated by a sudden ingress of water, the cause of which cannot be reliably ascertained, and that the natural panic in the unauthorised arrivals generated movement which basically stuffed the whole show, in shorthand. Just to confirm that: your assessment is that, whilst there were obviously some efforts to disable the steering capacity and other aspects of the vessel, the reason it sank, on the balance of probabilities, was its inherent unseaworthiness, exacerbated by the sudden ingress of water?

Cmdr Banks—You can see from the photographs that the vessel had water flowing out of it at an early stage. There were reports that the vessel had water in the bilges. The vessel’s pumps,

which were functioning when we first boarded, stopped working. One was for fuel—and we got some more fuel for them at one stage. The other was because the pumps were run dry. We provided pumps to assist them. The vessel was a wooden-hulled vessel; it was teak. Clearly, it had great buoyancy capabilities because, after the 8 October sinking, it remained partially afloat for at least 24 to 36 hours. So it had a reasonable flotation capability. Its engines were functioning when we first boarded it, and it maintained that good speed towards Australia. But, in the period after we boarded it and whilst we were on board, at various stages the engines conked out. We assessed that that was due to them being involved in what we called acts of sabotage.

The boarding party had significant difficulty moving around the boat to obtain access to all the areas of the boat. The steering compartment was actually underneath the toilet—rest assured that the boarding party were not too keen to be operating in that area. There was a lot of smoke in the boat—the diesel's exhausts generated smoke—and they were uncomfortable operating in those areas. We believe that at certain stages the SUNCs deliberately lit more fires. All of those things made the seaworthiness of the boat a little more tenuous on each occasion. When we departed the SIEV at 1030, it was the opinion of the boarding officers that the vessel was still seaworthy. It had an engine running, the water in the bilges was not at a level of concern, and the steering had been jury-rigged to be functional again. The vessel was still seaworthy.

Given the vessel sank 24 hours later, you could conjecture that the vessel's capacity to remain seaworthy abated with time. I still contend that it was on a one-way journey. The pumps which were keeping the bilges at a sustained or manageable level no longer worked. The portable pump that we had got functioning on that vessel by the provision of petrol from Christmas Island had stopped working. The portable pump that we had provided had stopped working, and we put the peri-jet eductor in. We believed that we were getting ahead of the water and were actually reducing the ingress of water.

The vessel, we contend, was continuing to be sabotaged, and at some stage the combination of the factors of the water ingress—and we do not know why the water was ingressing at a greater rate; it may have simply been that when the water got in other items in the boat started to float and perhaps punctured the hull and created an opportunity for more water to ingress—and the movement of the SUNCs on board caused the vessel to dip and, in the sea state, to become swamped forward. Once that swamping motion took place, combined with the increased panic of 223 people who were now generally fearful, the vessel began to founder. At that stage I made the decision it was time to effect a safety of life at sea rescue.

Senator BARTLETT—Obviously, it is a very difficult task to balance all those different obligations—and I do not envy you—but I presume it would be more difficult for your crew to have done what they eventually had to do, which was to try to get everybody out of the water in a sinking boat situation, than to have been able to transfer them off the boat before it got into that situation.

Cmdr Banks—Transferring the people to *Adelaide* would have been a mission failure. The mission was to deter and deny their access to Australia. Taking them on board *Adelaide* in other than a safety of life situation would have been a mission failure. That is why when they jumped overboard I went to lengths to ensure that they were returned from the water to the SIEV and not brought to *Adelaide*, because I figured that, once we allowed some on board *Adelaide*, I

would not get any of them off *Adelaide* and I would be inviting at that stage what we thought were 208 on board.

Senator BARTLETT—I appreciate that and I appreciate the primary mission requirement in that sense.

Cmdr Banks—To continue, I was not believing that the vessel was about to sink. We had controlled the situation with the use of the peri-jet eductor. We stopped the tow, passed the peri-jet eductor, established pumping and recommenced the tow. In the late afternoon the boarding officer expressed concern about the water ingress and, to allay his concern and satisfy me that we had control of the situation and I was getting genuine information from somebody who was not necessarily excited by the event, I had the Executive Officer and the Marine Engineering Officer from *Adelaide* go across in the RHIB and make their professional assessment of the seaworthiness of the vessel and whether we were at a SOLAS situation yet. They made the assessment that no, we were not, we had control of it and the water levels in the bilges were beginning to fall, which corroborated the fact that we had the situation contained. That situation very quickly degenerated.

Senator JACINTA COLLINS—Commander, was that the stage at which Brigadier Silverstone was encouraging you to go on the SIEV?

Cmdr Banks—I have no recollection of Brigadier Silverstone ever, ever suggesting that I go on the SIEV. I do not think he would have ever made that suggestion.

Senator JACINTA COLLINS—I will address this tomorrow when I go to his statement, but I just wanted to give you the chance at this stage to comment.

Senator BARTLETT—So what you have here is that, as reported in discussions with Brigadier Silverstone and in signal messages, the SIEV was eventually assessed as a vessel in distress and the decision was made to tow the SIEV to Christmas Island to await GOAS determinations. Sorry, what does 'GOAS' stand for?

Cmdr Banks—Government of Australia.

Senator BARTLETT—At that stage, once you made the decision to tow it to Christmas Island, didn't that constitute a mission failure in your terms?

Cmdr Banks—We had no longer deterred and denied; we were now containing, which was the other part of the mission.

Senator BARTLETT—So, at that stage, you were saying, 'Okay, we are going to take them to Christmas Island anyway, when the vessel is in that situation'—I am sure you understand what I am driving at: I am not questioning your judgment, but it seems to me that it would have been much better for the safety of your crew and everybody concerned if people had been taken on board before it got to the stage that it got to. Certainly I am not questioning people's assessment about the seaworthiness, or whatever, at various stages. But, once the decision was made to tow it to Christmas Island—

Cmdr Banks—That decision was made at 1.30 on 7 October. We intercepted it at 1.30. At about 1700 we commenced towing, and we towed the vessel for 24 hours. At 1600 or 1630, there were concerns about the vessel's ability to prevent the ingress of water, or our pump's ability to prevent the ingress of water. I sent people across to make a second evaluation of that. That situation quickly deteriorated. By 1700 on 8 October, the vessel began to founder. Those actions were nearly simultaneous. I was asking the question, 'Do I need to get them off now, or do we still have the situation contained?' because I needed to stay focused on the primary mission, which was not to get them on board *Adelaide*. Once we got them on board *Adelaide*, we entered the third phase of the mission, which was now where we were going to transport them to.

Senator BARTLETT—I have got your statement, so I can re-read it, but I want to confirm your evidence that the unauthorised arrivals expressed concern for the wellbeing of the infant and young children in amongst all this when they were being transferred to the *Adelaide* et cetera.

Cmdr Banks—Are you drawing on that email from the people on Manus Island?

Senator BARTLETT—I am actually drawing on what you said, I think in your opening statement, when you were showing the photos and the process of people coming on board.

Cmdr Banks—Early on, on the night of 6 October and the morning of 7 October, they showed us an infant and some children on board.

Senator BARTLETT—No, I think it was when the infant was being transferred to the *Adelaide*.

Cmdr Banks—From the SIEV when it was sinking?

Senator BARTLETT—Yes.

Cmdr Banks—We were aware that infants were on board.

Senator BARTLETT—They were specifically handing over the infant to make sure it was safe.

Cmdr Banks—They passed the child to us, into the RHIB. Probably the first person off the SIEV when it began to founder was that infant.

Senator BARTLETT—And that was, in part, because the unauthorised arrivals, you said, passed it forward or made sure that the infant was—

Cmdr Banks—At that stage, we had made a determination that the vessel was now foundering and that we were in a safety of life situation, and the first person off was a young child.

Senator BARTLETT—In your general—

CHAIR—We might make this the last question, because we do want to finish on time if we can and there are a couple of things we need to settle before we go.

Senator BARTLETT—You said at the start that you have had 25 years service in the Navy. Is this situation unparalleled, in your experience?

Cmdr Banks—Absolutely—and long may that situation continue. I believe that probably the worst, or the most feared, order I would ever expect to give is, ‘Launch the life rafts.’ It was a moment that will stay in my mind forever. It was not a difficult decision to make; it was clearly evident that I had to make that decision. But the gravity of those orders was significant and will stay in my mind forever.

I used the phrase ‘a controlled abandonment’. I need to emphasise that: it was largely a controlled event. But it did happen very quickly. In hindsight, I do not think I would have expected that vessel to have foundered as quickly as it did. But, once the decision was made that this vessel was now foundering—and it did go down very quickly—it was never, ever dangerous. The vessel had a significant inherent buoyancy from its teak construction and the amount of air in it, and the fact was that it had survived this journey already.

The people realised the situation and, despite their wailing, crying and general concern, behaved in a relatively ordered way and took clear direction from the boarding party, who gave very clear guidance to all the people to inflate their life jackets and enter the water. The previous day people had jumped in the water. On this occasion they entered the water in a much more controlled manner. Most had inflated their life jackets. The boarding party waited for some time before they inflated their life jackets, and then they entered the water themselves.

I backed *Adelaide* down from a position ahead of the vessel to provide a lee and to recover the tow out of the water at the same time. My aim was to get as close to the SIEV as possible to provide them with a morale factor of, ‘Here I am; I am ready to rescue you,’ to provide a physical lee, a shelter, for them, and to make the transit distance as short as possible. I had to be careful, also, that I did not drift on to the SIEV and cause more damage due to the different drift rates.

We put the life rafts in the water one by one, and ended up putting all six in the water. There was some concern of how we were going to get the life rafts from the ship. Normally, life rafts are tethered to the ship. You enter yourselves into the life raft and then you undo the tether. Getting the life rafts elsewhere was a new experience, and we used the RHIBs to assist do that. Indeed, that is why some of the people entered the water: to assist in the transfer of the life raft from *Adelaide* to the RHIB to get it across.

Those people who were able to enter the life rafts did so in a reasonably orderly fashion and stayed in the life rafts until they came back to *Adelaide*. Those in the water either swam, floated or paddled their way towards *Adelaide* or were assisted to *Adelaide* either by the RHIB or by the people in the water and entered *Adelaide* from the water to our 01 deck in a relatively controlled manner.

The whole event—I would have to check my log—took over an hour and a bit. If I could have picked a time to have said, ‘I think this is going to happen: please take your luggage off

and embark in *Adelaide*,’ perhaps I would have done that. I was not able to predict that time, nor do I think I would have been able to predict that time, nor did I expect that the vessel would founder so quickly.

CHAIR—I think that might be enough for one day. We will resume with you in the morning, Commander.

Cmdr Banks—I am happy to continue.

CHAIR—I know, but I am not sure after a full day that the committee is. We notice your ability to volunteer.

Senator MASON—He is just getting warmed up.

CHAIR—I also understand from some advice tendered to me from behind you during your evidence that you have no problem about returning to base tomorrow. If we take you in the morning, your plane bookings et cetera are fine.

Cmdr Banks—Wednesday.

CHAIR—You are more precinct than we are. This hearing stands adjourned till 9 a.m.

Committee adjourned at 10.33 p.m.