



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Reference: Certain maritime incident

THURSDAY, 4 APRIL 2002

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: <http://www.aph.gov.au/hansard>

To search the parliamentary database, go to: <http://search.aph.gov.au>

SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Thursday, 4 April 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, Faulkner, Ferguson 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, Commanding Officer HMAS <i>Adelaide</i>, Royal Australian Navy	273
RITCHIE, Rear Admiral Chris, Commander Australian Theatre, Royal Australian Navy	367
SILVERSTONE, Brigadier Mike, Commander Northern Command, Royal Australian Navy	322
.....	408
SMITH, Rear Admiral Geoffrey, Maritime Commander, Royal Australian Navy	447

Committee met at 9.35 a.m.

CHAIR—I declare open this meeting of the Senate Select Committee on a Certain Maritime Incident. Today the committee continues its public hearings in relation to its inquiry. The terms of reference set by the Senate are available from secretariat staff.

Today's hearing is open to the public. This could change 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.

The committee is unanimous in its determination to produce a report which is as definitive and 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 thorough and judicious examination of the issues. We shall be led by the evidence.

We shall attempt to deal as expeditiously as possible with witnesses. I urge witnesses to be concise in their answers and senators to keep their questions highly targeted. The committee has agreed that it will hear from Rear Admirals Ritchie and Smith this afternoon and this evening to accommodate their special circumstances.

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.

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, 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 ask questions to counsel.

[9.39 a.m.]

BANKS, Commander Norman, Commanding Officer HMAS *Adelaide*, Royal Australian Navy

CHAIR—Welcome back, Commander Banks. Senator Brandis will open the questioning.

Senator BRANDIS—Commander, let me remind you of some evidence you gave when you appeared before the committee last Monday evening. You were addressing us on the circumstances in which you arrived at the view that children had not been thrown overboard. On page 173 of the *Hansard*, you said:

... 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.

I should say, Commander, in fairness to you, that a little later on you expressed that perhaps the word ‘adamant’ was a little strong, but nevertheless it was the case that, by 11 October, you had reached that firm conclusion.

Might I also remind you of your evidence of last Tuesday, at page 265 of the *Hansard*, that by the time you wrote the 11 October cable—that is, the cable concerning which we heard so much evidence last time—you had not read the witness statements taken on 10 October. You will remember that at the close of your evidence last Tuesday afternoon I took you through each of the 16 witness statements and you identified for me two witnesses—Hynes and Blennerhassett—who you remember having spoken to by 11 October and two—Letts and Nixon—who you thought you would have spoken to but had no recollection of having done so and the other 12—Naree, Koller, Chapman, Barker, Heedes, Piper, von Kelaita, Walker, Black, Gerrits, Gullidge and Skells—who you did not recall having spoken to. This is as at 11 October.

I am sorry about that long preamble, but I wanted to put before you the relevant facts in fairness to you. Why is it that, as at 11 October, you were able to be adamant in that view—that is, that no children had been thrown overboard?

Cmdr Banks—Sir, because no children were thrown overboard, no children were put in the water, no children were recovered from the water, and it was a little surprising to me that that was being questioned. We had signalled a summary on 7 October that 14 people had gone overboard. I compiled my statement in response to a request from CJTF639 and the Maritime Commander to clarify the issue. I had already asked that—

Senator BRANDIS—I am sorry to interrupt you—but when you say ‘to clarify the issue’, you mean Brigadier Silverstone, do you?

Cmdr Banks—Yes, I do.

Senator BRANDIS—We will come back to that. Please go on.

Cmdr Banks—By 10 October—and I am pretty sure it was 10 October, but I cannot dismiss that it was not late on the 9th; but more likely the 10th—the brigadier had been in touch with me to say that there was a clear difference between what he recollected had been said and what I had transcribed in the operational sit reps, and he wanted me to clarify that children had been thrown overboard. I convened that the statements be taken and they sat in my cabin the night of the 10th. I composed my statement on the morning of the 11th and, at the same time, I sent the 15 other statements by email and then sent my own by signal at about the same time.

Senator BRANDIS—There was a lot in that; let me go through it carefully. I do not understand why you refer to the statements, because your clear evidence last Tuesday afternoon was that you had not read those statements by the time you wrote the 11 October cable.

Cmdr Banks—That is correct: I had not read the statements when I wrote my own statement.

Senator BRANDIS—I understand that.

Cmdr Banks—I had the statements in my cabin; they were brought up to me.

Senator BRANDIS—If you had not read them, you had not read them; what does it matter that they were sitting in the cabin.

Cmdr Banks—I then arranged for them to be electronically transferred, because all documents that leave *Adelaide* leave under my signature.

Senator BRANDIS—Commander, if the statements did not form part of the grounds for your conclusion—as I am sure you will agree they could not have if you had not read them—other than your conversations with Brigadier Silverstone, Rear Admiral Smith, and I think you also say the principal warfare officer, who I think was Lieutenant Commander Hynes, were those the three things that caused you to be adamant in that conclusion on 11 October?

Cmdr Banks—I am just trying to recollect everything before I answer.

Senator BRANDIS—Commander Banks, please take your time.

Cmdr Banks—There was a lot of information flowing around the ship.

Senator BRANDIS—That is what I am trying to track down. Of the information that was flowing around, what actually washed ashore in your mind.

Cmdr Banks—We were hearing and receiving emails that indicated that this was a significant event being played out in the media, and the significance was realised by me that I had an obligation to clear up whether a child had been thrown overboard or not.

Senator BRANDIS—If you could.

Cmdr Banks—If I could—no, I think I had an obligation to do that, full stop. That was the mindset I was operating in. I was aware of what I had seen with my own eyes and what I had heard and experienced.

Senator BRANDIS—Commander, just if it shortens things, I think it is uncontroversial that your clear evidence is that you did not see a child thrown overboard. Nobody disputes that.

Cmdr Banks—I went out to the ship's company and asked had anybody seen anything that would relate to this.

Senator BRANDIS—Commander, which members of the ship's company? Because those who were presumably the most immediate witnesses to this would have been those—I am sure you would agree—from whom statements were taken; yet you have no recollection of conversations with 12 of the 16, and only a firm recollection of conversations with two of the 16.

Cmdr Banks—The statements were taken independently by the chief coxswain.

Senator BRANDIS—I understand that.

Cmdr Banks—I certainly spoke to some people, because they are people who work in my immediate area.

Senator BRANDIS—You have told us you spoke to Hynes, you have told us you spoke to Blennerhasset and you have told us that you think you would have spoken to Letts and to Nixon.

Cmdr Banks—That is correct.

Senator BRANDIS—They are the four.

Cmdr Banks—They are the only four I can recollect having spoken to.

Senator BRANDIS—I will take you to those statements in a moment. Before I do, do I understand your evidence to be that in reaching what you at least initially described as an 'adamant view' on 11 October, something that Rear Admiral Smith said to you and something that Brigadier Silverstone said to you were also factors contributing to your arriving at that view?

Cmdr Banks—I do not quite understand the question.

Senator BRANDIS—Perhaps I am chasing shadows here but I read the transcript of your evidence and you used this unusual phrase of, 'We had agreed,' or, 'It had been agreed'—as it appears from the context—among the three of you that no children had been thrown overboard. Although, you go on to say that, perhaps, Brigadier Silverstone did not agree, or words to that effect. Was it that conversation or that series of conversations with Rear Admiral Smith and Brigadier Silverstone on 11 October that was the point at which you arrived at that adamant

view? That is the way I read it. Perhaps you would like to review it. I think your counsel has the *Hansard* there. It is on page 173, Commander Baston, at about point two on the page.

Cmdr Banks—I cannot speak for how Rear Admiral Smith and Brigadier Silverstone recollect the conversation, but at the end of the conversation—there were two conversations. There was a conversation before I wrote the statement, where the issue was called to question and I was asked to provide my assessment.

Senator BRANDIS—Can I stop you there. You say there were two conversations, one before you wrote the statement and one after the conversation. Were those both tripartite conversations involving you, Brigadier Smith and Rear Admiral Silverstone?

Cmdr Banks—There were no tripartite conversations.

Senator BRANDIS—As well as you can recall, can you take us through the conversations in sequence, please.

Cmdr Banks—I cannot do it in sequence.

Senator BRANDIS—As well as you can remember.

Cmdr Banks—There was a conversation between the brigadier and me, which I recollect I took in my cabin, probably because it ran for some time.

Senator BRANDIS—Was this on the 11th?

Cmdr Banks—I cannot swear to the date.

Senator BRANDIS—But it was beyond the ‘fog of war’—it was at a time when you were some days distant from the ‘fog of war’, I gather.

Cmdr Banks—I would like to address the ‘fog of war’ later. Certainly on the 9th and the 10th the conversation took place in which it was discussed that there was a clear difference in our recollections of the events. This was between Brigadier Silverstone and me. Brigadier Silverstone spoke to me about the importance of the event in the context of the media coverage it was having and the fact that there was an election going on, and said that it was important that we presented factual advice to the government. He reminded me that his recollection of our telephone conversation was different from what I was saying and reporting in my signals in that I had not stated anywhere in the signals that children were thrown overboard; yet it was his recollection that I had said this in the telephone conversation.

Senator BRANDIS—In answer to some questions from Senator Collins on Tuesday—page 204 of *Hansard*—about the critical conversation on the 7th, you said:

It would be my assessment that if he recollected that I said something then I would have said it ...

Cmdr Banks—I was not paying full attention there. Throughout the evidence I have given, I have not stated categorically that I can say one way or the other what that conversation was.

Senator BRANDIS—We understand that, Commander.

Cmdr Banks—But I was never of the view that a child—

Senator BRANDIS—Please accept that your very careful nuancing of your evidence has been much appreciated by us. Nobody is suggesting that you are claiming to remember things you do not remember.

Cmdr Banks—I was never of the view that a child was thrown overboard. In the conversation with the brigadier, he spoke to me about the fact that I was operating in a tactical situation and was probably under pressure. He said that it was quite understandable, in his opinion, that I could have made a mistake and not recollected things, and that he had written down a series of notes, which he intimated to me were in sentence form, of what I had said. I was then confused because my commander was saying I had said things but I had no recollection of that myself.

Senator BRANDIS—Why does that create confusion? Every day of our lives people tell us of things that they remember that we do not remember. That does not mean that they did not happen. It is just that sometimes you do not remember something that was said in a conversation. Why would that cause confusion?

Cmdr Banks—It was a fairly significant event. The brigadier is my superior. He is an intelligent man and a man I respect.

Senator BRANDIS—But he was not doubting your credibility, surely.

Cmdr Banks—He has intimated to me that perhaps I was wrong, that I needed to review the information and that I should not be ashamed if I felt I had made a mistake. I was then adamant—

Senator BRANDIS—I cannot see why anybody would be suggesting you did make a mistake, Commander.

Cmdr Banks—You would have to ask—

Senator BRANDIS—You did not say to him, ‘I never said that,’ did you? You said to him, ‘I don’t recall saying that,’ which is a big difference.

Cmdr Banks—I do not recall the words that I used in all these things. I am paraphrasing recollections of the conversations. I was firmly of the view that no children had been thrown overboard, because I was there and was aware that that had not taken place. The conversation that we are referring to sticks out in my mind, based on the child being held over the side.

Senator BRANDIS—Is this the 7 October conversation?

Cmdr Banks—This is the 7 October conversation that we are referring to. The brigadier and I—

Senator BRANDIS—I do not want to get too far off the track. This line of questioning started by asking you to recall what were the conversations between you and both Brigadier Silverstone and Rear Admiral Smith.

Cmdr Banks—There was a second conversation with Rear Admiral Smith—second in the sense that the first was with Brigadier Silverstone.

Senator BRANDIS—You spoke to Brigadier Silverstone first and then you spoke to Rear Admiral Smith. What did Rear Admiral Smith say to you?

Cmdr Banks—Rear Admiral Smith asked me—again, this is a paraphrased recollection—to confirm that there were no children overboard. We spoke about the time of sunrise. We spoke about the time between the boarding and the man overboard incidents; I believe he thought the two were nearly simultaneous, based on media reporting, and I reported back that, no, there was about an hour's difference between the two. He directed me to provide a statement—a chronology—of what had happened. I did that the next day. I believe that by the 11th, certainly in my mind, the evidence was clear that no children had been thrown overboard. I had provided a statement that said that, and there were other statements, which I subsequently read, that confirmed that.

Senator BRANDIS—I am having trouble understanding—allowing for the fact that you were properly deferential to your superior officers—why anything that either Brigadier Silverstone or Rear Admiral Smith said to you was even relevant, because you were there and they were not. You were the witness; they were not. Admittedly, Brigadier Silverstone was a witness to his telephone conversation with you, but on the question of whether or not children were thrown overboard, why would anything that either of those men said to you on 10 October, or thereabouts, have been relevant, because they were not there?

Cmdr Banks—In my mind, because the brigadier said, 'I have notes, Norman, that recollect our conversation. I took these at the time and you said "A, B, C and D."'

Senator BRANDIS—And I put that to you on Tuesday. What about Rear Admiral Smith? Why would anything that Rear Admiral Smith said to you be relevant to your recollection of an event to which he was not a witness and on which you had no contemporaneous discussion with him?

Cmdr Banks—I do not think I said that. I think I said that we had a conversation. I do not think he gave me any information.

Senator BRANDIS—So Rear Admiral Smith did not influence you arriving at this adamant view by 11 October?

Cmdr Banks—Other than Admiral Smith would have said, 'We need to get this right, Norm.'

Senator BRANDIS—So it is more the case that you felt a need to have it clear in your mind, rather than that he told you anything that helped you get it clear in your mind?

Cmdr Banks—A black-and-white answer was required to this question, and it was my duty to provide that black-and-white answer.

Senator BRANDIS—But what if it were a grey area? Perhaps it was a little unfair to you, Commander Banks, in the ‘fog of war’. It is unfair to you, isn’t it, that a black-and-white answer should be demanded of you in relation to a confused and highly mobile series of events of which you witnessed only some?

Cmdr Banks—I think four days later it was clear that a black-and-white answer was warranted and was achievable.

Senator BRANDIS—A black-and-white answer was not achievable on the 7th, was it?

Cmdr Banks—In my mind, a black-and-white answer was given on the 7th in that sit reps 8 and 9 from Adelaide made no reference to children overboard. We referred to only 14 UBAs overboard. At no stage did we signal that children had been thrown overboard or held overboard.

Senator BRANDIS—That is not right, is it? There was the little girl in the pink jumper who was held overboard.

Cmdr Banks—I did not signal that in any of the signal summaries.

Senator BRANDIS—That is my point, really. The fact that it is not mentioned in the signals does not mean that it did not happen. We know that the child held overboard incident did happen. You are quite clear about that and nobody is disputing that.

Cmdr Banks—It was not viewed as that significant an event at the time. It became a significant event under scrutiny later on.

Senator BRANDIS—I am going to read again a passage from the 11 October cable that was read to you by both me and Senator Ferguson last time. Paragraph 14—I am sure you are familiar with it—says:

14. Throughout, my boarding party and the other witnesses on the bridge wings were advising that they could see more jumpers, some men, some boys and some children. Reports of the number who entered the water varied greatly.

That is what is being told to you while it is happening. There is no controversy; you did not see children in the water. Why are you able to be adamant on 11 October—four days later—that there were no children in the water when on the 7th, as it is happening, members of the boarding party and other witnesses on the bridge are telling you that there are children in the water?

Cmdr Banks—As I have said earlier, my job is to assimilate information that is provided. The information that is provided may not necessarily be factual. My job is to filter that out and form a conclusive picture.

Senator BRANDIS—I understand that, but isn’t that a very important, indeed central, piece of evidence? This is not relying on memory; this is a narration of events as they happen:

... my boarding party and the other witnesses on the bridge wings were advising that they could see more jumpers, some men, some boys and some children. Reports of the number who entered the water varied greatly.

That is an important piece of evidence, isn't it, Commander?

Cmdr Banks—No children were ever recovered. Therefore, by the 11th, I was adamant in my mind that no children were thrown overboard.

Senator BRANDIS—Perhaps now we are getting somewhere. Is that the one additional fact that you could not have known while the event was taking place on the 7th but that you obviously did learn, subsequently, which hardened your view into an adamant one that no children had been recovered from the water?

Cmdr Banks—At 5.06 a.m. there was a report of a man overboard—that did not eventuate. Later on, there were lots—

Senator BRANDIS—No—follow my question. I am asking whether that one particular further piece of information that you could not have had while it was happening—one that you could have had only retrospectively, that no children had been recovered from the water—was, as it were, the missing link, the extra piece of information that enabled you to be adamant in your view that no children had been in the water?

Cmdr Banks—I think I was adamant in that view on the 7th, some time later in the day.

Senator BRANDIS—But you could not have been adamant while members of the boarding party and witnesses on the bridge wings were telling you there were children in the water. You do not say you were adamant then, do you?

Cmdr Banks—No. At six o'clock or seven o'clock in the morning, I was not adamant on anything, other than that people were jumping overboard from SIEV4. Subsequently, I was aware of the number—although that still would be a number that is open to conjecture, plus or minus one—that they were all male and that none were children.

Senator BRANDIS—This follows almost necessarily, I suppose: if you were not adamant when you were being told that at shortly before six o'clock in the morning—as you say in paragraph 14 of the cable—you were not adamant when you were speaking to Brigadier Silverstone a few minutes later because, by that stage, you did not have that extra piece of information that subsequently no children were recovered from the water.

Cmdr Banks—Could I just have the first part of your statement again?

Senator BRANDIS—You have told me at the time of which you speak in paragraph 14 of the cable—let me read it to you yet again—that:

Throughout, my boarding party and the other witnesses on the bridge wings were advising that they could see more jumpers, some men, some boys and some children. Reports of the number who entered the water varied greatly.

Your evidence, as I understand it, is that at the time to which those sentences refer you were not adamant about anything because you had not been able to assess all the information—

Cmdr Banks—The events were unfolding.

Senator BRANDIS—but that later in the day, on 7 October, you did become adamant that no children had been thrown into the water. That is the case, isn't it?

Cmdr Banks—That is correct.

Senator BRANDIS—My question is: when you spoke to Brigadier Silverstone a few moments after the events narrated in paragraph 14 of the cable happened, you were not adamant by that stage because you did not have that retrospective piece of evidence—that is, that no children had been recovered from the water.

Cmdr Banks—That is assuming that the conversation that I had with Brigadier Silverstone is as he reports it.

Senator BRANDIS—No, it is not assuming anything; it is simply putting to you the proposition that, if that was your frame of mind at the time to which paragraph 14 of your cable refers, then that was still your frame of mind if, shortly afterwards—your evidence last time was about 6.00 a.m.—you spoke to Brigadier Silverstone.

Cmdr Banks—At 6 a.m. I was unsure whether there would be any more jumpers. I had seen—

Senator BRANDIS—I am sorry?

Cmdr Banks—Any more people jumping. I had seen some people jumping as we were speaking on the telephone, and there was a child being held. The end state had not been achieved and full control had not been achieved of SIEV4.

Senator BRANDIS—And, as appears from paragraph 14 of your statement, I suggest to you, by 6.00 a.m. you had been told by the boarding party and other witnesses on the bridge wings that there were children in the water. You had not seen them yourself and you had not been able to verify that, but you had received that piece of information, hadn't you?

Cmdr Banks—Yes.

Senator BRANDIS—And that was your frame of mind when you spoke to Brigadier Silverstone?

Cmdr Banks—My frame of mind was that events were unfolding which included losing control of SIEV4, people jumping overboard, a child being held over the side, my boarding party on board and my RHIB recovering people. All of those pieces are relevant, not one snippet in isolation of that statement.

Senator BRANDIS—I want to focus on that because that is what interests me. When you spoke to Brigadier Silverstone, one of the pieces of information that you had lately received

from—and I quote your words—‘My boarding party and the other witnesses on the bridge wings’ was, among other things, that there were children in the water.

Cmdr Banks—That is correct.

Senator BRANDIS—On 24 October the Prime Minister went to see the *Adelaide* off. You told Senator Bartlett that you gave instructions, in advance of that visit, to the ship’s company that they should speak freely and honestly if they had the opportunity to either of your distinguished guests—that is, the Prime Minister and who was the other distinguished guest?

Cmdr Banks—Minister of Defence.

Senator BRANDIS—Members of the ship’s company were to speak freely and honestly to either of your distinguished guests, at no stage were you given instructions not to discuss SIEV4, and you were in company with the Prime Minister for between 45 minutes and an hour—and that all comes from page 171. By 24 October, you knew that the question of whether or not there were children overboard was a matter of public controversy and you had known that for some little time. Why didn’t you take the opportunity to grab the Prime Minister by the ear, as it were—that is a bit disrespectful—to take the Prime Minister aside and in a few seconds put your position squarely to him? Why didn’t you do that?

Cmdr Banks—I will just recollect my thoughts here. There were a number of factors: one, it was not my position or responsibility to do that; two, I was aware that an election was taking place; and, three, certainly on 14 October I was aware that this was a significant issue.

Senator BRANDIS—This was 10 days later.

Cmdr Banks—In my opinion, reports in the media were incorrect. By 24 October I had not seen too much more of the issue—I probably thought it had died—but, most importantly, my mind was focused entirely on Operation Slipper. I was preparing to take HMAS *Adelaide* and the ship’s company into harm’s way, and Op Relex was something that was part of history.

Senator BRANDIS—At any time up to and including 8 November did you have a conversation about these events with Brigadier Bornholt?

Cmdr Banks—Not to my recollection. I do not believe I have spoken to Brigadier Bornholt in the last year.

Senator BRANDIS—Did you at any time up to and including 8 November have a conversation with Air Vice Marshal Houston?

Cmdr Banks—Definitely not. I have not spoken to Air Vice Marshal Houston since he was an Air Commodore.

Senator BRANDIS—So far as you are aware, did either Brigadier Bornholt or Air Vice Marshal Houston ever get in touch with you at any time up to and including 8 November to discuss these events and your recollection of these events?

Cmdr Banks—No.

Senator BRANDIS—Had either of those gentlemen done so would you, in the ordinary course of things, have become aware that they had been attempting to reach you notwithstanding that you were on deployment?

Cmdr Banks—Sorry, this is after 8 November?

Senator BRANDIS—No, up to but not beyond 8 November. If either Houston or Bornholt had been trying to reach you, albeit that you were on deployment—

Cmdr Banks—The *Adelaide* was alongside.

Senator BRANDIS—In the ordinary course of events would you have learned of that fact?

Cmdr Banks—I believe so.

Senator MASON—Senator Brandis, in his examination, referred to several witness statements that you caused to be made at the time, and I might just refer to a few of them. Do you have them with you?

Cmdr Banks—I have copies with me.

Senator MASON—I might just refer first to Lieutenant Commander Daniel Christopher Hynes. What did Lieutenant Commander Hynes's position entail?

Cmdr Banks—He is the principal warfare officer and my operations officer. He would be my trusted left hand.

Senator MASON—I am looking at the third paragraph here—that is, the large paragraph on his witness statement. He was standing, I think, on the starboard bridge of HMAS *Adelaide*. Then, about six lines from the beginning, he says:

It was at this time—a few minutes prior to six a.m.—that one adult male on top of the coach house started dressing his child in a yellow positive buoyancy lifejacket. The vessel was approximately 75 to 100 meters away. He picked the child up and took him to the edge of the coach house and it was apparent that he was explaining to the child that he was going to have to go in the water. This was not well accepted by the child and naturally he/she started trying to get a tight grip on the adult. He then held the child out over the side of the SIEV and motioned to the RHIB—

which is the rigid hull inflatable boat—

to be ready to receive that child. The RHIB driver and the crew started motioning him with open hands to put the child down and not to throw the child. The RHIB initially closed in—obviously worried that they might have to catch the child. There was a lot of yelling on the SIEV and I do not believe that he properly heard what the crew was telling him although it was audible from the ship—“Don't” was being repeated.

You do not doubt the truth of that statement, do you?

Cmdr Banks—I spoke to Lieutenant Commander Hynes yesterday. His words to me were, ‘As God is my witness.’

Senator MASON—Can I next take you to the statement of Leading Seaman Tara Blennerhassett. So that I do not take up too much of the committee's time, I will just go through a few of these and not the whole lot. I think Leading Seaman Blennerhassett was on the bridge wing of HMAS *Adelaide* at the time?

Cmdr Banks—That is correct.

Senator MASON—If you go to the main paragraph there, about six lines down, it says:

I watched this through binoculars. About half an hour or so later, a man, standing on the top most deck of the SIEV, in front of the Wheelhouse roof, pulled a young girl from inside the wheelhouse on to the top deck with him. He placed her on the roof of the wheelhouse and put a lifejacket on her, she seemed to be around 4 to 5 years old. He held her on the roof of the wheelhouse while he watched the other SUNCs get picked up by the RHIBs and put back on the SIEV. He then picked the girl up and walked to the STBD side of the SIEV and motioned to LS McGuinness in the RHIB directly underneath him to grab the child, he was going to throw her in. LS McGuinness held his hand out in stop motion and, although I could not hear the words, by hand gestures and words telling the man not to throw her into the water. The man climbed over the guardrails, the child was kicking screaming and hitting at the man, shaking her head and grabbing at him around the neck.

Commander, you do not doubt the veracity of that statement?

Cmdr Banks—These are not my statements.

Senator MASON—You have no reason to doubt the truth of them?

Cmdr Banks—No.

Senator MASON—If I can take you now to—

Cmdr Banks—The substance of that fits in with my recollection, although some of the words and the drama would be different to how I expressed it. But the facts that come out there are the same.

Senator MASON—Thank you. Able Seaman Gerrits—if I may take you to that one now—has featured a bit already. Can I take you to the third paragraph, where the able seaman says:

I was on the bridge manning EOTS.

that is, the electrical optical tracking system—

During that time I witnessed and recorded (video tape) SUNKs jumping off the SIEV by their own choice and I believe one child also went overboard. One male SUNK was also threatening to throw a small female child over board by hanging her over the edge but he was persuaded not to by the boats crew. All persons who dove overboard did so by their own accord and were all wearing lifejackets. All personnel were also recovered by *Adelaide* seaboats and returned to the SIEV. All this was recorded on video tape.

Again, Commander, you do not have any reason to doubt the veracity of that statement?

Cmdr Banks—No, I do not.

Senator MASON—I want to turn next to the statement of Able Seaman Travis Gullidge. I think Able Seaman Gullidge was on the gun direction platform watching the events of the boarding through the aid of a night optical device. The fourth paragraph states:

There was one incident where a man, approximately 30-35 years of age, dressed a young child of 5 or 6 in a life jacket and was holding her over the side of the upper deck. The young girl was screaming and was holding on to the guardrail of the vessel in an attempt not to go into the water. The man then stepped over the side, while the young girl was kicking and wreathing violently. In an attempt to stop the man from dropping the girl into the water, I saw the boat coxswain in the RHIB—

the inflatable boat—

making hand gestures toward the man to stop. The young girl, in an attempt to free herself of the man's grip on her had chunks of hair removed from her head. The actions from the boat coxswain stopped the man from dropping her into the water.

Do you have any reason to doubt the truth, the veracity, of that statement?

Cmdr Banks—I have a little bit of doubt about the chunks of hair.

Senator MASON—Did you see that?

Cmdr Banks—Did I see what?

Senator MASON—Did you not see hair coming off the child?

Cmdr Banks—As I said, I find that a little bit dramatic.

Senator MASON—Able Seaman Gullidge was looking at this incident with the aid of a night optical device. What sort of effect does that sort of event have on your crew?

Cmdr Banks—Most people were angered. On the reference to the 'don't', I think most of that came from *Adelaide*, not from people on the SIEV or from the RHIB. I do not think we could hear that much. There were a number of people on the bridge wing and most of us were watching this event, and most of us were willing that this child would not be thrown overboard.

Senator MASON—I pass to you submission No. 5 to the committee from Mr Dyari Ramzi from the Manus Island Asylum Seeker Camp Committee—First Arrival Group. I want to ask you a few questions about some assertions made in that submission. I draw your attention to the first page of that submission, which is an email to this committee commencing, 'Dear Sirs'. Do you have that?

Cmdr Banks—Yes, I do.

Senator MASON—I take you to the paragraph commencing, 'On the 7th October 2001'. I will put some of this to you and then ask for your comments about it. I should just say, by way of background, that this submission is from the group of people that HMAS *Adelaide* and you intercepted that day.

Cmdr Banks—I saw it when I first got here last week.

Senator MASON—Yes. I just want to put that in context for the record. The submission reads:

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. The frigate intercepted our course so that the Indonesian captain reduced speed, while marines in 4 rubber boats took advantage of the low speed and entered our boat.

A boarding party was then injected. In the next paragraph, the submission reads:

There was a navigator officer and the wheelman that forcibly took over from the Indonesian crew and changed course to the opposite direction, then all the passengers—

on the SIEV—

...knew that they—

that is, your boarding party—

...were lying to us about providing supplies, while their main purpose was changing our course towards Indonesia.

Commander, what do you say to the claim that your boarding party was lying to the illegal immigrants?

Cmdr Banks—I refute that we were lying.

Senator MASON—All right.

Cmdr Banks—As a point of fact, there were only two rubber boats, not four.

Senator MASON—So you dispute that?

Cmdr Banks—We only have two rubber boats. We called them RHIBs.

Senator MASON—Can I take you to the next paragraph. There is a long passage here. For fairness, I should read it onto the record:

By using the maximum speed can get from the engine they pushed—

‘they’ being the boarding party—

...the speed levers heading toward Indonesia, 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 besides it drawing an arrow that leads to the direction of Indonesia. 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.

Commander, what do you make of any suggestion that sailors from the *Adelaide* boarding party were responsible for the failure of the engine, the water pump and the rudder to work?

Cmdr Banks—Absolute rubbish.

Senator MASON—Thank you. You have answered a lot of questions in the last few days from my Senate colleagues and I will read out some facts, as I understand them, in summary. If you object to any of them, please let me know.

Cmdr Banks—There are several in here that are incorrect.

Senator MASON—I will read out my summary, and please comment. Senator Brandis has just reminded me of something, and I think it is a good idea. I asked you to comment on the refugees' submission. If you have anything more to say on that, please do so. I cut you off. If you want to say anything else, please add it.

Cmdr Banks—I was not prepared. It is a lengthy document. In the bits that you have read out, there are some inconsistencies from my recollection and understanding of what took place.

Senator MASON—Can you tell us what they were?

Cmdr Banks—The timing is correct. We fired warning shots. I would not say we were trying to scare them, but we were trying to force them to stop the boat so we could board them.

Senator MASON—And that is an official naval procedure? It is internationally recognised as a form of warning ships and gaining their attention?

Cmdr Banks—Yes, it is. From one o'clock or 1.30 we had been communicating our intent for that vessel to heave to. We had also been passing immigration warnings advising these people that to continue to Australia was not correct and that the crew may face detention and the passengers would be returned to Indonesia.

Senator BRANDIS—And this at a time when, according to evidence last week, in your professional judgment and that of your officers, there was no suggestion the vessel was in distress.

Cmdr Banks—And the vessel was seaworthy. It continued its passage. We had difficulty boarding the vessel. We did intercept, and we did put a boarding party on. The boarding party obtained some control, but with nine people in the boarding party and 223 people on the boat, 'control' is a loose term. I find it hard to believe that they were actually able to segregate the people. They were crowded as it was. To have moved them around in such a controlled fashion would have been a most interesting exercise.

Senator MASON—Was there any violence?

Cmdr Banks—There was no violence reported, in the sense that weapons were not drawn, but hand force was used to clear people away to get on board and to move people around. We were not armed with electric sticks. I do not know where that came from. The boarding party was armed with holstered 9mm Browning pistols and ASP batons, which are batons held in a pouch. They were given clear instructions on the level of force they were authorised to use. I cannot discuss the details, but the use of force in the sense of lethal or deadly force was not authorised.

Senator MASON—You say, I think, in the *Adelaide's* boarding log, that the illegal immigrants made threatening gestures with sticks and timber torn from the vessel.

Cmdr Banks—Yes, they did. At one stage it was reported that they had set a small fire. Oily rags were set fire in the engine room space. When we boarded the vessel it was obviously functioning. The engines were running and it was steering—it had done so for some time. We reversed its course, because that was our mission—to deter and deny entry to Australia. The course was reversed and, shortly after, the boat's engine stopped. That was about 5.19, I think.

Senator MASON—Can you just tell us about the threatening gestures with sticks and timber torn from the vessel? What happened there?

Cmdr Banks—I witnessed the awning on the port side—it was a green awning—being torn off and part of it discarded. Part of it was left flapping in the breeze. I watched the orange lid that covered the water drum in the forward section of the boat being discarded overboard and subsequently being recovered by our RHIB. I personally did not observe anybody with a stick. These were radio reports I was receiving.

Senator MASON—And these were reported to you?

Cmdr Banks—Yes, they were reported to me.

Senator MASON—I missed something before. You said that there were immigration warnings given. Were they given in English and Indonesian?

Cmdr Banks—I would have to check up on that. I am pretty sure they were bilingual.

Senator MASON—All right. If I might just put some propositions to you, just on SIEV4—just on that incident—and we will see how we go. I think this is the evidence thus far: some illegal immigrants threatened to commit suicide; some illegal immigrants disabled the steering on SIEV4; illegal immigrants disabled the starter motor and sabotaged the engine; they lit a fire on the boat; illegal immigrants made threatening gestures with sticks and timber torn from the vessel—as you have just related. You had to insert a second boarding party to better restore control and to prevent the illegal immigrants from forcing a safety of life at sea situation. The illegal immigrants dismantled the navigational system and, as in evidence heard earlier, also the flag. They ignored persistent warnings from the *Adelaide* to cooperate. Illegal immigrants on SIEV4 jumped into the water, and this morning you said there were about 14 of those. Illegal immigrants on SIEV4 eventually succeeded in disabling the vessel. An illegal immigrant threatened to throw a child in the water—that is the little girl in the pink jumper that has been identified—and naval witnesses recorded a child being held with the obvious intention to throw

that child in the water. The video records a child being dangled above the water, and a sailor, as I related before, reported that a child was thrown in water—just the one. Because the engine had been sabotaged, the pumps did not function and could not pump out the water flowing into the boat, and this action assisted in causing the boat to sink. Finally—

Cmdr Banks—There is a long bow being connected between the pump being turned off and the boat sinking.

Senator MASON—Yes. But the fact that the engine was sabotaged, and that as a consequence of that the pump did not work, assisted in the boat ultimately sinking.

Cmdr Banks—That is one factor in it.

Senator MASON—I understand that. It assists me to understand that. Finally, it was the intention of the illegal immigrants on SIEV4 to create a safety of life at sea situation in order to be picked up by the *Adelaide* to assist in their efforts to enter Australia. Those are the facts as I understand them. Do you have any further comment? Do you agree with that? Is there any new dispute?

Cmdr Banks—The sinking was caused by the boat becoming flooded with water.

Senator MASON—Yes.

Cmdr Banks—One of the factors that contributed was that their own pump did not work. But *Adelaide* provided repairs to that pump; we provided fuel for a pump; we provided our own pump; we provided a second pump; and we provided the ship to help pump it out. So saying that losing the boat's own pump resulted in the boat sinking is not—

Senator MASON—Yes. It is not that simple, but certainly sabotaging the engine assisted, I suppose. You agreed before with the proposition that the fact that the engine was sabotaged assisted in the sinking of the boat.

Cmdr Banks—That is one factor.

Senator MASON—I understand that.

Cmdr Banks—If the vessel's engine had continued I have no doubt the vessel could have returned to Indonesia, sure.

Senator MASON—Do you agree with the rest?

Cmdr Banks—Broadly, yes.

Senator JACINTA COLLINS—Before I start on my remaining questions—you have dealt with many of them previously so I do not anticipate I will be too long—following up from those earlier questions, and perhaps Senator Mason can help me in terms of whether I heard his questions correctly, was the proposition put to you that one officer claimed that a child was

thrown overboard? Senator Mason, I am trying to clarify what you understood to be the facts just a moment ago. Was one of the propositions the claim that one officer claimed that a child was thrown overboard?

Senator MASON—I will give you my exact words, Senator Collins, because I have written this down. A sailor—

Senator JACINTA COLLINS—‘A sailor’, yes—

Senator MASON—did report that a child was thrown in the water.

Cmdr Banks—Reported.

Senator JACINTA COLLINS—Reported that he thought a child had—

CHAIR—The actual words in the statement were ‘I believe a child’.

Senator MASON—Yes. Thank you, Chair, that is correct.

Senator JACINTA COLLINS—And not ‘thrown’?

Senator MASON—This morning I actually read out the appropriate passage to you, Commander, from Gerrits’s statement, and I think we should leave it at that.

Senator JACINTA COLLINS—It is an issue we will come to later. I just want it understood that Commander Banks has not actually—

Senator MASON—Yes, sure. But that is on the record in fact.

CHAIR—So as to have the issues properly on the record, the full statement, which has been tabled, stands as the evidence before us without question—

Senator JACINTA COLLINS—Yes.

Senator MASON—Yes. Chair, I agree.

CHAIR—and that full statement goes on to say—

Senator BRANDIS—As part of the evidence.

CHAIR—As part of the evidence, yes, of course, but it is the statement of this sailor—

Senator BRANDIS—Yes.

CHAIR—and it says the word ‘believed’—‘I believed’. And it says, in the following sentence, that all people who dove overboard did so of their own free will, or some such.

Senator BRANDIS—But it has all been quoted.

CHAIR—It is all there on the record.

Senator MASON—I read it onto the record, Mr Chairman—

CHAIR—You did, at my request.

Senator JACINTA COLLINS—I simply wish to clarify that first point because it has been misquoted elsewhere and we will be dealing with it in later evidence.

Cmdr Banks—But it also does not say that he reported it to anybody.

Senator JACINTA COLLINS—Yes. That is right. One area that we have not covered in the questioning so far is related to some of the material provided in the logs. I note that you have your copy of the logs there. There are a few references that I would like to go to. As we were talking about the seaworthiness of the SIEV, I have one remaining question about how you dealt with this particular SIEV. Unfortunately, there does not seem to be any paging reference that I can take you to, so you will need to rely on the date and the time. On the *Adelaide's* boarding log, on 7 October at 0752—

Cmdr Banks—Is that a reference to towing?

Senator JACINTA COLLINS—Yes. Can you explain what was occurring at that point?

Cmdr Banks—I would have been making some contingency plans: if I had to tow this vessel, could I do that? Was the vessel seaworthy enough for that to take place? Were there suitable towing points? I think the boat was functioning again then, but the engine had been off and on; therefore, I may have had a need to tow it. So I was making some contingency plans.

Senator JACINTA COLLINS—The reason I ask this question is that the reference in the log says:

... CO request bordo—

Is that the boarding party officer?

Cmdr Banks—The boarding officer.

Senator JACINTA COLLINS—It continues:

to find area to attach line, to tow SIEV outside contiguous zone.

It is 'to tow SIEV outside contiguous zone' that I am trying to understand. I can understand why, within current government policy, the *Adelaide* would ensure that a vessel was seaworthy and escorted outside the contiguous zone. What I am asking you to explain is why you might tow it out.

Cmdr Banks—To buy time. If you read on, I was sending a damage control party across to investigate the engine problem, with a view to repairing the engine.

Senator JACINTA COLLINS—I understand you went on to repair the engine, but you were contemplating towing the ship outside the contiguous zone whilst continuing to repair the engine and then leaving the ship outside the contiguous zone. Is that right?

Cmdr Banks—Provided it was serviceable.

Senator JACINTA COLLINS—If the ship did not become serviceable, you would need to consider where it would further be towed to. Is that correct?

Cmdr Banks—That is correct.

Senator JACINTA COLLINS—There is another reference in the operations room narrative at 0139. Again, there are no page numbers but it is about 10 pages in.

Cmdr Banks—Does it say, ‘Estimate under way one hour or 1½ hours’?

Senator JACINTA COLLINS—It is at about page 55, but this page does not have the number. Page 54 is the page beforehand.

Cmdr Banks—Does it say, ‘Estimate under way’?

Senator JACINTA COLLINS—Yes, that is it. It says:

Towing option not a good option.

Why would the log indicate that?

Cmdr Banks—These are people’s recollections.

Senator JACINTA COLLINS—I appreciate that; that is why I am asking.

Cmdr Banks—I am trying to go back in my mind here: to tow the vessel out was not a good option, but it may have been an option I needed to look at.

Senator JACINTA COLLINS—With the intention to seek to restore the engine and then to disengage from the SIEV?

Cmdr Banks—That is correct. The aim was to deter entry into Australia.

Senator JACINTA COLLINS—Yes, but we were aware of the towing incident once distress became apparent.

Cmdr Banks—This is well before distress.

Senator JACINTA COLLINS—Precisely, which is why I was trying to clarify the context of this earlier towing contemplation.

Cmdr Banks—It was only a contingency a plan.

Senator JACINTA COLLINS—And only with the intention that the engines also be made serviceable?

Cmdr Banks—Yes.

Senator JACINTA COLLINS—The next area I want to go to in the logs—and I will also take you back again to the statement by the asylum seekers—relates to several references to decisions being required from the Prime Minister or the Prime Minister's office. It might be best if I work backwards here since you have already explored the asylum seekers' statement with Senator Brandis. On the second page of that statement at the fourth last paragraph, when the asylum seekers were concerned about the ship sinking, they say:

The only answer we've heard from the officer on board our boat was that they were reporting directly to the Prime Minister's Office and the order must come from them so they can help you abandon your boat—that answer kept the same until the boat was sinking then we had the answer which was—we will make the rescue when your boat is completely submerged and you all must go in the water with the kids and women. Then and only then, our orders will give us the permission for helping you from drowning.

Then further on in the statement—

Senator BRANDIS—Senator Collins, before you go on, could I ask: was that ever said?

Senator JACINTA COLLINS—This is what I am getting to, Senator Brandis. Perhaps, since you have had your opportunity, you will give me mine.

Senator BRANDIS—I thought you were moving on to something else.

Senator JACINTA COLLINS—No.

Senator BRANDIS—You cannot leave a proposition as incendiary as that hanging in the air.

CHAIR—I think she is coming back to it. I took the drift of her question to be that this was the first element of it.

Senator JACINTA COLLINS—Yes. There are two other references in this statement directly related to the question and, if Senator Brandis gives me the opportunity, I will complete it.

CHAIR—Well, you have the opportunity, Senator. Please proceed.

Senator BRANDIS—I was just trying to be helpful, Senator.

CHAIR—I am sure we are all trying to help one another. So let's get on with it.

Senator JACINTA COLLINS—I do not need your help, Senator Brandis. Further in the statement, Commander, it says it would have been possible to save several of the possessions and documents of the asylum seekers ‘if the decision to abandon ship was taken earlier’. There would have been, for instance, no need to save a child with her mother going underneath the ship and their concern was that the Australian government ‘never gave the order for the Navy to help us until the boat was fully submerged with water’. Can you respond to those assertions?

Cmdr Banks—These are not our words; these are the words of the asylum seekers.

Senator JACINTA COLLINS—Yes, that is right.

Cmdr Banks—So it is unfair of me to comment on their perception of things. But my perception of things is significantly different from that.

Senator JACINTA COLLINS—If we compare your statement, which says that there was a deliberate strategy to keep the asylum seekers on the ship for as long as possible, to their perception which was that, ‘We will make the rescue when your boat is completely submerged and you must go in the water with the kids and women’—

Cmdr Banks—I find that hard to believe. There were two boarding officers—a senior lieutenant and a senior sublieutenant—both of whom had my full trust. I would have expected them to have communicated to the SUNCs certain messages. I find it hard to believe that they would have communicated such messages.

Senator JACINTA COLLINS—If we then look at the facts of the situation, they did end up in the water before they were rescued. How do you explain that?

Cmdr Banks—The words I used were ‘a controlled abandon ship’. SIEV4 sank very quickly—much quicker than we anticipated it would happen, if it was to happen. We had the situation under control for about 24 hours; the tow had been under way. We had maintained a good speed of advance of two to three knots throughout that tow and there was no sign of the vessel being under strain. The water level was increasing and efforts were diverted to pump the SIEV dry and those efforts were taking effect. I had had the vessel inspected by the executive officer and the marine engineering officer, both of whom came back and had said that the vessel was fine.

Late in the afternoon of the 8th at about four o’clock or 4.30, the boarding officer began to report concerns that the water was again increasing and we spoke briefly. I dispatched the executive officer to give another opinion. I was beginning to think that the boarding officer was—what is the expression?—‘situating the appreciation’ because he was there and I brought the XO over as a second opinion. The XO called back on the radio something along the lines of, ‘I think we’re going to lose this one. It is starting to go.’ At that stage we had stopped the tow and we commenced a recovery action and the vessel began to founder pretty well at the same time.

Senator JACINTA COLLINS—Let us work in a little bit more detail through the logs on that point. Let us go to the operations room narrative at page 80. Firstly, here at 0751Z(1451G) there is the reference ‘C ✓ B’. Can you explain that to me?

Cmdr Banks—‘Chief, this is Boardo.’ It is a call sign, ‘Chief’ being me and ‘Boardo’ being the boarding officer.

Senator JACINTA COLLINS—So you are talking to the boarding officer. ‘Request to move children and women off’—whose request is that?

Cmdr Banks—The boarding officer.

Senator JACINTA COLLINS—He is requesting of you that the women and children be taken off.

Cmdr Banks—That is what it says.

Senator JACINTA COLLINS—What happened with that request?

Cmdr Banks—We stopped the tow. We made increased efforts to repair the ship and to get the water out of the ship, and my strategy of maintaining them on board persisted.

Senator JACINTA COLLINS—The agitation started at 0738Z(1438G). Then:

Sunks becoming agitated as the current course and swell means we are taking on water ...

This then leads to the request from the boarding officer to you to move the children and the women off—at 0751Z(1451G). On page 82 at 0922Z(1622G)—almost two hours later:

... Siev is taking on water when stopped in the water ... Water is coming through the side of the boat. Sunks becoming agitated.

At the next line there is something that is unclear on our copy of this log, and I am wondering if you can explain from your original version what the first word of that next line is meant to be to make a sentence.

Cmdr Banks—It is ‘perry jet’; it is a misspelling.

Senator JACINTA COLLINS—It is an abbreviation for peri-jet—is it?—or was it whited out?

Cmdr Banks—It is just a misspelling. The correct spelling would be ‘peri-jet’.

Senator JACINTA COLLINS—No, sorry, above that there is a blank on our copy.

Cmdr Banks—I can’t read it.

Senator JACINTA COLLINS—It says ‘— increasing water rising’.

Cmdr Banks—I can’t make sense of that.

Senator JACINTA COLLINS—Do you have something in the log that is a word? All we have is a large space and a little squiggle.

Cmdr Banks—It looks like ‘7’.

Senator JACINTA COLLINS—That is all that is there in your version?

Cmdr Banks—That is all that is there in my version.

Senator JACINTA COLLINS—We have:

... increasing water rising, perry jet to be left running whilst towing—

Then at 0942Z(1642G), ‘believe serious damage to the bottom’ of the boat. At 0948Z(1648G), on the next page, you are removing personnel from aft and ‘02 deck’. Is that the top deck?

Cmdr Banks—Yes.

Senator JACINTA COLLINS—Then I have another interesting reference here, at 0949Z(1649G):

110 cm water at shallowest point. We are not sinking, but taking on lg amounts of water. Believe the boat is slowly sinking.

Cmdr Banks—I think he is referring to the swamping. Water was coming over from the sea onto the deck and then going into the boat.

Senator JACINTA COLLINS—Then we go down to 1009Z(1709G):

Recommend we put people in the water.

So at 1009Z(1709G) we put people in the water.

Cmdr Banks—About then—we had already given the order to launch a life raft. It had already extracted one of the children who had been passed from the SIEV to the RHIB.

Senator JACINTA COLLINS—Yes. So we go from 0738Z(1438G) when your boarding officer requests that women and children be taken off the ship to 1009Z(1709G) when, finally, people are taken off the ship. Can you explain to the committee why over that 2½-hour period the decision to disembark the SIEV was not taken earlier?

Cmdr Banks—Because if I disembarked some to *Adelaide* I would have failed in my mission aim and I might as well have embarked all of them. In my judgment we still had a boat that was still marginally seaworthy and I still had control of the situation.

Senator JACINTA COLLINS—A boat that was marginally seaworthy?

Cmdr Banks—It was not until late 1650G, early 1700G, that it became readily apparent that I no longer had control. At 1430G I increased the efforts to dewater the vessel by installing the peri-jet.

Senator JACINTA COLLINS—Sorry, at which time?

Cmdr Banks—You are reading 0730 Zulu.

Senator JACINTA COLLINS—Yes, that is right. I am reading 0738Z(1438G). Are you suggesting that at 0738Z(1438G) you still thought you had a marginally seaworthy ship?

Cmdr Banks—Yes.

Senator JACINTA COLLINS—What happened between 0738Z(1438G) and 1009Z(1709G) when people were in the water to convince you otherwise?

Cmdr Banks—Several things: the advice of the boarding officer, the advice of the XO, the fact that I could see with my own eyes that the vessel was now bow down in the water, and the fact that the water level was rising despite our pumping efforts.

Senator JACINTA COLLINS—But the water level was rising at 0738Z(1438G) as well.

Cmdr Banks—I contained it by the use of the peri-jet in the period between 0738Z(1438G) and 0930Z(1630G)-something.

Senator JACINTA COLLINS—There are a few things in all of that that I want to get to the bottom of. The first is your mission's aim. How do you characterise that?

Cmdr Banks—The aim was to deter and deny access to the Australian migration zone. If forced to abandon that aspect of the mission, I was to contain the situation until a decision could be made as to where the SUNCs would be transferred to.

Senator JACINTA COLLINS—And what did 'containing the situation' mean? How would it be contained?

Cmdr Banks—That would be as it unfolded. That may have been taking them to Christmas Island and providing a picket or a sentry whilst they were taken to the buoys at Christmas Island. It was keeping them inside the contiguous zone but outside Australian territory in the SIEV, and *Adelaide* providing an escort, or it could have been embarking them in *Adelaide*.

Senator JACINTA COLLINS—Then where did this strategy of maintaining them on the SIEV for as long as possible come from and how does that relate to your mission's aim?

Cmdr Banks—Dare I be so bold as to say commonsense. If I had them on board *Adelaide* it was my opinion that I would not be able to get them off *Adelaide* without the use of force.

Senator JACINTA COLLINS—When you said at 0738Z(1438G) you had a marginally seaworthy vessel, did that mean that at 0738Z(1438G) you believed that, with additional work, the vessel could be made seaworthy again or just that you could keep it afloat?

Cmdr Banks—We could certainly keep it afloat. The engine had gone—it had seized. The vessel was floating. It had very good buoyancy, evident from the fact that a day and a half after it sank it was still partially exposed above the water level. Whilst I had the people on board the SIEV I had control of the situation.

Senator JACINTA COLLINS—And you had them contained in a containable space.

Cmdr Banks—I had them contained in an area. I was able to deliver food and water; I was able to reconstitute my boarding party—and *Adelaide* was free to carry out any other jobs it had to do.

Senator JACINTA COLLINS—Did you need any particular authority to bring these people onto the *Adelaide*?

Cmdr Banks—No. Given the opportunity, I would always have consulted with the brigadier, but my instructions were clear that there was to be no loss of life or injury.

Senator JACINTA COLLINS—What did you require authority for? We have references in the log to the need for authority to tow. I can take you to the particular references. As one example, in the ship's log at 1544G on 7 October we have 'Brig'—I take it that is referring to Brigadier Silverstone—'awaiting Prime Minister to make decision on SIEV'. Shortly afterwards, at 1550G, it says that the 'Prime Minister determined Ade [*Adelaide*] will tow SIEV to place to be determined'. I would like to understand what actions in this mission you needed particular authority for and where you understood that authority to come from.

Cmdr Banks—Circumstance allowing, it would always be prudent to have consulted at any stage in the operation, but I was pretty clear that I could have done most of these things without seeking authority. To effect a boarding, I was instructed to seek approval.

Senator JACINTA COLLINS—You were instructed to seek approval to effect a boarding?

Cmdr Banks—Yes, I was.

Senator JACINTA COLLINS—How long did it take for you to achieve that approval?

Cmdr Banks—Not very long—a few minutes on the telephone.

Senator JACINTA COLLINS—Who did you need to seek that approval from?

Cmdr Banks—From CJTF 639.

Senator JACINTA COLLINS—Did he need to seek that approval from further up the chain of command?

Cmdr Banks—You would have to ask him.

Senator JACINTA COLLINS—The reason I ask this is that it is pretty obvious through the logs that there is a belief from officers on the ship that the approval process goes beyond the brigadier. That reference I made is just but one.

Cmdr Banks—Yes, it did. I recollect that there were some conversations where the brigadier took me into his confidence and explained things—that this was important and that it was going to government, and indeed the Prime Minister on certain occasions, for decisions to be made.

Senator JACINTA COLLINS—Was whether you could board the asylum seekers one of those matters?

Cmdr Banks—I do not believe so.

Senator JACINTA COLLINS—But the towing was one?

Cmdr Banks—Where we were going to tow it to.

Senator JACINTA COLLINS—So not to tow but actually where to tow?

Cmdr Banks—If I had felt the need to tow, I would have effected that decision by myself. Obviously, I would have consulted if time had allowed it. I do not believe that the decision to tow required further approval. The decision where to tow the vessel and/or, if I embarked the SUNCs, where to take them required government approval. I was aware of a discussion of maybe going to Cocos Island, and I was working fervently to have that stopped because I felt that that was not achievable.

Senator JACINTA COLLINS—Are you aware of why you were instructed to consult the brigadier before you embarked asylum seekers onto the *Adelaide*?

Cmdr Banks—Because that was clearly a transition in the phasing of the mission where the deterrence and the denial aspects had stopped and we were then transitioning into the containment phase.

Senator JACINTA COLLINS—Looking at the earlier log, we see that at 0738Z(1438G) you were already in the containment phase, because at that stage you had already accepted that the ship could not be made seaworthy again. It was marginally seaworthy in that it was able to be kept afloat, but you were in the containment phase because you had these people contained on the vessel in tow.

Cmdr Banks—To another phase of the containment phase.

Senator JACINTA COLLINS—Take me through the different phases of the containment phase.

Cmdr Banks—‘Phases of it’ are my words. I do not think that there were predescribed phases, although we had prepared some briefs for COMNORCOM. Clearly, if the aim was always to deter their arrival in Australia, embarking them on the *Adelaide* was another step towards their achieving that goal and our being unable to reverse the process.

Senator JACINTA COLLINS—So containing them on their own vessel but ensuring that it was still floating and towing it to a place determined was one phase.

Cmdr Banks—Speculation—it could have been that I was directed to tow them back to Indonesia and transfer control to Indonesia. Having embarked them in *Adelaide*, that would have been an impossibility.

Senator JACINTA COLLINS—Why is that?

Cmdr Banks—Because I do not think I would have been able to have got them off *Adelaide*. But you are asking me to speculate now; those things did not happen.

Senator JACINTA COLLINS—Yes. But you could hand this marginally seaworthy but probably irreparable ship back to the Indonesian government?

Cmdr Banks—That is not my decision.

Senator JACINTA COLLINS—No, but we are working through and you were saying that, if you had put them onto the *Adelaide*, that would have closed off one of the options.

Cmdr Banks—You are asking me to give opinions, which I am not prepared to do.

Senator JACINTA COLLINS—But you would accept that moving to a different containment phase and putting them onto the *Adelaide* is balanced against the safety of life at sea issues relevant to these people on a ship.

Cmdr Banks—The sea conditions were fine, the vessel was marginally seaworthy but it was still afloat, my XO and MEO had recommended, after their visit, that the situation was in control, we were dewatering the vessel and, whilst the Boardo had some concerns and the SUNCs were intimidating concerns, it was my judgment we still had control of the situation and it was safe for the people to remain embarked in SIEV4.

Senator JACINTA COLLINS—You referred to this in your evidence last week. Was this the stage at which Brigadier Silverstone was saying things to you like, ‘Make sure you don’t get suckered into a safety of life at sea situation’?

Cmdr Banks—I do not recollect the use of the words ‘suckered in’, but I think—

Senator JACINTA COLLINS—I checked the *Hansard*; sorry.

Cmdr Banks—I stand corrected. That was preceding that event.

Senator JACINTA COLLINS—It was preceding that event?

Cmdr Banks—I am pretty sure that was preceding that; well before.

Senator JACINTA COLLINS—But would it have been one of the factors that made you decide, contrary to your boarding officer's request, not to take women and children off the ship?

Cmdr Banks—I get paid to make judgments. I listened to the advice, I weighed it up and I made a determination that the situation was still in my control. Obviously, with the benefit of hindsight, I was incorrect—but at 1430G that judgment was validated and even at 1630 the judgment was still correct.

Senator JACINTA COLLINS—What you have just said then does contradict the understanding of the asylum seekers—which was what I was coming back to—which was that they had to be in the water before you would rescue them.

Cmdr Banks—I do not know what the boarding officer had communicated to them. I find it very hard to believe that he would have communicated that.

Senator BRANDIS—That would not have been within his orders to do that, would it, Commander Banks, to make a communication to that effect?

Cmdr Banks—He would have been speaking to them all the time in his efforts to control them.

Senator BRANDIS—But you heard what Senator Collins read to you from the asylum seekers' statement, what they assert the boarding officer told them. It would not have been within his orders to make a statement to that effect, would it?

Cmdr Banks—Certainly not to my recollection.

Senator JACINTA COLLINS—Commander, some of these issues I will pursue further with Brigadier Silverstone. There are just one or two other issues I wanted to ask through your earlier evidence. When you spoke to Brigadier Silverstone regarding the threat of a child being put overboard, you indicated that you took several phone calls at that time and I think you have indicated through some of the evidence that one of those was COMFLOT.

Cmdr Banks—That is correct.

Senator JACINTA COLLINS—What was the nature of your conversation with him?

Cmdr Banks—I believe somebody else took the call—in reading the logs—and then he called back and he asked me had I used warning shots.

Senator JACINTA COLLINS—So it was only about whether—

Cmdr Banks—It was only about the warning shots.

Senator JACINTA COLLINS—So it did not even canvass the issue of children overboard?

Cmdr Banks—It was well before that event. This was in the log at 4.20 in the morning.

Senator JACINTA COLLINS—Did you talk to anybody else around about the time you spoke to Brigadier Silverstone?

Cmdr Banks—No. I have no recollection of speaking to anybody else.

Senator JACINTA COLLINS—So you had no other conversations covering the ‘children overboard’ issue where you could indicate that, in those conversations, you quite clearly indicated the facts as you understood them?

Cmdr Banks—The only telephone conversations I had were with Brigadier Silverstone. The exception to that was when COMFLOT rang.

Senator JACINTA COLLINS—I want to raise one more issue. This relates to evidence back when we were dealing with Minister Reith being on board the *Adelaide*. You said that you had a conversation with the minister about the EOTS machine—is that the right word?

Cmdr Banks—Yes. It is the EOTS equipment.

Senator JACINTA COLLINS—Can you describe the nature of that conversation more fully?

Cmdr Banks—No, I cannot. This is only because it was one of many conversations. When I go back in my mind I can recollect various little things, but the exact wording of it, no, I cannot. I recollect meeting him on board, I recollect some banter about a previous meal he had had on board, a letter he had written, talking about the future and Op Slipper. I recollect that as we walked around the ship he pointed out the EOTS and spoke about that—more so to the Prime Minister about EOTS, is my recollection. I think it was because he had EOTS wrong, he had given the wrong description of the acronym. We were focused very much on Slipper—where we were going and what was happening.

Senator JACINTA COLLINS—So it was not of the nature that ‘that is the equipment that took the controversial video’?

Cmdr Banks—No, I do not think so. The other part of the conversation was about the hangar.

Senator JACINTA COLLINS—That is right; no, I recall that part of it. I was more interested in the EOTS and the video, given Brigadier Silverstone’s evidence to us that Minister Reith said he did not want to look at the video. So I was curious about why he wanted to understand the EOTS equipment if he did not want to look at the video. The final issue I wanted to come to was the issue of the sabotage.

Cmdr Banks—Can I just go back to that EOTS question. Throughout it all, there are lots of assumptions. I had despatched the EOTS videotape on 14 October. I therefore, rightly or wrongly, assumed that that was available for other people.

Senator JACINTA COLLINS—Yes.

Cmdr Banks—The fact that it was not, I was unaware of.

Senator JACINTA COLLINS—In a chronology of events and key correspondence surrounding the intercept and escort of SIEV4, there is a conclusion—this is at enclosure 2 to the Powell report; you do not need to go to it, it is a very brief reference—at the very bottom of this chronology that says that, ‘SIEV4 foundered. Sabotage possible, but CO *Adelaide* assesses it is not the only plausible cause.’ You go into some more detail about that in your statement as well. Given that there have been some more recent media comments, amongst others, that sabotage is what caused these problems, is there anything further you wanted to add on that issue?

Cmdr Banks—No.

Senator JACINTA COLLINS—You stand by what is in your statement?

Cmdr Banks—It is my statement.

Senator JACINTA COLLINS—Yes.

Cmdr Banks—It was made at the time, based on the information at the time. Until I came to this inquiry, I was unaware that there were 12 SIEV incidents.

Senator JACINTA COLLINS—You were unaware of SIEV10, for instance?

Cmdr Banks—I was unaware of all of those.

Senator JACINTA COLLINS—Yes.

Cmdr Banks—I was unaware that there was another SIEV incident on 7 October involving another patrol boat.

Senator JACINTA COLLINS—Yes.

Cmdr Banks—It was a very isolationist view of our world and what was happening.

Senator JACINTA COLLINS—You did, though, receive the memo from Brigadier Silverstone, his advice to commanding officers in dealing with SIEVs, of 7 October?

Cmdr Banks—Yes, I did.

Senator JACINTA COLLINS—A memo in which he referred to allegations of children overboard?

Cmdr Banks—No. His words were, ‘children displaced over the side’. I think that was the wording.

Senator JACINTA COLLINS—I would have to go to the statement itself, but I think it referred to allegations, not facts.

Cmdr Banks—I have a copy of that somewhere.

Senator JACINTA COLLINS—I can quote it if you haven’t got it. We are both right. It says:

... deliberate displacement of personnel overboard, including allegations of children in lifejackets put over the side.

Cmdr Banks—I was just checking the classification; I had forgotten that it has been declassified. I am aware of that.

Senator JACINTA COLLINS—At the time that caused you no concern?

Cmdr Banks—No, it did not. It backed up what I was aware of—that no children had been thrown over; a child had been put over.

Senator JACINTA COLLINS—Or allegations that a child may have been put over.

Cmdr Banks—Allegations that a child may have been put over. To my version of things that rang true.

Senator JACINTA COLLINS—And if this had been the nature of the report by Brigadier Silverstone, further up the chain of command, it would not have been an issue.

Cmdr Banks—Correct.

Senator JACINTA COLLINS—And yet this is the report that he debriefs his COs with on the same day.

Cmdr Banks—I did not view this document with any alarm. I had received this on the evening of 7 October, well after all the events—at six or seven o’clock at night.

Senator JACINTA COLLINS—Through similar reports, are you aware of any safety of life at sea incidents as a result of the current strategy for handling SIEVs?

Cmdr Banks—As I said, I was only ever aware of SIEV3 and SIEV4.

Senator JACINTA COLLINS—I am now talking about after the SIEV4 incident as well. Were you at any time apprised of the SIEV10 incident and the death of two women in the water?

Cmdr Banks—As I said, I am aware of the death of two people altogether and, until I came here last week, I was unaware that there were 12.

Senator JACINTA COLLINS—Thank you.

Senator FAULKNER—Are you aware of what I understand is an unclassified memorandum from CDF headed ‘Collection and handling of operational material with potential evidentiary use’?

Cmdr Banks—Could you just give me a bit more information?

Senator FAULKNER—Not a lot, because I read about it in the *Bulletin* magazine. Laurie Oakes might like me to read his article into the record, but it does refer to an unclassified memorandum headed ‘Collection and handling of operational material with potential evidentiary use’.

Cmdr Banks—Something came out recently. I think I read it or browsed through it. It is in that pile in the ‘to do’ tray.

Senator FAULKNER—I know the feeling. I do not think this depends on an intimate knowledge of the memorandum, but I would like to understand whether you are aware of any loss or destruction—deliberate or otherwise—of any document or material that might be relevant to this committee’s inquiry?

Cmdr Banks—Yes, I am aware. The EOTS videotape—there are 10 tapes. The tapes of import are tapes 4 and 8. Tape 4 shows the ‘children overboard’ incident, as you call it—

Senator FAULKNER—I actually describe it as the ‘non children overboard incident’. I am sure that you appreciate that—I think we both do.

Cmdr Banks—I do appreciate that. And tape 8 showed the sinking. Both tapes were recorded on EOTS—and correctly—and in the subsequent reviewing in my cabin by me and/or during the recording process of making duplicate, triplicate and quadruplicate tapes we managed to record over significant sections of tape 8. Only about a minute or two of that footage is left. So that evidence was erroneously destroyed. I will take responsibility for the bulk of that.

Senator FAULKNER—This goes to the actual sinking event of SIEV4.

Cmdr Banks—The sinking and rescue.

Senator FAULKNER—How many minutes of tape would there be?

Cmdr Banks—I would have to check my records but there are probably 55 minutes.

Senator FAULKNER—I suppose you became aware of that almost immediately, did you?

Cmdr Banks—Not for some time, but within that October time frame.

Senator FAULKNER—In relation to the EOTS tapes—I do not want to be specific: you have said the relevant tapes are numbered 4 and 8, so obviously this does not apply to tape 8, but it may apply to tape 4 or any others—were tapes shown to any land based authority on Christmas Island?

Cmdr Banks—I recollect that I showed snippets of it to the harbour master and possibly the Federal Police and Customs guys. They came on board on the 9th and I was viewing that footage then as we were trying to compile our chronologies, on 9 and 10 October.

Senator FAULKNER—It is true to say that the AFP took possession of at least a copy of the tape.

Cmdr Banks—They were given a copy and I signalled a receipt that that transfer had taken place as part of the evidence process.

Senator FAULKNER—So the harbour master may have seen some part of the relevant tape, tape 4. Would that be possible or likely?

Cmdr Banks—Tape 4 and/or 8. Those are the two tapes that I would have been viewing.

Senator FAULKNER—I see. So the point at which the harbour master might have viewed tape 8 is prior to the copying of the tapes.

Cmdr Banks—Yes.

Senator FAULKNER—Beyond the ship's company, AFP personnel and the Christmas Island harbour master might actually have seen relevant parts of the tape that has been recorded over. They would be the only individuals, outside the ship's company, who would have had the benefit of any viewing of that tape.

Cmdr Banks—That is a fair assumption.

Senator FAULKNER—The Chief of the Defence Force, Admiral Barrie, actually rings you after the Senate estimates. That is not an unexpected call because the Maritime Commander, I think, warned you or flagged with you that that was likely to occur at some time, I assume, on the morning of 24 February. For the sake of the record, could you confirm that the Maritime Commander did in fact ring you and indicate to you that the CDF was keen to speak to you about some matters?

Cmdr Banks—Yes, he did.

Senator FAULKNER—Was the Maritime Commander able to say to you what the likely issues to be discussed or general thrust of this conversation with the CDF might be?

Cmdr Banks—Yes, he did. He put it in the context of Senate estimates, a media brouhaha, that the issue was very topical and that the CDF would likely ring me to ask some questions.

Senator FAULKNER—Did you have any questions for the Maritime Commander in that telephone conversation? Prior to speaking to the CDF did you seek any clarification or more detail?

Cmdr Banks—I think there was some discussion about the fact that there was going to be a Senate inquiry, that I would probably be called and not to worry about it, and just to get on with the job.

Senator FAULKNER—Was it similar in a sense to that discussion you had with Chief of Navy?

Cmdr Banks—Similar.

Senator FAULKNER—Was the Maritime Commander able to say to you, ‘You mentioned this brouhaha’—which I think is a pretty fair description; I am not critical of it at all—and was he able to give you any feeling as to the extent of the likely public interest in this or the extent to which, if you like, this had become an issue of some political notoriety?

Cmdr Banks—It was very evident that this was now on the front pages of the newspapers. I mentioned that I had received extracts on the Internet.

Senator FAULKNER—So CDF did contact you as you were expecting?

Cmdr Banks—He phoned maybe 10 to 15 minutes later.

Senator FAULKNER—I see. What were the circumstances in which you took that phone call? Where did you take it and were there any others present, and the like?

Cmdr Banks—I took the call in my cabin. I cannot remember whether it was transferred. I think it was transferred from the bridge to my cabin. I had set that up. The supply officer was in my cabin on another matter. I cannot recollect whether I asked her to stay either in the sense of a witness or out of keen interest if she was impressed that I was going to talk to the Chief of the Defence Force and wanted to listen in, but she ended up sitting adjacent and heard one side of the conversation.

Senator FAULKNER—Fair enough. How long did that conversation with CDF take?

Cmdr Banks—I could not accurately say; it was perhaps about 10 minutes.

Senator FAULKNER—Would you be able to outline for the benefit of the committee the nature of the conversation? I appreciate that it is now a few weeks ago, but it is perhaps in more

recent memory than some of the other events that we have discussed at this select committee to date, so I wondered if perhaps you could outline that for our benefit.

Cmdr Banks—CDF drove the conversation. He spoke about Senate estimates. He asked whether I was aware that he had appeared and what it was about. It was all to do with the children and the SIEV4 incidents. He spoke about what had happened and even asked me what was my recollection, and specifically what written advice had I provided about the incident. These files have lived in my cabin, just about opened for the last four and a bit months—so they were readily there—so I reached across and pulled out the two relevant sit reps and said, ‘Sir, in my sit reps Nos 8 and 9 I made no mention of children. I spoke only about 14 people being overboard.’ He asked me: ‘But we would not know those in Canberra; those were tactical level sit reps,’ and I said, ‘To the contrary, sir, these were addressed to agencies in Canberra, as well as all the other tactical agencies.’ He then said that that was going to change things because that was not the information he had been given.

I do not think we quoted the date/time groups of the signals, but we spoke about the wording in them. We spoke briefly about what had been in this telephone conversation and the conflict and that perhaps he had used the words ‘fog of war’ there. I reiterated that I had signalled information that did not mention children overboard. He spoke to me about the fact that he had been out of the country for a lot of the time, that he was now coming back to this and that he would deal with it from now on. He said that this would go to a Senate inquiry and that he also thought that it might go to a board of inquiry. I believe at that stage he was talking about a board of inquiry before the Senate inquiry so that formal evidence could be gathered. The conversation ended talking about Slipper, when we were coming back, how the deployment had gone and the general nature of current events, as in *Adelaide* not the Senate estimates.

Senator FAULKNER—Did the CDF express a view on the outcome of the Senate estimates hearings—perhaps the likely impact on Defence or the Navy?

Cmdr Banks—No. Not to my recollection.

Senator FAULKNER—Perhaps any impact on him personally?

Cmdr Banks—There was a conversation thrust along the lines of he would deal with it. Clearly the information that he had presented to the Senate—this is my summary of it now—was contrary to the information I was providing and that he would now have to deal with that conflict in information.

Senator FAULKNER—Did you talk at all about the timing of the call? You had obviously at least one face-to-face discussion with CDF more than a month earlier, in January, and, I suppose, there were other opportunities that CDF might have had to take an initiative. Was the question of the timing of the call discussed in the sense that it was after the issue was effectively front and centre in the public and political debate in this country, after the Senate estimates hearings in mid-February?

Cmdr Banks—There have been so many conversations, discussions and rereadings, I could not firmly say that on 24 February we rediscussed his visit on 17 January. What I had discussed

with him and the minister about SIEV4 was in very brief terms. I could not swear either way whether we discussed it again.

Senator FAULKNER—You have not had many discussions with CDF.

Cmdr Banks—Only two. There was a discussion on 17 January and again on 24 February. Apart from those, I have not spoken to CDF since he visited in Darwin in February 2001.

Senator FAULKNER—Were you left with the impression by the end of this conversation or did the CDF say to you that the advice that he may have proffered publicly, without the benefit of a discussion with you as CO of *Adelaide*, might now be changed? It was; as I think we are all aware, he took a different view and expressed that publicly and said it was as a result of the conversation with you. Did he indicate to you in the conversation that you had with him that that was likely to occur—in other words, that the conversation he had with you changed his view, changed his attitude and changed things in relation to how he perceived the issue?

Cmdr Banks—It is my recollection, or my perception, that I swayed his understanding of the events and that he would then deal with providing another statement to the Senate.

Senator FAULKNER—Did he indicate to you that he was embarrassed by that?

Cmdr Banks—I could not say. He was on the end of the telephone. I could not tell whether he was embarrassed or not. He intimated that it was difficult; it had changed things.

Senator FAULKNER—I did not actually ask you: ‘Did he look embarrassed?’ I meant: did he say he was embarrassed? I appreciate that. Did he explain to you why it was difficult or just that it was difficult?

Cmdr Banks—I do not think he explained it; he just stated that this was difficult now. He had made some statements and they were in error, but he would deal with that.

Senator FAULKNER—The op reps/sit reps that are relevant here did in fact, as you have indicated to us, go to Canberra agencies. Let me be clear—I want to understand this—I think you drew a distinction between tactical-level sit reps, which may not have included Canberra agencies, and other sit reps that might have. Is my distinction right here?

Cmdr Banks—My recollection is that it was the CDF who was saying that Canberra would not have got my tactical-level sit reps.

Senator FAULKNER—Yes, but that is the case with a tactical-level sit rep: a tactical-level sit rep does not go to Canberra agencies—or does it?

Cmdr Banks—They do. There is a process called op rep reporting—operational reporting—and there are a number of agencies that are pretty well automatic addressees, because the reports contain location information.

Senator FAULKNER—I see, so the CDF did not realise that a tactical-level sit rep would go to the Canberra agencies?

Cmdr Banks—That would be an assessment, yes.

Senator FAULKNER—That is what I was asking: I was wondering whether I knew as much about tactical-level sit reps as the CDF. I am a little worried that I do. Could you, for the sake of the record—and I think this is clear if we look at the actual sit reps themselves—say the date of the relevant sit rep and indicate the Canberra based agencies that it went to.

Cmdr Banks—They are preforwarded messages, so the addresses are pretty well the same throughout. The two in question were sit rep 8 and sit rep 9, daytime group 06 2200 Zulu, October and they were addressed to CJTF 639 for information Headquarters Northern Command, Task Group 639.0, Task Unit 646.2.2, MHQAUST, Coastwatch Canberra, ASTJIC, ASTJIC OBU, HQAST, DIO Canberra and DSD Canberra.

I think when I spoke earlier I said that ADHQ Ops were clearly not addressees on these. They subsequently got copies from their logs. My personal statements and witness statements were not addressed to Canberra; they were limited to NORCOM, CJTF 639 and Maritime Commander.

Senator FAULKNER—Is it true to say that the CDF made it clear to you that the addressees of these sit reps was significant and did change things?

Cmdr Banks—That was certainly my impression. As soon as I mentioned those addressees, he said, ‘That changes things.’ I had assumed throughout that he was aware of all these things—that was an erroneous assumption. I had also assumed that, because of the Bryant and Powell reports, he would have had access to all that information as well. So it was a little surprising to me when we were having this conversation.

Senator FAULKNER—Was it the nature of the conversation that surprised you or was it the fact that it was so late in the day?

Cmdr Banks—It was actually early in the day—

Senator FAULKNER—I mean late in the process.

Cmdr Banks—Late in the process, yes. As I said, I erroneously assumed a couple of things, but I had assumed that he had access to the Powell and the Bryant reports and would have seen those signals, which are contained in them.

Senator FAULKNER—Were there any other assumptions that you made that were wrong?

Cmdr Banks—In relation to?

Senator FAULKNER—You indicated that you erroneously assumed that he had had access to the Powell and Bryant reports—how do you know that he did not have access to the Powell and Bryant reports?

Cmdr Banks—I don't.

Senator FAULKNER—I am wondering if that is an assumption on your part?

Cmdr Banks—It is an assumption on my part based on the fact that he was asking me questions about my sit reps.

Senator FAULKNER—Anyway, we can check that with the CDF himself. You have had no conversations with the CDF since?

Cmdr Banks—None at all.

Senator FAULKNER—Did the CDF indicate to you whether he might have a direct communication or conversation with any of the other key parties to this—Brigadier Silverstone, for example, who you had that significant and early conversation with?

Cmdr Banks—No.

Senator FAULKNER—Were they the only matters that you discussed? Was your conversation limited to the events that arose out of the Senate estimates evidence?

Cmdr Banks—We then spoke about Slipper, when we were coming home, where was I stopping, the passage plan, the speed—all of those sorts of things. We spoke about when I was expected back in Australia, how the boardings had gone—a whole host of Op Slipper related things. The CDF showed a great deal of interest in what we were doing.

Senator FAULKNER—Yes. Of course, you also had an opportunity to discuss those matters with him earlier in January.

Cmdr Banks—On 17 January.

Senator FAULKNER—When you flagged with the CDF in a 'whispered aside'—I think that is a fair description—the possibility of raising a SIEV4 related issue, the CDF said not to progress that?

Cmdr Banks—Again, I assumed there that he was fully aware of the issues and our version of the issues. Clearly, he was not.

Senator FAULKNER—You talked to me—it seems half a lifetime ago, but I think it was only about a week or so ago—as an aside, about the possible need for a telephone log. I do not know if you remember that comment. Just for the record, could you tell the committee whether you or any other of the company of the HMAS *Adelaide* had at any time any contact by telephone or other means with any ministerial staffer about SIEV4 or Operation Relex? I have

tried to be careful in the way that I have asked that question. Having seen your witness statement, I am expecting an answer in the negative, but I am not entirely sure, so I wanted to ask you the question in that form.

Cmdr Banks—In relation to SIEV4, I have no recollection or knowledge of having any dealings with any ministerial staff adviser or minister.

Senator FAULKNER—And in relation to Operation Relax?

Cmdr Banks—In relation to Operation Relax, the same applies.

Senator FAULKNER—The fire alarm is ringing. What would that mean on a ship, Commander? Time to jump overboard probably!

Cmdr Banks—I am not going to make any comment on the use of that word whatsoever!

CHAIR—We were going to break for morning tea at 11.30. I have let the questioning roll on because I did not want to break the seam of it, but we do have Brigadier Silverstone down for 11.30. Will you be much longer, Senator Faulkner?

Senator FAULKNER—I do not think I will be much longer. Can we battle through the fire alarm?

CHAIR—Yes, I think so. It is a drill.

Senator FAULKNER—It might take me until about 12 o'clock. How does that sound?

CHAIR—In which case, I think we will break now for 10 minutes.

Senator FAULKNER—But I will not be long after the break—I promise you.

CHAIR—Apart from me, and I only have 10 minutes, I hope we can get through it. However, it has been a long sitting and I think—as far as I know—the commander now has the dubious record of being the longest single witness before a Senate inquiry.

Senator FAULKNER—It could be worse, Commander, you could be a senator!

Proceedings suspended from 11.40 a.m. to 11.52 a.m.

Senator FAULKNER—Commander, I wanted to ask you about something that was contained in Mr Reith's witness statement. You may or may not be aware that the committee has had access to the witness statements for both the Powell and Bryant reports. I want to read a part of a statement on page 3 of Mr Reith's statement to the Powell report, which is dated 20 November last year:

Unbeknown to me, but at the time of the incident, the CO of HMS Adelaide rang the Maritime Commander and told him that children were thrown overboard.

To put this in context, it goes on:

I was made aware of this conversation only in November by my Parliamentary colleague Dr Brendan Nelson, who was with the Maritime Commander when he took the phone call from HMAS Adelaide. When he put the phone down, the Maritime Commander relayed the report to Dr Nelson of children being thrown overboard.

Clearly there is no date on this, but both the Bryant and Powell reports do go to this issue. If I take you to the chronology in the Powell report, at page 4 of 13, halfway down the page—I think it refers to this section of the Powell report that is after 1813 hours—it says, marked ‘PM’:

During a reception onboard HMAS KANIMBLA, Rear Admiral Smith remarks to the Parliamentary Secretary for Defence, Dr Brendan Nelson, that ‘the task was very difficult, made even more so by the most recent boatload jumping/pushing people into the water, including children’.

I think it is proper that I point that out to you, just so you are aware of that—you probably were, anyway—in General Powell’s report. But can I just, for clarity’s sake, go to this statement of Mr Reith:

Unbeknown to me, but at the time of the incident, the CO of HMAS Adelaide rang the Maritime Commander and told him that children were thrown overboard.

I wanted to ask you: was there any truth at all in Mr Reith’s statement?

Cmdr Banks—I made no telephone call to the Maritime Commander in relation to this incident, on 7 October.

Senator FAULKNER—Have you ever rung or contacted the Maritime Commander and told him that children were thrown overboard?

Cmdr Banks—There is more than one question there.

Senator FAULKNER—With respect, there is not. The two parts of the question are related, not whether you have ever rung or contacted.

Cmdr Banks—I rang the Maritime Commander in relation to aspects of SIEV4 on 8 October, about the sinking, and we spoke again on the 9th, 10th, about the need for statements to clear up whether children had or had not gone overboard. I did not speak to the Maritime Commander on 7 October.

Senator FAULKNER—You use that date because of the chronology in the Powell report—7 October?

Cmdr Banks—Only because that is the day we are talking about—the children overboard.

Senator FAULKNER—Yes, indeed.

Cmdr Banks—I actually have not read the Powell report. I only got a copy faxed to me and because it is in colour—

Senator FAULKNER—Tell me about it, Commander. We all faced that problem. It does not work very well in fax machines, does it?

Cmdr Banks—No.

Senator FAULKNER—The only benefit that I know of actually being a member of this committee is that you actually get a colour copy of the Powell report. I am sure there is no other benefit of actually being a senator on this committee at all. So I appreciate the problem. While I am mentioning the Powell report, I refer to page 8 of 13 of the general's report. If I could just quickly take you there: the date is 9 October 2001 and it is the last entry there.

Cmdr Banks—I have not got a copy. Could you just say the time again?

Senator FAULKNER—I am sorry. It is p.m., it is not marked, it is the last entry in General Powell's report, page 8 of 13. I will just quote it to you:

CO ADELAIDE became aware of how the Australian media were portraying ADELAIDE's role in SIEV4 incident via internet.

I interpolate that you and I have talked about that in an earlier part of the hearings. It then says:

Herald Sun 8 October front page viewed. CO concerned about the misinformation but took no personal action to remedy this as he was advised not to.

That is contained in the Powell report. I am happy for you to have a copy of this if it is of assistance.

Cmdr Banks—I think those are my notes, or they are Ms Bryant's or General Powell's notes.

Senator FAULKNER—Yes, it also appears in the Bryant report; that is true.

Cmdr Banks—I recollect that. The time is 9 or 10 October, I think.

Senator FAULKNER—You may well be right. It is in this particular chronology as 9 October but, be that as it may, just for the record, I wondered about that part of this entry here that the CO is concerned about the misinformation, took no personal action to remedy this, as he was advised not to. Could you, for the benefit of the committee, indicate what 'as he was advised not to' means?

Cmdr Banks—I recollect—and I think that is a summary of events all the way through to 13 October—being advised not to, because we had the discussion on children being thrown overboard or not and then the chronology and the statements provided, which is where I became adamant that this had not happened, and did I then need to do anything about that? And the answer was, 'No, that would be dealt with at other levels.' I think I may even have spoken about did I need to send another signal or did I need to send a letter to the press? And the answer was, 'No.'

Senator FAULKNER—For the benefit of the committee, from where and when does this advice not to take any action emanate?

Cmdr Banks—I think it is a summary of discussions with CJTF 639 and Maritime Commander that there is no need to do anything further—I have told them. Subsequently I was asked to acknowledge receipt of the Op Relex op security instructions, which stated I was not to discuss it outside the military chain of command, and I acknowledged receipt of that and that clearly I had been advised not to go outside the immediate military chain of command to discuss information relating to SIEV4.

Senator FAULKNER—But this advice comes from Maritime Command and CJTF 639?

Cmdr Banks—And from CSO(O) at Maritime Headquarters, where I had been told not to send digital imagery, no more radio or TV telephone interviews and to abide by the letter of the law of the OPSEC instruction. That took place over a period of time—10, 11, 12, 13 October. By the time I got back to Perth, on 14 October, I had no uncertainty that I was not to discuss it.

Senator FAULKNER—Were you frustrated at all with the options that were available to you through the chain of command in this regard, given the inaccuracy of the information that, by this stage, was well and truly in the public arena?

Cmdr Banks—No, I still viewed that the information provided to the military chain of command was correct and what was being reported in the media was not correct. I had assumed that that was a media action.

Senator FAULKNER—One thing that has been discussed or commented on at some length is this whole question about the special arrangements that were put in place on 6 October with the direct provision of advice on Operation Relex to Air Vice Marshal Titheridge so he could brief Minister Reith. I do not know if you are well acquainted with that or not.

Cmdr Banks—I am unaware of that.

Senator FAULKNER—If you are unaware of it, it is probably very hard for you to comment. I am interested in understanding whether those arrangements had any impact actually on board HMAS *Adelaide*, on how you went about your communication role and responsibilities. But if you were not aware of it I imagine it would not have made an impact.

Cmdr Banks—I was unaware of it.

Senator FAULKNER—Have you had any recent communications about the possible need for you to appear before a board of inquiry or any other Defence inquiries that might be taking place?

Cmdr Banks—No, I have not.

Senator FAULKNER—Thank you.

CHAIR—I think that concludes questions from members of the committee. I have a couple of final questions but the light is very large at the end of the tunnel, Commander. First of all, Senator Brandis, in the last day's hearing, introduced the notion of your professional judgment,

and he introduced it by calling upon you to make a professional judgment about the condition of the vessel when you sighted it and so forth. That is a very good notion—the notion of your professional attachment. You have been in the Navy for, what, 25 years?

Cmdr Banks—Twenty-five years.

CHAIR—You are at the rank of commander and you are in charge of this vessel. Your professional skill and judgment relate to your seamanship and your experience as a Navy commander, don't they?

Cmdr Banks—I believe so.

CHAIR—This question about the fog of war has it that people can get confused in the heat of the moment—which I think is what the fog of war idea seems to be about. Your training over 25 years—your exercise experience and so forth—is about being as clear and as precise as possible in difficult circumstances, among other things, isn't it?

Cmdr Banks—Yes, it is. The fog of war issue has been something that has been on my mind a little bit. It is a term that I did not introduce. It has been introduced by other people. It is their expression, not mine. I view that the events of 7 October and 8 October took place in a largely benign environment. The fog of war relates more to a threat to the ship or to people. There was no threat to HMAS *Adelaide* or our people during that event. Whilst I was concerned—and certainly during the hours of darkness—at dawn, when the man overboard incidents took place, up until then I was fairly relaxed that we had effected a boarding safely and we were in control the situation. Throughout the remaining period, my concerns were raised a level but I was not swamped with information and I was not inundated with concern or worry unduly. I had the time to have signals drafted by my other officers and I had the time to be able to read those, review them, provide some analysis or some editorial comment and release them. So I do not think the fog of war applied, and it is other people's expression, not mine.

CHAIR—So what you are saying, if I can put it in layman's terms—correct me if I misstate it, please—is that you are relatively confident in your own mind that you made the right calls and you perceived the right circumstances—

Cmdr Banks—Yes.

CHAIR—and that you acted professionally.

Cmdr Banks—I and my ship's company acted professionally throughout.

CHAIR—Indeed. My understanding, broadly, of the purpose of Operation Slipper was to engage in the blockade of Iraq and prevent a breakage of that blockade. That was part of this nation's overall commitment to the war against terrorism and it was aimed at Iraq and also the axis of evil countries that have been referred to by President Bush. It all fits into that jigsaw. That was part of the operation.

Cmdr Banks—That was a part of the operation.

CHAIR—The people on this vessel—on SIEV4—were fleeing from those tyrannical regimes, were they not, and from what you have said exhibited signs of desperation to try and make it to Australia? That is a fair call, isn't it?

Cmdr Banks—I am not sure of the linkage between the two events.

CHAIR—Here we are conducting a war against countries—and Australia is part of this—which have tyrannical regimes which are not democratic, which suppress their people's liberties and rights and which engage in or are associated with international terrorism. Operation Slipper was part of that, and proudly part of that. The people on SIEV4 were fleeing from those regimes, were they not?

Cmdr Banks—I believe they were.

CHAIR—That is fine. I do not want to press the point any further than that.

Senator BRANDIS—Do you know, Commander Banks? Do you know if they were?

Cmdr Banks—No, I do not. I have not interviewed any of them.

CHAIR—The record will show it, because they have been interviewed and their countries of origin will be available to the inquiry at some point. My only point here was to make an observation in passing that a lot of their behaviour can be understood, given a sense of desperation on their behalf, and they exhibited behaviour which can be described in some circumstances as desperate. Illegal by our standards but—

Cmdr Banks—You are asking me to make opinions and form impressions—

CHAIR—Okay. I will not ask you to do that.

Cmdr Banks—which I am not in a position to do.

CHAIR—SIEV4 contained people seeking asylum in Australia, but it was not crewed by them, was it? It was crewed, as I think Admiral Shackleton said, by a number of people of Javanese appearance.

Cmdr Banks—We were unable to identify the crew of SIEV4. During the embarkation on the *Adelaide* we believed we had identified three or four of them by the fact that they were ostracised by the SUNCs and they maintained silence throughout it.

CHAIR—Were you asked in any way to identify who the people smugglers were, as opposed to who the refugees were?

Cmdr Banks—Asked by whom?

CHAIR—When you were collecting them from the water, were you asked by command to try and segregate the people smugglers from the refugees?

Cmdr Banks—No. We were effecting a rescue at that stage, and who it was was irrelevant.

CHAIR—When you were handing them over to the civilian authorities for processing, were you asked—

Cmdr Banks—We identified those people who we thought were the crew.

CHAIR—Were you asked at that point?

Cmdr Banks—No, we told the Federal Police.

CHAIR—They were handed over to the Federal Police?

Cmdr Banks—With the 220 SUNCs.

CHAIR—The whole lot were handed over?

Cmdr Banks—We identified that we believed these three or four people were the crew because they had sat by themselves and had made themselves separate from the other groups.

CHAIR—When the boarding party inserted itself on SIEV4, did it seek to identify who was in command of the vessel?

Cmdr Banks—Throughout the preboarding phase and the boarding phase the boarding party had attempted to identify who the crew and master were. We were unable to do that because that information was not provided by the people on board. I passed the DIMA warnings to the helmsman.

CHAIR—Is it assumed that the helmsman was a crewman? There had not been some sort of mutiny?

Cmdr Banks—The helmsman was in charge of the vessel. Therefore he should receive the notice.

CHAIR—You could not identify positively who the skipper was?

Cmdr Banks—No master was ever identified.

CHAIR—On the sabotage that occurred to the vessel, the evidence is that the engines were sabotaged; I think the pumps were sabotaged and maybe the rudder. Are you able to say positively whether that was done by the refugees or by the people smugglers in charge of the vessel?

Cmdr Banks—I am unable to answer that question. All I can say is that it was not done by HMAS *Adelaide*.

CHAIR—But we do not know which group on that vessel did that damage to the vessel?

Cmdr Banks—No, we do not—or no, I do not.

CHAIR—SIEV4 was first tracked by aerial surveillance and its presence in the region was reported to you—I think that was the evidence, wasn't it?

Cmdr Banks—Yes, it was.

CHAIR—Do you know whether the authorities were aware of its port of departure?

Cmdr Banks—I am unable to answer that question on the grounds of security.

CHAIR—All right. We may seek an answer, not from you but from a senior officer, in a private hearing, if that becomes a necessary or relevant part of the inquiry. I am just going back to your levels of professional judgment now. We have dealt with the 'fog of war' question. I just want to go through what I think are the main points of your evidence so that I have got a clear summary in my head. On the first point, your evidence is that there were no children thrown overboard. That is true?

Cmdr Banks—That is correct.

CHAIR—That is the finding of the Powell and Bryant reports.

Cmdr Banks—I have not read them that closely.

CHAIR—I can assure you that it is. It is your evidence, as well, that no signals or messages emanated from the *Adelaide* that children had been thrown overboard?

Cmdr Banks—That is correct.

CHAIR—I think it is also your evidence that, when you became aware of reports that children had been thrown overboard, you moved immediately to correct those reports.

Cmdr Banks—'Moved immediately' is generous. In the time frame of 9, 10, 11 October, in consultation with CJTF 639 and Maritime Commander Australia, we discussed and resolved.

CHAIR—So you reported to your senior officers. When you became aware that there had been misreporting of this incident in the media, you moved quickly—immediately, I thought it was, in the next day or so—to advise your senior officers that those reports were not true.

Cmdr Banks—I actually think the brigadier rang me and questioned me. The conversation went: 'I wanted to talk about this.' I do not think I initiated the call. But the thrust is correct.

CHAIR—But, reasonably promptly—within a day of this report becoming public—evidence was obtained from you by a senior officer that the reports were not true. That is a fair statement, then, is it?

Cmdr Banks—Yes, sir.

CHAIR—You spoke to a Channel 7 production assistant or researcher, and you were later told that you should not have done so.

Senator BARTLETT—Channel 10.

CHAIR—Channel 10—what did I say? I have got Channel 7 and Channel 10 confused. They will both be annoyed with me! But you spoke to them—and you were told you should not have done so. Under what order were you told that you should not have done so? Was it this order that we have seen dated 8 August 2001 titled ‘Public comment and dissemination of information by defence members’? Was it that order?

Cmdr Banks—No.

CHAIR—It was not?

Cmdr Banks—No, it was the Op Relex.

CHAIR—Under special orders for Operation Relex?

Cmdr Banks—Yes.

CHAIR—And what did those orders say as far as your ability to comment to the media was concerned?

Cmdr Banks—They did not make it clear.

CHAIR—They did not make it clear? Who was it that told you that you should not have commented?

Cmdr Banks—Brigadier Silverstone, and Brigadier Silverstone is correct. I should not have commented.

CHAIR—You have always accepted that you should not have, and you did that in your opening statement and you have done so all the way through. I am not questioning that. I might say, I am glad you did because if you had not have, maybe we would still not know the truth of this circumstance. You transmitted photos and the videotape up the chain of command. These were all properly labelled showing what they were and what they referred to, were they not?

Cmdr Banks—Yes, they were.

CHAIR—And none of the labels said that they referred to ‘children overboard’ in the context that we have come to use that phrase?

Cmdr Banks—No. All the emails were sent to military addressees. All contained photographs and text in various guises. Some had been sent before the boarding and some had been sent after the sinking. They were covering the gamut of events.

CHAIR—And they were all correctly labelled, describing what they were about and when they occurred?

Cmdr Banks—Yes.

CHAIR—When Mr Howard visited the ship, you did not discuss this matter with him? You have given reasons this morning why you did not.

Cmdr Banks—No, we did not discuss it. I saw a media clip the other day on TV which was not quite correct. We did discuss snippets of it, in the general sense of, ‘You guys did a great job of saving those people at Christmas Island.’ We did not discuss the specifics of it.

CHAIR—But you did not discuss the particular issue of children being thrown overboard?

Cmdr Banks—No, we did not.

CHAIR—To do so, you would have to have stepped outside the chain of command, wouldn’t you?

Cmdr Banks—Yes, I would have.

CHAIR—In a later conversation with Admiral Shackleton, which unfortunately came to light by virtue of your notes—and we have apologised to you for that—you were assured that neither the *Adelaide* nor you were on trial here, that there would be an inquiry but that would be likely to focus on those further up the chain and on Mr Reith’s office. Is that the key understanding?

Cmdr Banks—The discussion of 25 December spoke in those terms.

CHAIR—Thank you, Commander Banks. I have no further questions. When I welcomed you to this inquiry, I think I said on behalf of the committee that all of us respected your role and that of your crew. We would ask for our regards and that assurance to be passed on to the crew. In the time that you have been with us, those remarks have been more than justified, and we do appreciate that we do have, in the Australian Navy, officers of your calibre. Thank you very much.

Cmdr Banks—Thank you very much, sir. I have one question on notice, for which I have a reply. Senator Bartlett asked last week whether at any stage SIEV4 entered Australian territorial waters. The answer is no. The closest it came was one to two miles north of the territorial limit.

Senator BARTLETT—Thank you.

CHAIR—Thank you. I think what you have constantly referred to as your well-known ‘defensiveness’ need not apply.

Cmdr Banks—Thank you, sir.

[12.22 p.m.]

SILVERSTONE, Brigadier Mike, Commander Northern Command, Royal Australian Navy

CHAIR—Welcome to the inquiry, Brigadier Silverstone. We are sorry to have kept you waiting as long as we have. Usually people appearing before us have had a statement to make of what their evidence will be. Do you have such a statement?

Brig. Silverstone—I have no statement.

CHAIR—So you are happy to go to questions from the committee immediately?

Brig. Silverstone—Yes, I am.

CHAIR—I understand you are accompanied by a counsel. It is entirely up to you to decide how you want to deal with this, but it is quite reasonable, in our view, for your counsel to sit alongside you.

Brig. Silverstone—We are quite comfortable with this, thank you.

Senator BRANDIS—Brigadier Silverstone, at the relevant time—that is, on 7 October 2001—you were the commander of the joint task force which had been tasked to police Australian territorial waters to repel or to keep out people-smuggling vessels. Is that a fair description of your role?

Brig. Silverstone—That is correct, Senator.

Senator BRANDIS—Help me with the chain of command, please. Who reported immediately to you?

Brig. Silverstone—At that time I had a number of vessels under my command: the CO of HMAS *Adelaide*, the CO of HMAS *Warramunga* and the CO of HMAS *Geraldton*. HMAS *Brunei*, which was en route to Ashmore Island, reported to me. We were supported by an Australian Customs vessel, *Roebuck Bay*, which did not report directly to me but I had communications with it.

Senator BRANDIS—So the commanding officers of each of those naval or Customs vessels reported directly to you. Did they report directly to anyone else within their own service or were all lines of communication up the chain through you?

Brig. Silverstone—They were through me, with the exception of the Australian Customs vessel.

Senator BRANDIS—Do not worry about them; I am not interested in them. For the purposes of this exercise, the only person in the chain of command to whom, for instance, Commander Banks of the *Adelaide* reported was you.

Brig. Silverstone—That is correct.

Senator BRANDIS—To whom did you report?

Brig. Silverstone—I reported to the Naval Component Commander, Australian Theatre, Rear Admiral Smith.

Senator BRANDIS—Did you report to anyone else?

Brig. Silverstone—No. For this matter, I did not.

Senator BRANDIS—So, for the purposes of the HMAS *Adelaide*, it went directly from Commander Banks to Brigadier Silverstone to Rear Admiral Smith.

Brig. Silverstone—Correct.

Senator BRANDIS—Brigadier Silverstone, when did you first become aware of the interception of the suspected illegal entry vessel which we now know as SIEV4?

Brig. Silverstone—We had an indication on the 6th—

Senator BRANDIS—Just to make it clear, when you say ‘we’, I take it you mean your office—that is, the office of the joint task force.

Brig. Silverstone—My headquarters receiving—

Senator BRANDIS—Your headquarters are in Darwin?

Brig. Silverstone—In Darwin; that is correct.

Senator BRANDIS—At all relevant times, you were in your headquarters in Darwin.

Brig. Silverstone—That is correct.

Senator BRANDIS—I am sorry; go on.

Brig. Silverstone—About mid-afternoon on the 6th, I received a report from a P3 Orion indicating that this vessel was approaching Christmas Island.

Senator BRANDIS—Who gave the instruction to the *Adelaide* to move close and, if necessary, to intercept the vessel? Was that you?

Brig. Silverstone—I did, through my headquarters.

Senator BRANDIS—Let us get this straight, to start with. The communication between you and the *Adelaide* was both verbal and by signal. Is that right?

Brig. Silverstone—That is correct.

Senator BRANDIS—What form did the signals take? Were there different modes or media of conveying signals, or was there just one medium?

Brig. Silverstone—There was one medium: formal signal traffic.

Senator BRANDIS—The only two modes of communication, then, would have been a signal or a conversation over the telephone.

Brig. Silverstone—That is correct. There is also the classified email system, which was used for the movement of photos later on and for some large documents, but not in connection with the command and control of the operation.

Senator BRANDIS—As far as you are aware, there was no relevant email communication contemporaneous with this incident.

Brig. Silverstone—No.

Senator BRANDIS—You gave an order by signal to Commander Banks to move the *Adelaide* into a position where it could, if necessary, intercept and apprehend the SIEV4. Is that right?

Brig. Silverstone—That is correct, yes.

Senator BRANDIS—When you assumed the command of the joint task force—I understand that some of this may be intelligence material and, if you wish, you can ask us to move to a closed session—were you briefed with intelligence reports that had been obtained by Australian military authorities, or other Australian security agencies, concerning the instructions or advice given to occupants of SIEV vessels from the points of embarkation in Indonesia?

Brig. Silverstone—No.

Senator BRANDIS—Were you aware that there were intelligence reports in existence concerning instructions or advice given to the occupants of these SIEV vessels at the points of embarkation?

Brig. Silverstone—I am not aware of specific intelligence reports. I think that—

Senator BRANDIS—Perhaps I can help you. Can I read you a bit of evidence that Admiral Barrie gave to the Defence estimates committee on 20 February:

... for these events—

that is, the use of naval vessels to intercept people-smuggling vessels—

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.

As I read the Admiral's evidence, that seems to be an intended reference to briefings given to the occupants of the people-smuggling vessels. Can you help us at all with that?

Brig. Silverstone—I think it is appropriate to say—and DIMIA, the Department of Immigration and Multicultural and Indigenous Affairs, would be in a better position to provide you with information on this—that there is a good deal of briefing of the people trying to come into Australia within Indonesia in preparation for them to come down. They would appear to be quite well briefed on the immigration procedures and the schedule by which they will be treated—in terms of, if they come to Ashmore Island, how they would be moved to Darwin; the sorts of procedures they would go through to be dealt with on arrival in Darwin; and so forth. So there is a good deal of preparation from that period of time. There is a view that we formed as the government's new policy came into being that it would appear that there was a general level of awareness of some of the actions we had taken against previous vessels and that there was a degree of knowledge about that amongst the SIEVs. Whether they were briefed in detail or how they were provided with that advice is not clear to me.

Senator BRANDIS—The involvement of the Navy and, indeed, the Army in an operation of this kind was a new phenomenon. This had been taken over from a function performed, until quite recently, by the Australian Customs Service.

Brig. Silverstone—That is correct.

Senator BRANDIS—Let me remind you of some evidence that Admiral Shackleton gave this committee last Monday. I put this proposition to Vice Admiral Shackleton:

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 Admiral Shackleton's reply to me was:

That is what we found.

I then said to him:

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 Admiral Shackleton's reply was:

Correct.

Then he went on to agree with me that there was a pattern of behaviour, engaged in by the occupants of the suspected illegal entry vessels in implementing this tactic, which was identifiable. Can you tell us whether you agree with Admiral Shackleton's assessment of there being a pattern of such behaviour?

Brig. Silverstone—Yes, I would agree.

Senator BRANDIS—Is that on the basis of your own experience as the head of the joint task force?

Brig. Silverstone—It is on the basis of the reports passed to me from the vessels engaged in this activity.

Senator BRANDIS—Is it too high to say it is a pattern of behaviour, or do you accept that characterisation of it?

Brig. Silverstone—I would characterise it as an occurrence that, when it is reported to me, is not surprising to me.

Senator BRANDIS—I think the evidence has been, from a minute from Air Vice Marshal Titheridge, that on seven occasions of 10 SIEV vessels between September and December there were reports of threats or harm to children.

Brig. Silverstone—That is correct, yes.

Senator BRANDIS—Is that consistent with your experience?

Brig. Silverstone—Yes, it is.

Senator BRANDIS—Would you call that a pattern?

Brig. Silverstone—I would call that a pattern, yes, Senator.

Senator BRANDIS—I want to go then to what passed between you as commander and Commander Banks from the time the SIEV4 vessel was identified. The instruction was a signal, but we have also heard evidence from Commander Banks that there was more than one telephone conversation between you and him up to the time of what we have colloquially called the 'children overboard'—or, as Senator Faulkner says, the 'non-children overboard'—incident early in the morning of 7 October. I think we know what episode we are talking about. How many conversations with Commander Banks do you remember, Brigadier Silverstone—telephone conversations?

Brig. Silverstone—From a review of my notes, I spoke to CO *Adelaide* possibly nine times on the 7th—certainly at least once the evening before and any number of occasions in the days that followed.

Senator BRANDIS—I am not immediately interested in the days that followed.

Brig. Silverstone—Yes.

Senator BRANDIS—You will have heard or be aware of the controversy about a particular telephone conversation in which there is a question as to whether Commander Banks said to you something about a child in the water or a child overboard. Did you initiate a telephone conversation to the bridge of the *Adelaide* at about—and you will have to adjust the times for me, please—6 a.m. at the location of the incident?

Brig. Silverstone—Not to my knowledge.

Senator BRANDIS—Do you have a recollection of a conversation in which Commander Banks said to you words to the effect ‘there are men in the water and children thrown overside’?

Brig. Silverstone—Not those words, but words similar to that—‘men in the water and a child thrown over the side’.

Senator BRANDIS—A child was thrown over the side. Do you have a diary note of that conversation?

Brig. Silverstone—Yes, I do.

Senator BRANDIS—Before we go to that, do you have a practice in relation to the diarising of telephone conversations?

Brig. Silverstone—I have a practice of noting as people talk to me, so I have a clear recollection of what they said and so that I am focused on the issues they are raising to me.

Senator BRANDIS—And is that a practice that you uniformly adopt when having telephone conversations in what we might loosely call command situations?

Brig. Silverstone—Frequently, yes.

Senator BRANDIS—Is it your practice to record as extensively as you can the words that are said to you and the words that you use, or is it your practice merely to make notes in a more abbreviated form?

Brig. Silverstone—It depends on the pace of the conversation or the discussion and the length of the discussion. At times I will insert editorial comments as I am working through. At times I will take notes of key words. On other occasions they are more complete.

Senator BRANDIS—I want to take you to the document which is appended to your statement to the Powell committee, which I am not quite sure how to identify. Perhaps I could hand you my copy.

Brig. Silverstone—I have a copy in front of me if you are talking—

Senator BRANDIS—I just want to make sure we are talking about the same document. Would you mind passing to me the document that you have?

Brig. Silverstone—I will pass the front page of that document or do you want the entire document?

Senator BRANDIS—I want the diary note. Do you have the actual diary note?

Brig. Silverstone—Yes, I do.

Senator BRANDIS—Can I have the diary note itself, please?

Brig. Silverstone—Absolutely.

Senator JACINTA COLLINS—This might be a good time to give Brigadier Silverstone the opportunity to advise us of the update in his diary note. I have previously seen it.

Senator BRANDIS—Senator Collins, I will conduct this examination methodically and I will not miss any relevant points.

Senator JACINTA COLLINS—Well, off you go then. This is information that you are not aware of.

Senator BRANDIS—If you would not mind giving me a moment, Brigadier Silverstone. But I would ask the courtesy of other senators not to jump in with other questions because I do not want to lose the flow of this. Just let me examine this, would you?

Senator JACINTA COLLINS—The copy we have does not include a further change. It does not include the time notation. You might like to address that while we are waiting for Senator Brandis.

Brig. Silverstone—The time noted—

Senator JACINTA COLLINS—The copy we have of your notes does not include the time notation that you have later added to your personal record.

Brig. Silverstone—Yes. Could I see that copy, please?

Senator JACINTA COLLINS—Yes.

Brig. Silverstone—That time is not where, Senator?

Senator JACINTA COLLINS—No. In your copy of your notes you have an explanation about the time.

Senator BRANDIS—Senator Collins, I will deal with it if I can just resume now, thank you. The document, or the pages you have handed to me, form part of a notebook called a Department of Defence Field Survey Notebook. That is a form of official notebook, is it not?

Brig. Silverstone—That is correct.

Senator BRANDIS—Was that the type of notebook which it was your practice to use to make these notes of telephone conversations concerning command decisions?

Brig. Silverstone—That is correct, Senator.

Senator BRANDIS—Let me hand it back to you, please. Brigadier Silverstone, was it merely telephone conversations that it was your practice to record in that notebook or did it include other data as well?

Brig. Silverstone—Frequently, the majority were telephone conversations and, at times, if I was doing some analysis of the situation and seeking to identify approaches to the issues that were raised as a result of those conversations or passage of other information.

Senator BRANDIS—Thank you. On the bottom half of the notebook as it lies open before you there are some words highlighted. Are those words which refer to the telephone conversation with Commander Banks of which we are speaking?

Brig. Silverstone—That is correct.

Senator BRANDIS—Can you identify for us, please, where, in the handwriting on the notebook, the words which describe that conversation begin?

Brig. Silverstone—They start with the word ‘vessel’.

Senator BRANDIS—Does that say, ‘Vessel disable the steering’? Is that right?

Brig. Silverstone—Yes, that is correct.

Senator BRANDIS—Immediately above the word ‘vessel’ in the left-hand margin, there are the figures ‘0720’—and then a character that I cannot quite discern. Does that relate to this conversation?

Brig. Silverstone—It does. It is a time that I added a number of days after the discussion when it became apparent that this was the subject of some interest. It is the time that I recollect speaking to the CO of HMAS *Adelaide*.

Senator BRANDIS—So the figures ‘0720’ and the character are not contemporaneous?

Brig. Silverstone—They are not contemporaneous.

Senator BRANDIS—What is that character after the second zero?

Brig. Silverstone—It is an asterisk.

Senator BRANDIS—But that was an intended reference to introduce the time of the relevant conversation, wasn't it?

Brig. Silverstone—It is based on my recollection of the time, yes.

Senator BRANDIS—Is there anything above that in the diary note that is relevant to this conversation?

Brig. Silverstone—No.

Senator BRANDIS—And then immediately to the right of '0720*', we see some words in pencil.

Brig. Silverstone—Correct.

Senator BRANDIS—Which, as I read them, read: 'Added three to four days after the event (vide Bryant Report). Is that what they read?

Brig. Silverstone—That's correct.

Senator BRANDIS—At this point, I think I should pause and ask you to hand the notebook to the other senators so that they can see what I am directing your attention to.

Senator FAULKNER—What do you have a copy of, Senator Brandis?

Senator BRANDIS—I have a photocopy from the Powell Report. When I inspected the notebook a few moments ago I copied onto my copy the words that appear in pencil there, which I am directing your attention to now, Senator Faulkner.

Senator FAULKNER—Yes, I see.

Senator JACINTA COLLINS—That is not in your record?

Senator FAULKNER—No.

Senator BRANDIS—Why don't we pause and let the other senators write that down as well so they can see exactly what is written there.

Senator FAULKNER—So the pencil note applies to that '720K', does it?

Brig. Silverstone—It is '720*', yes.

Senator FAULKNER—I am terribly sorry—

Brig. Silverstone—I know it looks like a 'K'.

Senator FAULKNER—to attack your handwriting, brigadier. The ‘720*’, as you mentioned before, was added three to four days after the event?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—But when was this note here added?

Brig. Silverstone—It was added during the CO *Adelaide*’s evidence, in front of my counsel, just to make it clear. There was a pencil mark added so there would be clarity.

Senator JACINTA COLLINS—I think there is a date on it, isn’t there?

Senator FAULKNER—No, there is not.

Brig. Silverstone—No, there is not. There is a date on the bottom.

Senator JACINTA COLLINS—No.

Senator FAULKNER—Senator Brandis has had the advantage of seeing this documentation that we have not seen. So the pencil insert says ‘Added three to four days after the event’?

Brig. Silverstone—Yes.

Senator FAULKNER—Then it says ‘(vide Bryant Report)’?

Brig. Silverstone—Yes.

Senator FAULKNER—Senator Collins has just asked you, I think, when that pencil—

Brig. Silverstone—That pencil mark was added during the CO *Adelaide*’s evidence when, I believe, Senator Collins indicated that she wanted to see the notebook. So I put it in there as a point of clarity.

Senator FAULKNER—So it was last week?

Brig. Silverstone—It was last week, in front of my counsel, yes.

Senator BRANDIS—Senator Faulkner, would you mind handing that to the attendant so we can—

Senator FAULKNER—I am just looking at the rest of the photocopy I have in front of me; I will not be a moment. Carry on and I will hand it back to you in a moment. In relation to the original notebook, when precisely does the brigadier say the events of the—

Senator BRANDIS—I have not asked him that yet, Senator Faulkner; if you would bear with me.

Senator FAULKNER—You have not asked him that—I thought that you did ask him that.

Senator BRANDIS—Not in those terms but if you would just allow me, I will take him through it methodically.

Senator FAULKNER—The trouble is that the document that I now have in front of me has other pencil annotations such as ‘0420’. You may have established when that was inserted.

Senator BRANDIS—Could I see the notebook?

Senator FAULKNER—Have you established that?

Senator BRANDIS—No, not yet. I think, Senator Faulkner, this is easiest done—

Senator FAULKNER—Well, no, it is not. With respect, there is one notebook and you are quite properly pointing out to us—or the brigadier is—the pencil addition that occurs at 0720*. I think there is also a pencil addition in relation to 0420 hours.

Brig. Silverstone—Yes.

Senator FAULKNER—I do not think you have yet canvassed—

Senator BRANDIS—What I have asked him is whether there is anything above 0720* which relates to what can loosely be called the child conversation.

Senator FAULKNER—Sure.

Senator BRANDIS—He has said, ‘No.’ If the brigadier could have the notebook back, I will clarify that from him, Senator Faulkner.

Senator FERGUSON—In the absence of the chair, we should note that while we have been very liberal with the presence of television cameras, I do not think it is right that they should be filming documents that we are actually using. They were filming over Senator Faulkner’s shoulder.

Senator FAULKNER—I was not aware of that.

Senator FERGUSON—I do not think it should be allowed.

Senator FAULKNER—I have a process suggestion that I think is going to get us over a lot of this problem: why do we not respectfully ask the good brigadier to provide us with a photocopy of the document as it now stands?

Senator BRANDIS—We can do that.

Senator FAULKNER—Would that not be a sensible way of dealing with this, instead of continually asking the brigadier to pass up his original? It might help us.

Senator BRANDIS—Except, I suppose, that the brigadier seems to have taken pains to make some annotations in pencil for a purpose, and that would not be revealed by a photocopy.

Senator FAULKNER—Yes, but having now sighted it—

Senator BRANDIS—Senator Faulkner, I will keep going with this, if I may.

Senator FAULKNER—Before you do, given that the brigadier has attached to his witness statement a photocopy of his diary which is very helpful and we appreciate, could we ask the brigadier whether it would be possible for the committee to be provided with a photocopy of that diary page as it now stands?

Brig. Silverstone—Certainly, Senator.

Senator FAULKNER—Thanks very much.

Senator BRANDIS—Perhaps, that could be done over lunchtime.

Senator FAULKNER—Lunchtime is almost upon us.

Senator BRANDIS—That is right; so we do not need to interrupt. Brigadier Silverstone, the ‘0420’ pencil notation half way up the bottom page, does that bear any relationship to the conversation concerning the child?

Brig. Silverstone—No, it does not.

Senator BRANDIS—When you made these notations in pencil, in the circumstances which you have described, for what purpose were they made?

Brig. Silverstone—The ones against the 0720 or all of them?

Senator BRANDIS—Both, really.

Brig. Silverstone—The one at the top was when I was doing some calculations about time differences, based on the times there which are India-kilo. We have been working in so many time zones that I was clarifying—

Senator FAULKNER—What do you mean by the one at the top?

Brig. Silverstone—I cannot recall, if we had—

Senator FAULKNER—Sorry, my question—which really is important for the *Hansard* record—is just a question of what you mean by answering Senator Brandis’s question, ‘The one at the top’. I think we need to identify it more effectively.

Senator BRANDIS—Let me do that.

Senator FAULKNER—By all means.

Senator BRANDIS—There are two pencilled addenda to the bottom page of the notebook: one, towards the top of the page or just above half way up the page, is the figure ‘0420’.

Brig. Silverstone—Yes.

Senator BRANDIS—The other one, about three-quarters of the way down the page, is the words ‘added three to four days after the event (vide Bryant Report)’. Is that right?

Brig. Silverstone—That is correct.

Senator BRANDIS—Are those the only two pencilled amendments to the page?

Brig. Silverstone—There are a number of lines on the page in pencil.

Senator BRANDIS—Do they bear any significance? They are not text; do they bear any significance to you?

Brig. Silverstone—Only that against the date 060535I/K—it is not clear on the photocopy, but it is on mine—I put a pencil line through the ‘06’.

Senator BRANDIS—What does that signify?

Brig. Silverstone—It signifies that when I wrote that ‘06’ down on the morning that I was taking these notes, I initially wrote ‘06’ down because my digital watch is set to Zulu time, but I wrote the actual time in India-kilo, looking at my analogue watch. When I realised that ‘06’ was incorrect, I put ‘07’ to correct that time.

Senator BRANDIS—All right.

Senator FAULKNER—For the accuracy of the record, with respect, the brigadier will need to also mention—because this does not come up on the copy—the highlighting of some of the diary entries.

Senator BRANDIS—Senator Faulkner, I was going to take him, item by item, to each variation—

Senator FAULKNER—You seem to be missing out a significant number of the items though.

Senator BRANDIS—That is because I have not reached them yet, Senator Faulkner; just be at peace. Brigadier Silverstone, do the ‘0420’, the pencil notation and the line through the ‘06’ immediately above it bear a relationship to the conversation with Commander Banks concerning the child?

Brig. Silverstone—No, they do not.

Senator BRANDIS—Right. Going to the point in the notebook where you have told us the reference to the conversation concerning the child commences, for what purpose were the pencilled words, added three to four days after the event, vide Bryant report, added by you last week in the circumstances which you have described?

Brig. Silverstone—Just for clarity, so I was aware that that was an addition that I had made three or four days after, and for the point of making sure that that was noted there, I noted that.

Senator BRANDIS—That is a reference, in turn, to the figures and character on the left-hand margin: 0720*.

Brig. Silverstone—That is correct.

Senator BRANDIS—That is added in pen three or four days afterwards.

Brig. Silverstone—That is correct.

Senator BRANDIS—By what process did you estimate or arrive at the position that this conversation took place at 0720?

Brig. Silverstone—Because it is my very clear recollection that I rang CO *Adelaide*—or he rang me—and we had a telephone conversation at 0720 in preparation for a phone call I was required to make to Air Vice Marshal Titheridge. That phone call was required to be made by 0730 India-kilo that morning.

Senator BRANDIS—In what time zone are these times recorded?

Brig. Silverstone—This is Darwin; we are talking about Darwin time.

Senator BRANDIS—And the incident locality time was?

Brig. Silverstone—Two and a half hours earlier.

Senator BRANDIS—Is that Zulu time?

Brig. Silverstone—No, that is Golf time.

Senator BRANDIS—So we have Golf time, which is the incident locality time; Zulu time, which is an international standard; and the local Darwin time.

Brig. Silverstone—Yes.

CHAIR—Is Golf time Western Australian time, the time in Perth?

Brig. Silverstone—No.

CHAIR—It is an hour further on.

Brig. Silverstone—Yes.

CHAIR—Earlier.

Brig. Silverstone—Yes.

Senator BRANDIS—Brigadier Silverstone, was it your custom to record times in locality time—that is, in Darwin time when you are in Darwin, even though you are speaking to somebody in another time zone?

Brig. Silverstone—Yes, it is, but it is also not my custom to regularly record the time.

Senator BRANDIS—As I understand your evidence, you have told us that you can establish with reasonable certainty the time of this conversation because it occurred shortly before a fixed point in time—that is, 0730 Darwin time—at which you had to ring Titheridge. Is that right?

Brig. Silverstone—That is correct.

Senator BRANDIS—Does this reflect your assessment that the conversation took not more than 10 minutes, perhaps a little less than that?

Brig. Silverstone—The conversation took about a minute, Senator.

Senator BRANDIS—So a few minutes elapsed between the completion of that conversation and when you rang Titheridge.

Brig. Silverstone—Three or four minutes, because my recollection is that I rang Titheridge not at 7.30 but at about 7.28.

Senator BRANDIS—All right.

Proceedings suspended from 12.59 p.m. to 2.01 p.m.

CHAIR—We have a long day today, and I draw my colleagues' attention to the fact that we hope to get to Rear Admiral Ritchie this afternoon and then to Rear Admiral Geoffrey Smith, finishing with Rear Admiral Smith this evening. I hope we can complete that program, and I am sure my colleagues will bear in mind the need to be targeted in their questioning so that we do.

Senator BRANDIS—Brigadier Silverstone, we have been provided by the Senate Printing Office with a colour photocopy of your diary. Do you have a copy of that there? I suppose you have the original.

Brig. Silverstone—I have the original in front of me.

Senator BRANDIS—Before the lunch break, I was asking you about the entry 0720* on the left-hand margin about three-quarters of the way down the page. Your evidence was that, as indicated by the pencilled addition to the right of those figures and that character, you added that entry three to four days after the event. You have told us how you were able to establish

that as the time and that it was the local Darwin time. Why did you add that time entry three to four days after the event?

Brig. Silverstone—Because three to four days after the event it was apparent that this report had attracted considerable attention. Just as I had directed CO *Adelaide* to gather information to clarify what had happened on that, I reviewed my note. I noticed that I had not listed the time—did not have a time against that—and so I placed the time against that as a point of clarification against my recollection of the events of that morning.

Senator BRANDIS—And, I suppose, in order to complete the record.

Brig. Silverstone—Indeed.

Senator BRANDIS—At the time that you made that entry of the time, was the conversation still clear in your mind?

Brig. Silverstone—Absolutely.

Senator BRANDIS—Tell me again, please, why it is that you can be so certain that your estimate of the time was correct?

Brig. Silverstone—Because I had a requirement to pass the latest information to Air Vice Marshal Titheridge by 0730 Darwin time that morning and I had previously arranged with CO *Adelaide* to talk to him at 0720 in order to get a report on what was happening.

Senator BRANDIS—And you met that deadline to speak to Air Vice Marshal Titheridge by 0730 a.m.?

Brig. Silverstone—Indeed. My recollection is of sitting there at about 0728. I called him at that time and then called Rear Admiral Smith directly after that.

Senator BRANDIS—So there was little or no interruption between the termination of your telephone conversation with Commander Banks and your making the telephone call to Air Vice Marshal Titheridge?

Brig. Silverstone—There were a number of minutes. My conversation with Commander Banks was very short, and I had three or four or five minutes before I talked to Air Vice Marshal Titheridge.

Senator BRANDIS—With the exception of the word ‘child’—and I will ask you about that in due course—were the balance of the pen—that is, ink—notes on that page of the notebook taken as you spoke to Commander Banks or were they taken immediately you concluded the conversation or were they written at some other time? Can you tell us, please?

Brig. Silverstone—They were taken as I was speaking to Commander Banks.

Senator BRANDIS—I will ask you to take me through them in a minute, but let us get rid of this issue of the interlineation of the word ‘child’. Can I take you to the foot of the page. There, as I read it, you have written in a square bracket:

[NOTE: ‘child’ added after phone conversation with COADE before discussion with HSC]—

and then there appear to be initials and then the date 2/12/01. Do I read that correctly, brigadier?

Brig. Silverstone—That is correct.

Senator BRANDIS—The initials are yours?

Brig. Silverstone—They are.

Senator BRANDIS—COADE is the notation for the Commander of the *Adelaide*, Commander Banks?

Brig. Silverstone—That is correct.

Senator BRANDIS—HSC is the notation for the Head of Strategic Command, Air Vice Marshal Titheridge?

Brig. Silverstone—That is correct.

Senator BRANDIS—That note was, as appears on the face of it, written on 2 December 2001—that is, about two months after the event occurred?

Brig. Silverstone—That is correct.

Senator BRANDIS—But what it tells us is that the word ‘child’ was interlined before you spoke to Titheridge, which you did, on your evidence, by about 7.28.

Brig. Silverstone—That is correct.

Senator BRANDIS—As I understand your evidence, all the other ink notes were written as you were talking, the telephone conversation between you and Banks finished and then, in the four or five minutes that elapsed before you telephoned Titheridge, you interlined the word ‘child’.

Brig. Silverstone—That is correct.

Senator BRANDIS—Why did you do that?

Brig. Silverstone—Because that was central to the report from Commander Banks. At the time he was talking to me, he was talking quite quickly and I was having trouble keeping up. I left the space there, put ‘thrown over side’ and added ‘child’ afterwards, and then the following question was to do with the age of the child.

Senator BRANDIS—You are quite certain that the word ‘child’ was put in before you spoke to Titheridge?

Brig. Silverstone—Absolutely.

Senator FERGUSON—The entry ‘5, 6 7’, where you are referring to the age, was added at that time?

Brig. Silverstone—That was Commander Banks’s response to my question about how old the child was.

Senator FERGUSON—Only ‘child’ was added afterwards; the ‘5, 6 7’ was put there originally?

Brig. Silverstone—Indeed, yes.

Senator BRANDIS—That ‘5, 6 7’ plainly refers to the age of the person in the water?

Brig. Silverstone—It does, and indeed I left a space between ‘men’ and ‘over side’ because I could not keep up, with the intention of going back and adding that word in when I had a chance.

Senator BRANDIS—So, even if the word ‘child’ had not been interlined, you say that, because of the presence of those numerals ‘5, 6 7’ in an intended reference to the person in the water, it must have in any event been a reference to a child that you were noting as Banks spoke to you?

Brig. Silverstone—Yes, absolutely.

Senator BRANDIS—Brigadier, independently of your note, do you have in your memory a recollection of the conversation with Commander Banks?

Brig. Silverstone—Yes, very clearly.

Senator BRANDIS—When you refer to your note, you do so—if I invite you to—to assist, but you do not rely upon the note in order to perfect your memory?

Brig. Silverstone—No, and particularly with regard to the age issue. When I spoke to Commander Banks, I asked how old they were and he said, ‘Five, six, seven—I can’t tell properly,’ or words to that effect. He had a degree of emotion in his voice as though wondering why I was asking those questions when he had to get on and deal with the circumstance in front of him.

Senator BRANDIS—You are probably aware that Commander Banks says that he recollects describing to you an incident in which a child was held overboard but, allowing for the fact that he concedes his memory is imperfect, he does not recollect telling you that a child was thrown or put overboard or into the water. How can you be sure that the reference here was not a

reference to what Commander Banks told you about the child being held overboard as opposed to a child being put into the water?

Brig. Silverstone—The first mention of that that I have a recollection of is on the afternoon of 9 September when it was apparent there was some controversy attached to these issues and he talked specifically about that issue to me. I regarded that as quite distinct from our conversation early on the morning of the 7th when he said to me that a child was thrown over the side.

Senator FAULKNER—You mean October, brigadier.

Brig. Silverstone—Sorry, October.

Senator BRANDIS—Let me get this straight. Is it your evidence that the first time the reference to the child being held overboard as opposed to thrown overboard was made to you by Commander Banks was in the afternoon of the 7th?

Brig. Silverstone—No, on the afternoon of the 9th.

Senator BRANDIS—Does your specific recollection of what was said to you by Banks on the morning of the 7th extend to a recollection that what was said to you was that a child had been put or thrown overboard or had ended up in the water?

Brig. Silverstone—My recollection—clear recollection—is that Commander Banks said to me that a child was thrown over the side.

Senator BRANDIS—When he said that to you, was that in response to a question you put to him or did he say it to you not in the manner of the response to a question?

Brig. Silverstone—I do not recall, although I must say that my notes indicate that it was part of his speaking to me in a description of events. It was a sort of single paragraph, if you like.

Senator BRANDIS—Perhaps we can bring this all together now. Would you tell us, please, as best as you are able—and referring to the note where necessary but having regard to what you have told us is your independent recollection, too—what you said to Commander Banks and what he said to you in that conversation from the start to the finish.

Brig. Silverstone—I spoke to Commander Banks at about 0720, as arranged, in order to get a clear view of what was happening. He gave me a quick summary of events, talking about the boat being dead in the water, about the steering being disabled and about it being seven to eight nautical miles south of the contiguous zone. He then indicated that there were men in the water, that a child had been thrown over the side. I asked him then, ‘How old is the child?’ He said, ‘Five, six, seven—I can’t tell properly.’ I then said, ‘Are they wearing life jackets?’ He indicated that a man or some of the men were but some of the men had removed their life jackets. I then said to him, ‘Have you got everybody?’ And he said, ‘To the best of my knowledge, yes.’

Senator BRANDIS—Was that the end of the conversation?

Brig. Silverstone—It was. I might have then said a few words of encouragement—‘Well, get on with it. Get the situation under control’—and then hung up and let him get on with it.

Senator BRANDIS—I think in fairness to you, Brigadier Silverstone, the record should show that when you were giving the committee that account of the conversation you were not relying upon any notes or making reference to any of the documentary material before you. You were telling us from your memory what happened.

Brig. Silverstone—Yes.

Senator BRANDIS—For the purposes of assisting Major General Powell you gave a transliteration from your notes of the conversation in typed form. That forms the enclosure 2 to attachment 2 to Brigadier Silverstone’s statement to the Powell report.

Brig. Silverstone—It is a copy of an email that I had sent to Admiral Smith.

Senator BRANDIS—In that email to Admiral Smith, which appears was sent at about 1.15 p.m. on 11 October, you give an account, apparently assisted by your contemporaneous diary notes, of your conversation with Commander Banks. Perhaps you might care to read that into the record, Brigadier Silverstone, rather than me take you through it. It reads:

At about 070720 - 07261/K Oct CO ADE and I had a conversation that went, from my notes and ...

Perhaps you could carry on the narrative and read it into the record.

Brig. Silverstone—It reads:

[recollection of events]:

“COADE: the vessel has disabled steering it is dead in the water 7 - 8 nm south. [The PII are] threatening a mess exodus

There are men in the water and child thrown overside.

COMNORCOM: How old?

CO ADE: 5, 6 or 7 [I cannot tell properly.]

COMNORCOM: [Are they wearing lifejackets?]

COADE: yes, [though] some [men] have discarded theirs.

COMNORCOM: Have you recovered them [the PII]?

COADE: To the best of my knowledge [we’ve] got everyone.”

At about 0730hr, I relayed this information to AVM Titheridge (during a pre-arranged phone call) and then MC

Senator BRANDIS—All right, you can stop there. At the time you prepared that communication I assume the conversation with Commander Banks was fresh in your mind, so

you had an even fresher memory than you do now, together with the assistance of your contemporaneous diary notes.

Brig. Silverstone—Yes.

Senator BRANDIS—Are you quite satisfied that your recollection of the reference to ‘child thrown overside’ is clear?

Brig. Silverstone—Absolutely clear.

Senator BRANDIS—And then, at about 7.30 local time, you conveyed that to Titheridge.

Brig. Silverstone—Yes, I did.

Senator BRANDIS—In your notebook there is not a reference to a conversation with Titheridge at 7.30. Can you explain why?

Brig. Silverstone—Because I was not in the habit of recording every conversation that I had. It was required of me to phone and pass on to Titheridge what was happening. I have a recollection of my conversation with Air Vice Marshal Titheridge and it started with me passing on to him the events of the previous number of hours, all of which he actually was aware of. As I talked through the firing and the authorisation to board, he said, ‘I am aware of that, I am aware of that.’ As we stepped through the events I said, ‘The only other thing is I have just got off the phone to CO *Adelaide* and he has just told me that there are men in the water and that a young child aged five, six or seven has been thrown overboard.’

Senator BRANDIS—So you basically told him what you had just been told by Banks?

Brig. Silverstone—Yes.

Senator BRANDIS—And did you use your diary notes as you spoke to Titheridge?

Brig. Silverstone—Yes, I did.

Senator BRANDIS—All right. Just one last thing, Brigadier Silverstone: Senator Faulkner in his usual lovable way tried to make something of the highlighting. What is the significance of the yellow highlighting?

Brig. Silverstone—In referring to that note subsequent to the event, trying to put statements together, I was always fumbling through the book so I highlighted that so that it stood out.

Senator BRANDIS—And was all that yellow highlighting applied at the same time?

Brig. Silverstone—My recollection is yes.

Senator BRANDIS—And that, I assume, was just to identify or literally to highlight those parts of the diary entry that referred to this conversation?

Brig. Silverstone—Yes.

Senator BRANDIS—Thank you.

Senator BARTLETT—Sticking with the document that we were on before, brigadier, which was an email sent to Rear Admiral Smith outlining your conversation, I draw your attention to a statement right near the end where you state, regarding the actions of the Commander of the *Adelaide*:

... his pre-planning and preparation are all beyond reproach. He should be commended on resolving a difficult situation not criticised ...

You say just above that, ‘Whether a child was disposed over the side or not is immaterial.’ Could you just explain that statement? Are you saying that in an operational sense it is not really relevant or significant whether or not a child went over the side?

Brig. Silverstone—In the sense that we had a report that ultimately proved incorrect, that it was a tactical report which was frangible information at the time, and that, as soon as we became aware that it may not be correct, we sought to fix it. In the kaleidoscope of events of the type that were occurring that morning sometimes these reports are wrong, whether they are written or oral.

Senator BARTLETT—Is it fair to say, in an operational sense, with the sorts of things that you have to focus on when you have these sorts of events happening, that the specific reporting of a child being held up or a child being thrown in the water in itself was not a major detail in amongst the whole reporting of the broader situation?

Brig. Silverstone—From the tactical management of this operation, as long as whoever went overboard was put back on board the vessel, that was all I was principally concerned with.

Senator BARTLETT—With the conversation you detail there, which was basically the information going up the line, given that in an operational sense it is not that important, the main thing being, if there was anybody in the water—man, woman or child—that they were rescued, why do you think this one fairly unimportant detail in an operational sense seems to stand out so much once it gets further up the line?

Brig. Silverstone—You will have to ask the people up the line, Senator.

Senator BARTLETT—Okay. We have gone through in a fair bit of detail with you and similarly with Commander Banks the phone call that you had with him where there was—‘dispute’ is a bit harsh a word—uncertainty about what was said regarding whether a child was thrown overboard. Consequent to that it seems that it does not matter greatly specifically who said what because within three or four days the situation had been clarified as to precisely what had happened and the facts of what had happened had been communicated up the line.

Brig. Silverstone—It is important that we are as accurate as possible when we are passing information. Clearly there is a disagreement about this part of the information but, in the scheme of things, tactical information is frangible. It can be wrong across a whole range of

events. The important thing, from the tactical commander's point of view, is that when you are faced with a situation you make an assessment of what has got to be done, you act on it, and then you move on. That was really our focus. As soon as we became aware that this was a controversial issue—and in the light of the election, clearly it was controversial—we took every step we could to clarify whether this event had happened or not. When we reached a conclusion about that, we then passed it up the line. So it was important in the way the information was treated later, but not important in terms of our immediate management of the event.

Senator BARTLETT—In terms of the after-the-fact situations, such as you are in now—establishing what happened—it is not that important now because further information, clarification and details have been got together to flesh out what exactly happened, and that has been put together and reported back up through the appropriate channels.

Brig. Silverstone—It is important to different people at different levels.

Senator BARTLETT—The issue of what channels that information flowed up through is one that I am interested in, along with the idea of the line of command. You gave an interview on 19 December—these documents have not been released, but I believe they will be—and there is a report of that interview, the Bryant report. Are you aware of that occasion, with Jenny Bryant, Rachel Stephen-Smith and Major James Watson?

Brig. Silverstone—Yes.

Senator BARTLETT—At the start, the report says:

Brigadier Silverstone stated that there had been frequent telephone contact between various people from Maritime Headquarters bypassing the chain of command throughout the relevant time.

It stated that it is generally regarded as poor practice as it can lead to confusion, but that you were not aware of the degree to which it was occurring. What types of contact occur from maritime headquarters, bypassing the chain of command—the actual giving of orders, of seeking information or of providing information?

Brig. Silverstone—I do not know. I became aware of this in the latter stages of *Adelaide's* handling of that. When I became aware of it I spoke to the Chief Staff Officer (Operations) and then to the Maritime Commander of my concern about that.

Senator BARTLETT—Was action taken in relation to your concerns?

Brig. Silverstone—I think that for future events that practice stopped. There are legitimate reasons for maritime headquarters to be speaking to the ships, and that is to do with their ongoing programs and logistic support. The issue of concern for me was that of dealing with immediate operational events.

Senator BARTLETT—Is it bypassing the chain of command for phone calls to come from the minister or ministerial staff direct to specific officers?

Brig. Silverstone—I would view it as that, yes.

Senator BARTLETT—There is a signature at the bottom of each page of your record of interview which I guess could be yours?

Brig. Silverstone—Yes.

Senator BARTLETT—I am assuming that you are happy with that as a true record of interview?

Brig. Silverstone—Of that conversation, yes.

Senator BARTLETT—The report talks about the conversation you had with Mr Reith on 31 October.

Brig. Silverstone—Yes.

Senator BARTLETT—This is where Mr Reith talked a lot about the video. He seemed to think that the video held the key to the real story about what happened. You said, ‘In retrospect, Mr Reith’s concluding remark to the effect that “we’d better not see the video” led you to conclude that, while you were usually direct in addressing such issues, you could not have made it clear to the minister that no children were in the water at all. You continued:

Brigadier Silverstone’s other lasting impression was not being able to understand how it was possible, by that stage, that Mr Reith was not aware of the conclusion that no child had been thrown in the water, and the tension that this created between Brigadier Silverstone’s knowledge that no children had been thrown in the water and the need to be circumspect about what he said as he was not aware of what advice ‘the system’ had provided to the Minister.

Can I take it from that that you were surprised that Minister Reith apparently did not know that no child had been thrown in the water, but you were apprehensive about making that crystal clear to him because you were not sure how the story had been spun to him by others up the line?

Brig. Silverstone—To clarify that, on the day that the minister came into my headquarters we were in the middle of managing another SIEV and had just concluded managing another three on the days before. When the minister arrived, I was involved in the close management of what was to become SIEV9. When I spoke to him briefly and he raised the issue of the video, I was somewhat taken aback that he had raised that issue. The problem I faced in talking to Ms Bryant on the 19th was that I did not have a clear recollection of my discussion with the minister, and I certainly could not recall the precise words I used to speak to him. When I spoke to Ms Bryant on that day we were in the middle of dealing with SIEV12 and trying to return that to Indonesian waters, so I was distracted at that time as well.

After this period I went on leave and after the Christmas leave I was then able to sit down and reflect on what had happened through this period. My recollection of the discussion with Minister Reith on the afternoon of the 31st is that, when he raised the issue of the video, I was uncertain about what he had been told. It was inconceivable to me that the CDF had not informed him of this issue at that time. I also had concerns for where we stood, under the caretaker role, in terms of the passage of information.

While I was thinking about these issues, I used words to the effect of ‘Well, Minister, the video does not show things clearly and does not show children overboard. We also have concerns that no children were thrown in the water at all and we have made an investigation of that.’ Then I paused, expecting to hear a ‘yes’. He then said, ‘Well, we had better not see the video then,’ and left my office.

Senator BARTLETT—What did you take from that comment?

Brig. Silverstone—They are the words the minister used. He could have meant a range of things—literally or as a side comment. As he left, my thoughts were, ‘He hasn’t listened to what I said.’

CHAIR—I think that if Senator Brandis were here he would remind us that Brigadier Silverstone said that without reference to any notes.

Senator Ferguson interjecting—

CHAIR—The witness was unprompted when it came to what was actually—

Senator FERGUSON—I understand that, but the question was asking the officer for an opinion, which I thought you may have picked up.

Senator BARTLETT—Once the minister left your office it says here that you reported the conversation to your chain of command. Who was that to?

Brig. Silverstone—I think that in the Powell report it says that I contacted Rear Admiral Smith. My recollection now is that I did not contact Rear Admiral Smith. I contacted Rear Admiral Ritchie.

Senator BARTLETT—That included making them aware of your impression that perhaps the minister was not actually aware of the fact that there were not any children thrown overboard?

Brig. Silverstone—That is correct, yes.

Senator BARTLETT—When I was questioning Commander Banks, he spoke about being asked to clarify what happened, providing the reports back. People—including yourself and possibly one other person—were telling him that he did not need to worry about correcting the record, that ‘it is not your job, it is other people’s job; leave it to us’. I am paraphrasing him. That would be roughly correct, wouldn’t it?

Brig. Silverstone—I imagine so, yes. That is the sort of thing that I would say.

Senator BARTLETT—It is not your job either, is it? It is your job to pass that up the line to somebody else, rather than personally make sure that the message has got through.

Brig. Silverstone—That is correct.

Senator BARTLETT—I notice that your record of interview says that it was not until a day or two after the immediate situation with the SIEV4 that you managed to look at the media and even become aware of criticism from the Democrats—it is nice to see that somebody actually noticed what we were saying during the election campaign—and that you realised that you had not seen written confirmation of the child overboard incident. In terms of all the now enormous amounts of paper that we have got about this incident—I am talking here more broadly, not just incidents involving children being held over the side, or whatever—is it normal to get that type of level of written confirmation of incidents?

Brig. Silverstone—It is only because this became an issue.

Senator BARTLETT—It is all the Democrats' fault. Oh well. So, normally, unless there is basically a need for clarification about a certain incident, such as a sinking, you would not get this sort of level of post-event confirmation?

Brig. Silverstone—No.

Senator BARTLETT—I am interested in more broadly than the specific incident. Hopefully, out of all this, we can also come up with some constructive ways of improving things. I note that your record of interview says:

Brigadier Silverstone stated that there is a new culture in Defence, which seeks to be more responsive to the government/Minister, and that this may have 'anaesthetised' people to some sensitivities, especially with regard to the uncertainty usually associated with reports of emerging tactical situations.

Could you expand a bit more on that new culture in Defence, because I think it is an important broader issue that we should be aware of?

Brig. Silverstone—I think that there has been a lot of work done on reminding Defence that the government is both the owner and the customer in terms of what we do and that we need to be responsive to the requirements of defence of the government. Consequently, there is a good deal of effort made to provide responses to information in order to meet government requirements. I think that, from my perspective, if it had not been for the requirement to provide this information to Air Vice Marshal Titheridge for the IDC, or whoever was going to use that information, I would not have called Commander Banks or spoken to Commander Banks at 7.20 on that day. It is my pronounced practice, pronounced in terms of my policy, that I do not ring my staff and the various COs working for me—indeed, it is my actual practice—when they are in the middle of boarding operations. I do not ring them when they are dealing with crises. I rely on them sending the op reps, and I remain available to them at all hours to answer questions on issues of concern. That is my practice, but on this particular morning, because of the requirement to pass this information to a Air Vice Marshal Titheridge and because we had become more imbued with a sense of providing information to government as it requires, we did this.

Senator BARTLETT—Just continuing on with your record of interview, it says that you considered 'the desire to feed the media has sometimes been allowed to drive operational practices and that this should not occur', which reinforces what you have just been saying in a

sense—that that desire to get information for media purposes is actually impacting on operational practice.

Brig. Silverstone—Care needs to be taken in which information is provided—verbal reports of emerging tactical circumstances or written reports of op reps, as they have been called through the *Adelaide* series of signals, of emerging tactical circumstances. There have been a number of op reps, written information, that have proved to be either incorrect or to have different interpretations in the days afterwards. So the risk of you providing information as tactical events are emerging is that you will provide incorrect information.

Senator BARTLETT—You are obviously concerned about the culture of Defence. Is that still present or has the culture changed since that time?

Brig. Silverstone—I think there is a new policy and a view that recognises there is a need to balance the way we manage our relationships with the media.

CHAIR—This has arisen since the election?

Brig. Silverstone—The CDF and the secretary have just signed off on a new instruction, Senator.

Senator BARTLETT—And you think that may significantly modify the culture that you express concerns about?

Brig. Silverstone—That remains to be seen.

Senator FAULKNER—I would just like to follow on from Senator Bartlett's questioning. On page 2 of the same statement, paragraph 10(b)—'Initiating contact with the commanding officers'—you stress this point:

My reasoning for this was that commanding officers had sufficient demands on their concentration that they did not need the added complication of questioning from higher headquarters at times of pressure ...

You go on in a little more detail:

Otherwise, all reporting was to occur by formal OPREP signal traffic, the frequency of reports increasing and decreasing as the operational tempo rose and fell. This remains my intention and practice.

I think you faithfully recorded that view in answer to questions Senator Bartlett asked. You then go on to make the point very strongly in paragraph 10(c):

My telephone call to CO ADELAIDE, on AM 7 October, represented an exception to the practice described above.

Again, you have made that clear. I am interested in understanding, firstly, why this exception was made. Is it only the fact that on 6 October 2001 these new arrangements of direct reporting to Air Vice Marshal Titheridge are put in place so that he can inform the minister on a regular basis about events that are occurring with the SIEVs? Is that the predominant reason or the only reason?

Brig. Silverstone—The only reason I had that conversation with CO *Adelaide* on that morning was that I was required to talk to Air Vice Marshal Titheridge at 0730. That was the only conversation I had had with Air Vice Marshal Titheridge before or after in relation to any of these events.

Senator FAULKNER—If those new reporting arrangements were not in place, you would have relied on formal op rep signal traffic?

Brig. Silverstone—That is correct.

Senator FAULKNER—Would this issue never have arisen if you had depended only on formal op rep signal traffic?

Brig. Silverstone—This issue would never have arisen.

Senator FAULKNER—Let us go back to 6 October—I think it was 6 October but you can correct me if I am wrong because you can look at this from your own operational expertise—which is when I understand the special reporting arrangements were put in place in relation to Air Vice Marshal Titheridge. Tell me when you became aware of the special arrangements.

Brig. Silverstone—It is not special arrangements; it is a one-off occurrence. A requirement was passed to me by the Maritime Commander, Rear Admiral Smith, on the evening of Saturday the 6th, along with a range of instructions that I expected had come from the interdepartmental committee with regard to which warnings were to be passed, a particular warning to be translated into Bahasa, particularly that warning making it clear to the crew of the SIEV the new punishments and penalties for partaking in people-smuggling. In the process of that conversation, Rear Admiral Smith told me that I was to contact Air Vice Marshal Titheridge at 0730 my time—eight o'clock Eastern Standard Time—and gave me the Air Vice Marshal's mobile phone number.

Senator FAULKNER—This is a result of a phone call or a more formal communication with Rear Admiral Smith?

Brig. Silverstone—A telephone call.

Senator FAULKNER—A telephone call?

Brig. Silverstone—Yes.

Senator FAULKNER—And it is standard operating procedure, is it, for a special arrangement like that to be put in place via a phone call?

Brig. Silverstone—I think that this particular operation is occurring in a very fluid policy environment and that the IDC is in fact taking questions and issues from a whole range of agencies and, as a result of addressing those issues, providing requests for certain action to be taken, levied against Defence. It is in that context, I would expect, that that information came to us.

Senator FAULKNER—It is a rather special time in the electoral cycle too, isn't it?

Brig. Silverstone—Apparently.

Senator FAULKNER—You said before that you are aware of the significance and I accept the view that you have presented—you are aware of the sensitivities that an election campaign brings, the special caretaker provisions that apply and the like. This is as applicable to Defence as it is to any other area in the Public Service. There are no special rules that absolve Defence in relation to caretaker conventions, are there?

Brig. Silverstone—No, Senator, but you also need to have regard to the issue that this operation has international relations and diplomatic consequences as these vessels are coming from Indonesia. It is a new policy for government and there is a range of activities occurring across these agencies that, on their own, require close coordination. So it is not necessarily solely linked to the election cycle.

Senator FAULKNER—But in retrospect—because you can reflect on this now as it is a few months since these incidents—as Commander of Joint Task Force 639 do you believe that the special arrangement that we are speaking of worked or did not work, was helpful or unhelpful? What is now your view in relation to that special arrangement that was put in place on 6 October?

Brig. Silverstone—Clearly, if we had not had that phone call I would not have spoken to Commander Banks and this particular misreporting of whether a child went in the water or not would not have occurred.

Senator FAULKNER—In the phone call you had with Rear Admiral Smith, did you express any concerns to him about this? I appreciate that obviously you did not have a crystal ball beside your memo pad, but did you have any discussion with Rear Admiral Smith about the appropriateness or otherwise of what this special arrangement might mean operationally? Did you have a discussion with him? If you did, did you express any views for or against such a special arrangement?

Brig. Silverstone—No, I did not.

Senator FAULKNER—You just accepted that was the new operational procedure and you had to adhere to it?

Brig. Silverstone—It was not a new operational procedure—

Senator FAULKNER—Sorry, a special arrangement. You just accepted it was a special arrangement?

Brig. Silverstone—For that morning, yes.

Senator FAULKNER—Did you understand when an end point for the special arrangement might be?

Brig. Silverstone—The moment I hung up the phone from Air Vice Marshal Titheridge.

Senator FAULKNER—So it was a special arrangement that applied to only one phone call?

Brig. Silverstone—One phone call, yes.

Senator FAULKNER—Was there any indication whether there was any ministerial involvement or ministerial office involvement in determining this particular special arrangement?

Brig. Silverstone—During the telephone conversation with the Maritime Commander he mentioned that it was to do with the Treasurer appearing on current affairs programs that morning.

Senator FAULKNER—You mean on the Sunday morning?

Brig. Silverstone—On the Sunday morning, correct.

Senator FAULKNER—So this was not driven by Defence, it was driven by somebody else; is that what you are saying? We could obviously ask Admiral Smith but you could give me your assessment.

Brig. Silverstone—I formed the view that it flowed from the requirements of the IDC.

Senator FAULKNER—Were you clear it would end at the conclusion of that particular phone call to Air Vice Marshal Titheridge before you made the phone call or by the conclusion of the phone call?

Brig. Silverstone—I was tasked to make one phone call.

Senator FAULKNER—I see. You mentioned in answer to an earlier question that you would consider any phone calls that you might receive from a ministerial staffer as being outside the chain of command. I do not want to put words into your mouth but I think that is the evidence that you gave?

Brig. Silverstone—Yes.

Senator FAULKNER—And you stand by that?

Brig. Silverstone—Yes.

Senator FAULKNER—Did you receive, during the time that you were joint task force commander 639, phone calls from ministerial staffers?

Brig. Silverstone—No.

Senator FAULKNER—I might come back to that because I will turn up a statement that you made a little earlier and come back to it, but I want to also explore the level of contact you have with the task force if I could. My colleague says you may want to add something to your earlier answer?

Brig. Silverstone—Only that I had a recollection of a conversation I had with Mr Scrafton after he ceased being a ministerial adviser, but not during that period.

Senator FAULKNER—Okay, we might come back to that conversation with Mr Scrafton after he ceased being a ministerial adviser a little later. You did not have any contact from Mr Hampton—I will have to turn up the reference—keen to contact the commanding officer of HMAS *Adelaide*?

Brig. Silverstone—I did not talk to Hampton. There was a number of requests saying that Hampton wanted this information. I did not speak to him. I have seen Hampton and sat in the same car as him before these events, but my recollection is that there were requests for him to talk to director CO Adelaide and I checked with Admiral Smith, informed him of this and said that I did not think he should.

Senator FAULKNER—You are making the point here, and it is a valid one, that such a request goes to joint task force 639 as opposed to its commander. Is that what you are saying to us? Your task force, or NORCOM, receives such requests, but maybe not you personally.

Brig. Silverstone—Indeed. The title CJTF 639 talked to my headquarters and not necessarily specifically to myself.

Senator FAULKNER—But is a phone call from a ministerial adviser to Northern Command or to the task force outside the chain of command?

Brig. Silverstone—In my view, yes.

Senator FAULKNER—As is a phone call to you—

Brig. Silverstone—Yes.

Senator FAULKNER—in either of those two Defence capacities or responsibilities that you have?

Brig. Silverstone—Yes.

Senator FAULKNER—In your role as commander of the joint task force or in your broader role, can you outline the number of contacts that Mr Hampton, as a starting point, made with either the joint task force or Northern Command during the period we are talking about, which is early October 2001 to mid-November 2001?

Brig. Silverstone—I would have to take that on notice. My recollection of Mr Hampton seeking clarification of what had happened out on *Adelaide* at this time is that the pressure for

that came through Maritime Commander's media representative saying that Mr Hampton wished to talk to CO *Adelaide* or something to that effect. However, I will have to check the record and come back to you.

Senator FAULKNER—I would appreciate it if you would, and I would also appreciate understanding, if you would not mind also taking this on notice, what other contact occurred with ministerial staffers, not necessarily limited to the staffers for the Minister for Defence; I am also interested in any other ministerial staffers, including prime ministerial staffers—PMO staffers—who may have contacted you or your command. Was Mr Hampton's contact made direct to NORCOM or the joint task force, or was it made direct to Maritime Command?

Brig. Silverstone—I will have to check that. My recollection is that it went to Maritime Command and we received a request from Maritime Command coming in to my headquarters, but I would have to check the record.

Senator FAULKNER—Was this a request to provide contact? What was the nature of the request that you received from Maritime Command?

Brig. Silverstone—It was to do with seeking clarification of what happened with regard to SIEV4 and, I believe, the 'child overboard' claims.

Senator FAULKNER—Are you sure it was not a desperate attempt by Mr Hampton to try and see if he could effectively contact the commanding officer of *Adelaide* direct?

Brig. Silverstone—I would have to check our record about that.

Senator FAULKNER—In answer to a question I asked in an estimates committee—and I appreciate that you may not be aware of this—Rear Admiral Ritchie said:

... I was told by Brigadier Silverstone that the minister's media adviser wished to directly question the commanding officer of HMAS *Adelaide* and I directed Brigadier Silverstone that that was not to happen.

Do you recall saying to Rear Admiral Ritchie that Mr Hampton wanted to directly question Commander Banks?

Brig. Silverstone—My recollection of that is that that request had come through Maritime Headquarters to my staff, they had come to see me and I had gone back to Admiral Ritchie to get a stop put to it.

Senator FAULKNER—I think we need to know, in relation to the ministerial staffers, precisely the number of contacts that were made and what their nature was. If I can move now to the contact you had with Mr Scrafton which postdates his role as a member of Mr Reith's staff—and I appreciate that qualification—can you indicate to the committee when that contact took place?

Brig. Silverstone—It happened at the end of February at the conclusion of the senior leadership group meeting here in Canberra.

Senator FAULKNER—I missed what you said at the conclusion—

Brig. Silverstone—The Defence senior leadership group.

Senator FAULKNER—Thank you for that. What was the nature of that contact, please?

Brig. Silverstone—He approached me and said that he had read the Bryant Report and the Powell issue and was interested in my comment that I was—I forget the precise words—not ‘reticent’ but ‘cautious’ about what I said to the minister. He thought that there was a contradiction between my statements to Powell and to Bryant, and he asked me about that. I described my recollection of the conversation that I had had with the minister.

Senator FAULKNER—What was the contradiction that Mr Scrafton thought existed?

Brig. Silverstone—Let me find the words here.

Senator FAULKNER—Do you have a reference that I can go to?

Brig. Silverstone—I am looking at my statement to Ms Bryant. He talked about my comment—my knowledge that no children had been thrown in the water and the need to be circumspect.

Senator FAULKNER—Can you point me to that reference, please?

Brig. Silverstone—That is on the third page of my statement to Bryant. The section heading is ‘Conversation with Mr Reith’.

Senator JACINTA COLLINS—Is that enclosure 1 or 2?

Senator FAULKNER—Is it a numbered page?

Brig. Silverstone—It is the record of interview with Ms Bryant.

Senator FAULKNER—It is a paper wall, brigadier. I am ordering a truck to take it all back to Sydney. Take me to the relevant part.

Brig. Silverstone—It is under ‘Conversation with Mr Reith’—second paragraph, second-last line—where it talks about my thought of the need to be circumspect in what I said.

Senator FAULKNER—In Ms Bryant or her staff’s record of interview, which you have signed, it says:

Brigadier Silverstone’s other lasting impression was not being able to understand how it was possible, by that stage, that Mr Reith was not aware of the conclusion that no child had been thrown in the water, and the tension that this created between Brigadier Silverstone’s knowledge that no children had been thrown in the water and the need to be circumspect about what he said as he was not aware of what advice the ‘the system’ had provided to the Minister.

Was it that statement that Mr Scrafton was referring to?

Brig. Silverstone—Yes.

Senator FAULKNER—How would Mr Scrafton have been aware of your statement to the Bryant Report?

Brig. Silverstone—I do not know.

Senator FAULKNER—Were you surprised by that?

Brig. Silverstone—Somewhat, but I did not know.

Senator FAULKNER—Did you ask him?

Brig. Silverstone—No.

Senator FAULKNER—The first thing I would have done is to ask him: how do you know about it?

Brig. Silverstone—I did not ask him.

Senator FAULKNER—Anyway, he knew, didn't he? What did he say to you about that particular statement?

Brig. Silverstone—He asked me about that—what did I mean?

Senator FAULKNER—In what capacity did he ask you?

Brig. Silverstone—I think as a colleague at the SLG, the senior leadership group.

Senator FAULKNER—So Mr Scrafton is engaging in questioning you at the Defence senior leadership group about these matters. At this stage, of course, Mr Scrafton is not a ministerial staffer, is he?

Brig. Silverstone—I believe not.

Senator FAULKNER—He would not be at the senior leadership group if he was, would he?

Brig. Silverstone—That is unlikely.

Senator FAULKNER—So he holds some senior position. He is attending the senior leadership group as part of the Department of Defence executive, effectively.

Brig. Silverstone—Yes.

Senator FAULKNER—That is an interesting status for him to have, given certain imperatives that some are suggesting about ministerial parliamentary staff not being called before this committee. I am very interested in Mr Scrafton's engagement in this sort of activity

when he is no longer a ministerial staffer. That is very helpful to know and understand, I can assure you, brigadier. So where did this conversation go?

Brig. Silverstone—He asked me about it. I recounted the conversation, as I recalled it, with the minister, explaining once again that he had asked about the video and that I had told him that the video did not show the children in the water. I then said words to the effect that we had concerns as to whether any children went in the water at all and we had investigated that, and then the minister left my office, saying, ‘We’d better not see the video, then.’

Senator FAULKNER—Brigadier, I would admit that I am a bit out of touch with things in Defence; it is a long time since my very enjoyable days of being a minister in the Defence portfolio. I quickly add that I am terribly jealous of all those who now hold those positions. Technically, as I saw Mr Scrafton’s position on the witness list before the last Senate estimates committee hearings, he would probably be a two-star equivalent, wouldn’t he?

Brig. Silverstone—I do not know. In terms of his position with the minister, or his position—

Senator FAULKNER—No, not his position with the minister; his position in the Defence bureaucracy.

Brig. Silverstone—He is a senior Defence civilian, yes.

Senator FAULKNER—Is he senior to you in the Defence organisation?

Brig. Silverstone—The equivalence of his position is, yes.

Senator FAULKNER—That is what I thought. That is why I described it as a two-star position. I am a bit out of touch with this, but that was my understanding. Is my understanding basically right?

Brig. Silverstone—I believe so.

Senator FAULKNER—So he also comes to you and asks you this, effectively, as a superior in the Defence organisation, in the broad. I am not going to go into the diarchy, because Dr Hawke will probably write me a long letter and tell me that I am wrong.

Brig. Silverstone—I did not feel under any compulsion to respond to him because of his position, Senator.

Senator FAULKNER—You did not feel under any obligation to talk to him?

Brig. Silverstone—No.

Senator FAULKNER—Why did you?

Brig. Silverstone—Because I had been musing over this conversation with the minister since I had come back from leave and, without thinking about whether I should or should not comment on the matter, I told him.

Senator FAULKNER—Is that the only conversation you have had with Mr Scrafton?

Brig. Silverstone—Yes.

Senator FAULKNER—So where did it end up? You had that conversation; did it go any further? Did you just take his views on board, or did you act on them?

Brig. Silverstone—No. We had that conversation. It was right at the end and there was a beer or a glass of wine or something—I think I had a glass of light beer and then left. This was right at the end of the conversation.

Senator FAULKNER—So you just took his views on board.

Brig. Silverstone—Yes.

Senator FAULKNER—Would it affect the sort of evidence you gave at a meeting like this?

Brig. Silverstone—Absolutely not.

Senator FAULKNER—Could you tell us the date of the senior leadership group meeting?

Brig. Silverstone—I would have to check my diary—it was 28 February or 1 March.

Senator FAULKNER—It was after the Senate estimates hearings, in fact.

Brig. Silverstone—If that is the case, yes.

Senator FAULKNER—It was also the senior leadership group meeting that occurred at the same time that CDF did his press conference about his views on the children overboard issue.

Brig. Silverstone—That is correct.

Senator FAULKNER—It is the same meeting—

Brig. Silverstone—Yes.

Senator FAULKNER—where CDF in fact said that he was satisfied that children were not thrown overboard?

Brig. Silverstone—At the Senate legislative committee?

Senator FAULKNER—No. He made a public statement to that effect around the time of the senior leadership group meeting.

Brig. Silverstone—That children were not thrown overboard?

Senator FAULKNER—Yes, CDF did. Are you aware of that? You may not be aware of it.

Brig. Silverstone—My recollection is that at the press conference he shifted his position on this.

Senator FAULKNER—Yes, that is what I am saying.

Brig. Silverstone—No, you said that he said that children were not thrown overboard.

Senator FAULKNER—I did say that; I did mean to say that. CDF—

Brig. Silverstone—Sorry, indeed yes.

Senator FAULKNER—Are we at cross-purposes?

Brig. Silverstone—We were at cross-purposes.

Senator FAULKNER—Was that issue on the formal agenda of the senior leadership group?

Brig. Silverstone—The CDF and the chiefs spoke to the senior leadership group, and the CDF indicated what he was going to say before going out to the media conference.

Senator FAULKNER—And did Mr Scrafton's discussion with you precede those comments or was it after—

Brig. Silverstone—No, it was well after—at the end of the senior leadership group.

Senator FAULKNER—Thank you for that. We are aware of the statement that CDF made at that time; when did you, brigadier, become aware that children had not been thrown overboard?

Brig. Silverstone—Pretty definitely, on the morning of 10 October at 1114—I think that is the time it took—

Senator FAULKNER—When did you become aware that the photographs that allegedly depicted children who had been thrown overboard were actually photographs of another event—the sinking of SIEV4?

Brig. Silverstone—Whenever the email with the photographs hit my desk. It was an issue of whether or not they were of children thrown overboard. I saw the photographs and was not happy that they had been circulated beyond reasonable control. The only dealing I had with that issue was to tell the Maritime Commander that we should tighten up on the control of the photographs.

Senator FAULKNER—When you had your discussion with Air Vice Marshal Titheridge at 7.28 a.m. on 7 October, it also was pretty brief? You mentioned that your phone call with Commander Banks was a fairly brief one.

Brig. Silverstone—Yes.

Senator FAULKNER—Was the discussion with the air vice marshal pretty brief, too?

Brig. Silverstone—Yes.

Senator FAULKNER—It only took a minute or two?

Brig. Silverstone—Thereabouts, yes.

Senator FAULKNER—Just for the record, can you indicate what you said to the air vice marshal?

Brig. Silverstone—I have already done that, Senator.

Senator FAULKNER—Fair enough. Did you talk to Air Vice Marshal Titheridge about the op reps at all?

Brig. Silverstone—I did not speak specifically about op rep numbers, but I took him through a quick summary of the information that was in the op reps, and he indicated that he was aware of those.

Senator FAULKNER—Was there any indication whether the air vice marshal had read the op reps? They may not have been available to him; I do not know.

Brig. Silverstone—I do not know how he had the information about the preceding events that I had reported to him.

Senator JACINTA COLLINS—Brigadier, can you indicate which op reps or sit reps were reported to him?

Brig. Silverstone—No. I would have spoken to him quickly about what had happened through the night. I cannot recall which op reps, but I can say that I spoke about the difficulties that Commander Banks was facing in terms of the boarding. I said that I had authorised the boarding at about 0535 my time and that I had authorised shots across the bow at about 0608 my time. He said, ‘Yes, I’m aware of that,’ and, ‘Yes, I’m aware of that,’ as I went through that information. Then I said, ‘The only other information is that I have just got off the phone to CO *Adelaide*, and this is the circumstance.’

Senator JACINTA COLLINS—So they were not yet the sit reps in relation to the man overboard?

Brig. Silverstone—No, because they did not exist at that time. The only information I had about the current circumstances on *Adelaide* came from talking to CO *Adelaide* just before talking to Air Vice Marshal Titheridge.

Senator FAULKNER—As you properly say, the note of the phone conversation with Commander Banks was, in the first instance, a contemporary note that you took down at the time of the call. There have been a number of additions or changes—call it what you will—to that. Are you concerned that that in any way affects the integrity of the original note that you took? I understand the background of it: you and Senator Brandis have worked through that in some detail. I am wondering, however, whether you are concerned that the changes, the amendments, that postdate the original note might leave an impression that the original record is less than adequate.

Brig. Silverstone—No. It is very clear in my recollection of that conversation what was said. The note reflects that. The word ‘child’ was added in the gap between my conversation with CO *Adelaide* and my phone call to HSC, and that word was added into the gap that I left while taking the contemporaneous note because he was talking quite quickly.

Senator FAULKNER—I know how busy you are in your role as Commander of Joint Task Force 639, and I do not expect you necessarily to answer this in the affirmative: did you have any opportunity on either 7, 8 or 9 October to see any of the television news reporting of these incidents? Homing in on the significance of the words ‘child’ and ‘children’, I wonder whether you were able to pick any of that up and, if you did—I am not suggesting you necessarily saw it—how you responded.

Brig. Silverstone—This whole thing was a busy time. I think it was on the Monday or the Tuesday that I became aware of the press reporting on this and saw that it was being given quite considerable coverage. It was also at this time that it was causing concern to the Maritime Commander and Commander Australian Theatre. We had a discussion about this and the need to confirm what exactly happened or did not happen. All through Sunday—in fact, once I reported that conversation to Titheridge—the issue of the child in the water was a gone issue for me, in that everyone had been recovered and we had moved on to the next phase of this operation. I did not give it another thought until the Monday or the Tuesday, when I saw the press coverage and we went back and checked on it.

Senator FAULKNER—The reason I am asking you this is the issue of ‘child’ as opposed to ‘children’. That is my focus. The Prime Minister, for example, on the Alan Jones radio program on 8 October, said, ‘Genuine refugees don’t throw their children overboard into the sea,’ and there were a number of other public references to ‘children’—plural—as opposed to ‘child’—singular. I wonder whether you heard those and, if you did, whether you responded.

Brig. Silverstone—I would not have focused on that. The subject was children in the water or threats to children, and the specific instance here was a report that a child was thrown overboard.

Senator FAULKNER—When you had your conversation with the minister on 31 October—and you touched on this a little earlier—was the minister accompanied by staff members?

Brig. Silverstone—There was a staff member with him, but my recollection is that he was on the phone the whole time. In fact, the final comment from the minister occurred as this fellow finished on the phone and they stood up and left.

Senator FAULKNER—The final comment being his statement, ‘We’d better not see the video, then.’

Brig. Silverstone—Yes. This was actually said to the staffer, as opposed to me. I do not know who the staff member was.

Senator FAULKNER—I see. So that comment was not made to you; you overheard that comment, did you?

Brig. Silverstone—We are sitting there, he stands up and he looks across at this other fellow and says, ‘We had better not see the video then.’

Senator FAULKNER—I see. Do you know who that other fellow was?

Brig. Silverstone—No, I do not.

Senator FAULKNER—You just know that he was a ministerial staffer of former Minister Reith?

Brig. Silverstone—Yes.

CHAIR—Would you recognise him again?

Brig. Silverstone—Possibly. It was not Mr Hampton.

CHAIR—I am just asking if he was recognisable.

Senator FAULKNER—The less said about that the better, I think! But I think it is probably significant that the comment was not made to you, brigadier. Perhaps I did not appreciate that it was made to the staffer, but it was in response to something that you said to the minister.

Brig. Silverstone—Yes.

Senator FAULKNER—You have the staffers on the phone; you have your conversation, which you have reported to us, about the video—that is right, is it not?

Brig. Silverstone—We have the conversation about the video, I then continue to say that we had cause for concern as to whether any children went into the water and we have investigated the issue. I pause, and about the time that I am pausing the staffer is finishing on the phone and the minister says, ‘We had better not see the video then,’ and stands up and leaves my office.

Senator FAULKNER—But Minister Reith says that to his staffer; he does not say that to you.

Brig. Silverstone—Yes, he says that to his staffer.

Senator FAULKNER—Is there any question that the then minister hears your comment about concerns about whether children had been thrown in the water or not?

Brig. Silverstone—I said that before he made the comment about not seeing the video.

Senator FAULKNER—So there is no doubt in your mind that he heard that?

Brig. Silverstone—Yes, but, as I have indicated, I used words to that effect because at the same time that I am having this conversation I am thinking, ‘Why doesn’t he know this? Where do I stand in terms of the caretaker requirements?’ So I have this double conversation going on in my head. That is why I do not have a specific recollection about the precise words. But I said words to that effect and I expect that he would have heard.

Senator FAULKNER—So there are two elements to it, aren’t there? The Commander Joint Taskforce 639 says to the minister that you have concerns that no children had been thrown overboard—that is true, isn’t it?

Brig. Silverstone—Yes.

Senator FAULKNER—And secondly, at the conclusion of that brief part of the conversation, the minister says to his staff members, ‘We had better not see the video then.’

Brig. Silverstone—Yes, that is correct.

Senator FAULKNER—And that is the end of the conversation. He is up and out of there, basically.

Brig. Silverstone—Yes.

Senator FAULKNER—With his staff member.

Brig. Silverstone—Yes.

Senator FAULKNER—He could not get out quick enough.

Brig. Silverstone—I would not say that. He left the room saying farewell and departed the building.

Senator FAULKNER—So if the staff member was on the phone for most of the time then none of your staff would have had any discussions, I assume, with the staff member.

Brig. Silverstone—That is correct.

Senator FAULKNER—Just so that I am clear on this, how much of those two parts of the interplay with the minister about children being thrown overboard and about the video was reported up the chain of command?

Brig. Silverstone—That occurs very shortly after that. I think Rear Admiral Smith was away, so I rang Rear Admiral Ritchie to tell him about that.

Senator FAULKNER—Yes, I know, but both elements?

Brig. Silverstone—Yes.

Senator FAULKNER—Both elements?

Brig. Silverstone—Yes.

Senator FAULKNER—Thank you for that. In your original diary note—thank you very much for the colour version that you have provided to us—that was attached to your witness statement that we have had the benefit of now for some time, and so did those who prepared the official reports, I notice a little earlier on the page, or perhaps the page before that, Mr Moore-Wilton's name gets a guernsey. You might just tell us what the detail is of that communication, please.

Brig. Silverstone—It would be as part of the discussion that I have had with the Maritime Commander. At this time there is considerable discussion, apparently, within the IDC, with various departments having a view about what we should do with the SIEV. The Maritime Commander mentioned Moore-Wilton's name—and I have written it there. Underneath that it looks like 'No chance: CDF. Direct inshore. Mission aim: deter from coming to'. I cannot recall the specific background to that other than that there was discussion about what to do next. There is a view about whether these people should be taken direct to Cocos Islands or put ashore at Christmas Island. That is just the broad context to what we are also trying to manage at the present time.

Senator FAULKNER—So those three arrow points under Mr Moore-Wilton's name are 'No chance: CDF'?

Brig. Silverstone—Yes.

Senator FAULKNER—What is the next one?

Brig. Silverstone—'DIR', which I would usually write to mean 'direct' and then 'inshore'—I have no idea what that means.

Senator FAULKNER—So it is 'DIR inshore', is it? It is really hard to pick up.

Brig. Silverstone—That is what it looks like to me, yes.

Senator FAULKNER—You have got the original—

Brig. Silverstone—I have the original.

Senator FAULKNER—I thought you might struggle less than I am. What is the last arrow point beneath that?

Brig. Silverstone—‘MSN’, which is ‘mission’, then ‘Aim: deter from coming to’, and that would mean to deter SIEVs from coming down.

Senator FAULKNER—So this is not a direct contact with Mr Moore-Wilton?

Brig. Silverstone—No.

Senator FAULKNER—You are being told—well, you tell me what you think it is.

Brig. Silverstone—It is part of a discussion I am having with, I believe, the Maritime Commander—the rest of the conversation up the page is with the Maritime Commander, so this probably is as well—who is providing me with advice. He is obviously aware of some discussions that are occurring up the line from us and he is providing a context to what is happening to us at the present time.

Senator FAULKNER—So, while you were the commander of the joint task force 639, you would not have had any direct contact with officials of the Department of the Prime Minister and Cabinet?

Brig. Silverstone—No.

Senator FAULKNER—But you are kept informed of events as they develop via—what?—contact with the task force? Is that how it works?

Brig. Silverstone—Word is passed down the chain from the representative that goes from, I believe, Air Vice Marshal Titheridge’s organisation and then the word is passed down through the headquarters—in this case directions given to translate various things into Bahasa and whatever else. My notes above the page would indicate that this has come out of a summary of events at an IDC.

Senator FAULKNER—But do any directions, orders or instructions that you receive, brigadier, come from Defence sources only?

Brig. Silverstone—Yes.

Senator FAULKNER—ADF only?

Brig. Silverstone—Yes.

Senator FAULKNER—So when there is a government imperative, whether it be direct from the task force or indirect, how is this transmitted to you?

Brig. Silverstone—It comes from the Maritime Commander, who is the naval component commander for the purposes of this operation.

Senator FAULKNER—Yes, but only the Maritime Commander?

Brig. Silverstone—If he is absent, then his deputy, but it comes through the naval component command process.

Senator FAULKNER—I appreciate that—it is helpful to understand. You certainly would not have any direct contact with any of the IDC members or the like?

Brig. Silverstone—No. I do have contact with Director-General, Coastwatch, Rear Admiral Bonser, and we talk every day throughout all of this and normally a number of times a week when the pressure is not on for this operation, because we work in support of each other on a daily basis.

Senator FAULKNER—When the Maritime Commander contacted you with a directive from government, is it clear to you that that is its status?

Brig. Silverstone—Yes. In the context of this operation, I would say generally, yes, because this operation is occurring with a very high degree of interagency coordination. A lot of that—or most of that—is done through the interdepartmental committee. So, where there are adjustments to policy, they would come from that. If it is just a continuation of a current act, then it may well come solely and direct from the naval component command.

CHAIR—I am wondering, Senator Faulkner, in view of the time, whether this would be a convenient place to pause. We will pause for a moment, but we will not adjourn just yet. We have an organisational problem, in that the next witness is Rear Admiral Chris Ritchie. He is due to depart Canberra at seven o'clock this evening so he can link with a flight to Japan tomorrow. This may be bad news for you, but let me canvass it in your presence, brigadier. The options are to excuse you, deal immediately with Rear Admiral Ritchie and bring you back at the conclusion of Rear Admiral Ritchie, or to excuse Rear Admiral Ritchie straightaway and find some future time in which we might be able to call him. They seem to me to be the two options. I am in favour of the first one, if that is manageable. My understanding is that there is no immediately pressing requirement on you as there is on Rear Admiral Ritchie.

Brig. Silverstone—That is correct.

CHAIR—First, let me ascertain whether that is a course that the committee—

Senator FAULKNER—I think Rear Admiral Ritchie could be relieved. This will bring a certain discipline to the questions.

CHAIR—Yes, I think that might be right. Do we therefore opt for the first option, in which case you have a question, Senator Ferguson.

Senator FERGUSON—Brigadier Silverstone, following on from Senator Faulkner's questioning about the video and the former minister, I have not found this in the statement you have made but is it not a fact that when you were discussing the issue of the video with the minister the term that was used was that the video was inconclusive?

Brig. Silverstone—I said to him—I have to check the—

Senator FERGUSON—I think it is important we get the term, what was actually said, right.

Brig. Silverstone—I said in my statement that I had not seen the video and that I believe the video did not provide a very clear picture of the events of that morning. I then stated words to the effect, 'Minister, the video does not show a child being thrown in.'

Senator FERGUSON—So it does not show very clear events? Are you quite sure that the words that were spoken either to you or to his adviser were, 'Then we had better not see it?' Are you sure they were the exact words or may he have said, 'There is no point in seeing it if it is not very clear and it does not show anything conclusively'? Are you sure of the words?

Brig. Silverstone—The words he said were, 'We had better not see the video then.' What he meant by those words, I cannot—

Senator FERGUSON—You are not sure. He could easily have meant that in fact because it was inconclusive or it was not very clear there was no point in seeing it?

Brig. Silverstone—There is a range of meanings open to him.

CHAIR—We will adjourn for afternoon tea. With your approval, brigadier, we will resume with Rear Admiral Ritchie. When we conclude his evidence, we will come back to you and complete your examination.

Proceedings suspended from 3.34 p.m. to 3.45 p.m.

[3.46 p.m.]

RITCHIE, Rear Admiral Chris, Commander Australian Theatre, Royal Australian Navy

CHAIR—I welcome Rear Admiral Ritchie. The normal procedure is to invite witnesses to make an opening statement if they have one. Is that a process that you would like to follow?

Rear Adm. Ritchie—If I may, I will make a short opening statement which will position me in the tapestry.

CHAIR—Please proceed.

Rear Adm. Ritchie—Firstly, I thank you for your indulgence in allowing me to come. I do not think Brigadier Silverstone thought he had much choice.

CHAIR—I do not think I lent him much latitude—but still.

Rear Adm. Ritchie—I am the Commander Australian Theatre, and I have responsibility for the planning and the conduct of ADF operations, including the operation which is under discussion here, Operation Relex. I am directly responsible to the CDF and, as such, I talk directly to him and to his principal staff officer for operational issues, who is Air Vice Marshal Titheridge, the Head of Strategic Command. Direct command of operations in the Australian Theatre is most usually exercised through a component commander. In this case, the operation being ongoing, that role is fulfilled by the naval component commander, who is Rear Admiral Smith, the forces involved being primarily but not only from his maritime command. He has been assisted in this by Brigadier Silverstone, who is the joint force commander in Northern Australia. Essentially, Rear Admiral Smith has conducted the operations for me within the framework of a concept, rules of engagement and assigned forces that derive from my authority. He has reported back to me and either I or my headquarters have been the normal means by which the authorities in Canberra, the CDF and the Head of Strategic Command have been informed of progress and have discussed and directed necessary changes to the conduct of the operation.

The issues that I would ask you to note are that I am the responsible authority for all ADF operations and I am also the means by which operational issues are discussed with the CDF. I do not in the normal course talk directly to government. That is the CDF's prerogative. I do not accept operational direction from anyone other than the CDF or, on the CDF's authority, his principal staff officer, the Head of Strategic Command. That is the opening statement.

CHAIR—Thank you. Is it possible for an attendant to obtain a copy of it from you?

Rear Adm. Ritchie—It has been topped and tailed a bit. Yes, it is.

CHAIR—It is a brief statement. There is nothing attached to it that we should not have?

Rear Adm. Ritchie—No.

CHAIR—Thank you, I just needed to make that clear.

Senator FAULKNER—Admiral Ritchie, I assume you were listening to the evidence that Brigadier Silverstone was providing to us. I wonder whether the brigadier's contact with Minister Reith on 31 October—and this may not have been drawn to your attention at all—had been drawn to your attention by Maritime Command at all. It may not have been, but I thought we might start there.

Rear Adm. Ritchie—My recollection is that Brigadier Silverstone told me personally—it did not come to me through Maritime Command—that he had had that conversation with the minister; fairly well as he told it here before the recess.

Senator FAULKNER—Do you think the evidence that he gave to this select committee is a fair reflection of the information that he gave to you in relation to those two issues: first, in relation to his comment to former Minister Reith about questions about children being thrown overboard and, second, in relation to the minister's comment, 'Better not see the video then'—both those elements?

Rear Adm. Ritchie—Both of those elements are in my recollection of what he told me.

Senator FAULKNER—Given that occurred, did you have that conversation with him around 31 October?

Rear Adm. Ritchie—I do not have any record of that conversation, but I believe that it was around the 31st. Indeed, in my statement to Powell, I said at the time that I believed it was around the 31st.

Senator FAULKNER—Did you take any further action—

Rear Adm. Ritchie—I noted what he said. I do not have any recollection that I passed that on to anyone else, no. In fact, I probably regarded it as rather a personal exchange between him and the minister.

Senator FAULKNER—What about your own experience, and your organisation's, in terms of any contact, direct or indirect, with the office of the former minister over the period that we are talking about—the first week of October through to 10 November? First, you might indicate to us if there was any such contact and, second, if there was, what its nature was.

Rear Adm. Ritchie—It is very rare for the Headquarters Australian Theatre to have any direct contact with the minister and indeed with the minister's staff. I did have contact with Mr Scafton on, I believe, 10 October. Mr Scafton rang me in the morning and my recollection is that he was asking about evidence in support of the claim that children were thrown overboard. It may not have been in exactly those words, but I have no clear recollection of exactly what it was. At any rate, it caused me to talk to Admiral Smith. I know that Admiral Smith talked to either Silverstone or Commander Banks, and I was advised about midday of that day that the electro-optical film—the video that we all talk about—showed that there were no children

thrown overboard. It showed that there was one child held over the side, that people were jumping over the side of their own volition and that one 13-year-old—and he has variously been described as 13 to 15, or 17 to 18 but at the time I recorded him as a 13-year-old—was pushed over.

I was also told that the CO *Adelaide* had thought that there might be reports able to be taken from sailors who were on the disengaged side—that is, the side that the camera could not see—that indicated that there might be children in the water. At 12.42, I passed that information back to Mr Scrafton. That is the only contact that I recall with ministers or ministers' staff in this period.

Senator FAULKNER—Was Mr Scrafton basically asking if you were aware of any sort of evidentiary support for claims that children had been thrown overboard—is that a fair way of putting it?

Rear Adm. Ritchie—My recollection is, yes, he rang me up and said, 'Chris, what have we got that supports the claim that children were thrown overboard?' At this time I still believed that it was true.

Senator FAULKNER—I think it is fair to say that you do not believe it is true for much longer.

Rear Adm. Ritchie—Not for much longer, no.

Senator FAULKNER—It might be useful for the record if you could say when it became clear to you that children had not been thrown overboard.

Rear Adm. Ritchie—Again, in my recollection, it is clear to me on the 11th that in all probability children have not been thrown overboard, because on the 11th I see the statements taken from the sailors concerned on the *Adelaide*, and the last vestige of hope, if you like, was the fact that there would be statements taken from sailors. I already knew that there was nothing on the video. I knew that there was nobody coming forward and saying that they had seen it, but I believe that there was a possibility that the statements taken on the 10th would include that. Indeed, as we all know, there is one person, the EOTS operator, who says in his statement that he thought one child was thrown overboard; there are 15 who say that they were not. So, by the 11th, it was clear to me.

I think others will tell you that they probably believe that they discussed that with me on the morning of the 11th as well. I think it becomes clear to Brigadier Silverstone—I think he has already said this—on the 10th. I certainly spoke to him first thing on the morning of the 11th. So, in all probability, we talked about those sorts of things. But my definite recollection when I saw the statements is that I thought that this in all probability did not happen.

Senator FAULKNER—What about the other issue of clarity when the photographs do not actually represent that incident but an incident that takes place on another day?

Rear Adm. Ritchie—I had seen two photographs, which had been emailed to me by Rear Admiral Smith, which were of the rescue on the 8th. I saw those photographs being shown on

the *7.30 Report* on the evening of the 10th, and I rang the CDF to inform him that those photographs were not of children being thrown overboard, which is what they were purported to be on that media show.

Senator FAULKNER—You received two photographs. Did you do anything with the photographs you received? Did you discuss them with anyone or take any further action?

Rear Adm. Ritchie—No, because when I received the photographs they were merely photographs of part of the rescue of the 223 people when the boat sank.

Senator FAULKNER—In relation to the period of the 10th and 11th and certainly after Mr Scafton's phone call, was the uncertainty of the claims an important issue for you—trying to seek some satisfaction, some clarification or some certainty, if you like, on the question?

Rear Adm. Ritchie—I think it became an issue on the evening of the 10th and then again on the morning of the 11th, particularly over the fact that I was well aware that photographs were being misrepresented and, coincident with that, I became aware that in all probability the event did not happen. It was not an issue for me until the 10th and it was not an issue for me after the 11th until, I suppose, about 8 November when it again comes into public focus with the Chief of Navy's comments et cetera.

Senator FAULKNER—The phone call you received from Mr Scafton around midday—

Rear Adm. Ritchie—Earlier than midday. I rang him back at 1242. He rang me some time after eight o'clock on the morning of the 10th. I went through the process of talking to Smith. Smith talked to the people concerned and came back and gave me that view of the world—it is not on the tape; it might be in some statements—and I passed that back to Scafton at 1242.

Senator FAULKNER—This is the point. You in fact have two contacts with Mr Scafton on 10 October. The first one was around 8 a.m. Is that right?

Rear Adm. Ritchie—Around 0930Z(1630G) or so.

Senator FAULKNER—Whatever. It was early morning. I want to be clear on this. The thrust of this is that Mr Scafton was seeking information to support the claim that children had been thrown overboard. Is that fair?

Rear Adm. Ritchie—My memory is that Mr Scafton was seeking to find out whether there was any evidence to support the claim that children were thrown overboard.

Senator FAULKNER—I ask you that because I want to be clear on it. He was not actually seeking to test the claim?

Rear Adm. Ritchie—No, I do not think so. And I say it that way because of the nature of the response that I gave him, and the response was that this particular piece of evidence, the tape, does not show it but there may be other pieces of evidence in the form of statements that will show it.

Senator FAULKNER—So he was not asking you if it was true, basically; he was asking you if there was evidence—

Rear Adm. Ritchie—If there was any evidence to support it.

Senator FAULKNER—and by 1242 he got an answer.

Rear Adm. Ritchie—He got an answer, but be careful to remember that the answer that he got still indicated that it was possible that it had happened.

Senator FAULKNER—We are clear on the answer. The answer goes to the video.

Rear Adm. Ritchie—The answer goes to the video and says it is not on the video. The video does not show it.

Senator FAULKNER—Yes.

Rear Adm. Ritchie—But the answer then says, ‘But there may yet be sailors who will make statements that will show that it did happen.’

Senator FAULKNER—Appreciating that, were you able to effectively answer him at 1242 saying, ‘There is no evidence to support the claim’?

Rear Adm. Ritchie—No.

Senator FAULKNER—You in fact said, ‘There is none at this point’—

Rear Adm. Ritchie—He would have walked away from that conversation believing that there still might be evidence that supports the claim, because I believed that.

Senator FAULKNER—I appreciate that, but you did not have any.

Rear Adm. Ritchie—I did not have it, no.

Senator FAULKNER—There was no evidence at that point, but some may have been forthcoming. Is that the best way of describing it?

Rear Adm. Ritchie—That is fair.

Senator FAULKNER—After that contact with Mr Scrafton, you are satisfied by the next day that children had not been thrown overboard. That is true, isn’t it? Can I say also that, by the next day, you are satisfied that there is no evidence then to support the claim that children had been thrown overboard?

Rear Adm. Ritchie—That is true.

Senator FAULKNER—Are you satisfied that that is adequately communicated through the chain of command?

Rear Adm. Ritchie—Yes, I am, because I spoke in similar words to the CDF about that. He told me he was in communication with the minister on that subject.

Senator FAULKNER—This goes to some of the evidence that I think you gave at the Senate estimates committee. You were comfortable, as far as your own role as COMAST was concerned, that this issue was squared away by the subsequent day, 11 October. Is that right?

Rear Adm. Ritchie—As part of that long conversation that I had on the morning of 11 October with the CDF, I recorded immediately subsequent to that conversation that the probable actual course of events was that, on the film, one child was held to the side of the boat and one child jumped overboard—and that is all you would see if you looked at the film—and that the video operator said that he saw a child go in the water, and that is borne out by the statement that he has made, and that no children were recovered from the water. From those three points, albeit that one of them is contradictory, I have drawn the conclusion that it probably did not happen.

Senator FAULKNER—In the chain of command, you are responsible for briefing CDF on this issue and on related issues. I think there is absolute clarity on that.

Rear Adm. Ritchie—I talk to CDF directly, yes, and CDF and I would normally, in this or any other operation, personally discuss the most significant issues. I think CDF actually gets briefed daily by Air Vice Marshal Titheridge's organisation, they being his immediate staff for this sort of thing. Their organisation and my organisation are in constant communication about what is going on in each and every operation.

Senator FAULKNER—Were you aware of the special arrangement that I was speaking to Brigadier Silverstone about?

Rear Adm. Ritchie—Yes. In fact, I think Titheridge rang me on the Saturday evening and suggested that he had to brief—or had been requested to brief—the minister on the Sunday morning on what was going on with SIEV4 and asked if it would be okay if he spoke directly to Silverstone in order to cut out the middleman, if you like, on that one—and that one only—particular occasion. I agreed with that and asked Admiral Smith to arrange it.

Senator FAULKNER—The middleman being effectively you?

Rear Adm. Ritchie—Myself and Smith.

Senator FAULKNER—Middlemen?

Rear Adm. Ritchie—Middlemen, yes.

Senator FAULKNER—Are you confident that in your discussion with CDF on 11 October the fact that there was no evidentiary support for claims that children had been thrown overboard was made clear?

Rear Adm. Ritchie—Yes, I am confident.

Senator FAULKNER—In saying that Admiral, are you able to tell us whether you are able to provide clarity about the question of the video not depicting any images of children being thrown overboard?

Rear Adm. Ritchie—To the CDF?

Senator FAULKNER—Yes.

Rear Adm. Ritchie—I think I have given evidence before that I do not have a direct recollection of what I actually said to the CDF on that issue, but given what I wrote in my notebook, I am fairly confident that I did, yes.

Senator FAULKNER—I assume that you would have told Rear Admiral Smith that you had informed CDF about the lack of evidence over the claims?

Rear Adm. Ritchie—Yes, although I do not think it was straightaway. I think Smith probably was not there on that particular morning so it would have occurred some time in our contact thereafter. Admiral Smith has an office that is very close to mine and we see each other a lot.

Senator FAULKNER—You have regular discussions or briefings with CDF. I imagine this happens on a daily basis or a couple of times a day—or whatever is necessary as determined by events. Was this issue raised directly between you and CDF on more than one occasion in the October period?

Rear Adm. Ritchie—I only have a direct recollection of raising this particular issue, and the accuracy of what was being reported, twice with CDF—once on the evening of the 10th and then again on the 11th. I came away from the conversation on the 11th convinced that the issue was a dead issue.

Senator FAULKNER—Yes.

Rear Adm. Ritchie—So I would have had no cause to raise it again.

Senator FAULKNER—Did the discussion with CDF on the 10th also go to the question of the misrepresentation—those are my words, but I think they are fair—of the photographs?

Adm. Ritchie—The discussion on the 10th was entirely about the misrepresentation of the photographs.

Senator FAULKNER—So there were no other issues?

Rear Adm. Ritchie—No.

Senator FAULKNER—I appreciate that. So that conversation did not go to any other doubts about the claims?

Rear Adm. Ritchie—The discussion on the 11th would have gone to the rest of it but the 10th did not. The conversation on the 10th was very short. I told him that what was being shown on the television at that time was misrepresenting what was actually there.

Senator FAULKNER—Understanding that, I think it is fair to point out that the photographs were promulgated and publicised as evidentiary support of the claims. Is it fair to make that link?

Rear Adm. Ritchie—Yes, definitely.

Senator FAULKNER—Is it possible to be categorical and say that the conversation of the 10th was totally about the photographs and what incident they applied to, given that we understand that they were actually being promoted as evidentiary support that children had been thrown overboard? That is why they were there in the public arena—allegedly to show that children had been thrown overboard. I am not doubting you. I am just wondering if contextually—

Rear Adm. Ritchie—It was a very short conversation. I got home, the television was on and the first thing I saw were those photographs on television purporting to be evidence that children were thrown overboard. I immediately rang him on the telephone and said, ‘Those photographs that were on the *7:30 Report* are not of children being thrown overboard.’

Senator FAULKNER—In relation to the photographs specifically, what was your feeling about what they depicted? Did you have any views, or did you express any views, about either the advisability or necessity of correcting the public record about that?

Rear Adm. Ritchie—With CDF?

Senator FAULKNER—With the CDF or more generally. In other words, you were aware that the photographs were depicting a different event?

Rear Adm. Ritchie—Yes.

Senator FAULKNER—Did you raise the issue, with the CDF or more broadly, about the need for the public record to be corrected? In part, I ask this because it is something that I am very sensitive about: the fact that this was—as you would be aware, although I accept that it is not a central issue for you—all occurring in the early stages of a federal election campaign.

Rear Adm. Ritchie—I do not know how to answer that, other than to say that I told the CDF, in fairly straight terms, that these photographs were not what they were said to be. The CDF indicated that he would talk to the minister about it. I am not then going to go and talk to anybody lesser in the chain. To me, that is about as far as you can go.

Senator FAULKNER—There is no-one lesser in the chain.

Rear Adm. Ritchie—To me, that is about as far as you can go.

Senator FAULKNER—Given that there is this one question mark remaining in relation to the middle of the day on the 10th and the statements of the crew, did you have any involvement in whether CDF would be apprised of the outcome in relation to that? It may not have fallen into your bailiwick; I am not sure.

Rear Adm. Ritchie—No, and I am sure that probably that is part of what I was talking to CDF about. But I gave no consideration to sending those things to CDF or passing them on any further. They had come as far as they needed to go. We had formed the view and said that, in all probability, this did not happen. The advice I got back was that the issue would not be pursued any further.

Senator FAULKNER—But, as far as we know, it was not?

Rear Adm. Ritchie—It was not really pursued that very much further until we got to November.

Senator FAULKNER—That is right.

Rear Adm. Ritchie—So nothing happened, that I can recall, between then and 8 November that causes me to say that I should have gone back and done this again. I might be at fault there, but certainly there is nothing in my memory about that.

Senator FAULKNER—One of the things we are all aware of is that these photos were not brought forward as evidentiary support again until, as you say, the end of the first week in November. At that point of course we know that CDF—at least for some of that period, if not most of it—was not even in the country, as you were aware.

Rear Adm. Ritchie—No.

Senator FAULKNER—But, in terms of your own responsibility, did you take any action when the claims resurfaced and the photographs were published again?

Rear Adm. Ritchie—The next time, I suppose, that it really came to notice is when the Chief of Navy made a statement saying that the advice that children had been thrown overboard had not been passed to the minister, and then he corrected it. I was aware that that advice had been passed to the minister. I was also aware that subsequently, I believe, advice had been passed saying, ‘There’s nothing to show that it’s true.’ I think that the Chief of Navy has recorded that he then had some conversations with other people, including me, as to how this thing got into the public agenda. He attributed me as telling him that Titheridge probably passed it through the IDC or whatever. Subsequently, it appeared that that was not the case, because Titheridge did not go to that IDC. But I may well have said something like that, because that is the sort of model that was being followed for this activity.

Senator FAULKNER—But you have just said in answer to my question then that you knew that advice had been passed to the minister. How are you able to be so definitive about that?

Rear Adm. Ritchie—Because I was aware of the arrangement that was put forward for Titheridge to talk to the minister. After Silverstone phoned Titheridge, Silverstone then phoned Smith and Smith phoned me. He told me that this had been said to have happened and that the thing had been passed on in accordance with the arrangement we had come to the night before. It was fairly clear to me that the minister's office knew about that, because why else would people like Scrafton say, 'Is there any truth in this sort of thing?' So it was not a secret; we all believed it. I am quite happy that we collectively—that is, the Defence organisation—did tell the minister and his people that it happened.

Senator FAULKNER—It was not a secret for you; that is true. I understand that and I think we all appreciate that. It was a secret as far as I was concerned and as far as members of the general public in this country were concerned right through the period of an election campaign. While it may not be a secret for you—

Rear Adm. Ritchie—What I said was not a secret was the fact that we told the government that this was true—and we did.

Senator FAULKNER—That was a secret right through that period too, surely?

Rear Adm. Ritchie—Not really. I think Minister Ruddock had a press conference on Sunday morning, the 7th.

Senator FAULKNER—I am sorry. You are saying the original—

Rear Adm. Ritchie—The original telling of the story.

Senator FAULKNER—We are speaking at cross-purposes. I thought you were suggesting that it was not a secret that the record had been corrected?

Rear Adm. Ritchie—I am not making any comment on the business of the record being corrected, or I have not made any comment on that yet.

Senator FAULKNER—Would you care to?

Rear Adm. Ritchie—No.

Senator FAULKNER—I must admit I thought your last few comments were directed to the events—

Rear Adm. Ritchie—No, they were directed to—

Senator FAULKNER—That is because I was questioning you about discussions with CDF and the like and I thought you were referring to the events that—

Rear Adm. Ritchie—I was referring to events between 7 and, say, 10 October.

Senator FAULKNER—Okay. I must admit I understood you to be talking about events post the 10th. I understand the nature of what you are saying, and you are right, of course, to make the point that Minister Ruddock had a press conference and it was no longer a secret from that point. I asked Commander Banks about this and I wonder whether I could ask you about it: are you aware of an instruction from the CDF, an unclassified memorandum, titled ‘Collection and handling of operational material with potential evidentiary use’? The distinguished gallery journalist Laurie Oakes in fact wrote an article about it.

Rear Adm. Ritchie—I am aware of it.

Senator FAULKNER—So you are aware of the memorandum?

Rear Adm. Ritchie—Yes, if it is of relatively recent origin. Is it?

Senator FAULKNER—Yes, I think so. I made the point this morning that Mr Oakes knows a lot more about this than I do, but I thought you might be able to shed some light on it. Are you aware of any loss or destruction, whether it be accidental or deliberate, of any document or material relevant to this committee’s inquiry, the SIEV4 incident or task force 639’s activities?

Rear Adm. Ritchie—I am not aware of any deliberate misappropriation or loss.

Senator FAULKNER—So, nothing. What about the issue of the correcting of the public record when the issue was raised again later in November: did you give any thought to the need or necessity for that in the circumstances? Again, it was a highly sensitive time in the political cycle, as I am sure you appreciate.

Rear Adm. Ritchie—I did not. Having had that discussion with the CDF in October, I considered that that was probably adequate. I am also aware that Air Marshal Houston took the action that he did in November, which really seemed to move things on a pace in any case. I think he took that action on 7 or 8 November; I am not sure exactly which. I personally gave no thought to making any statement to anybody to say that this should be corrected, no.

Senator FAULKNER—Fundamentally, you did not think it was your responsibility? Or you felt that at the end of the day you had had a discussion?

Rear Adm. Ritchie—Fundamentally, I thought I had fulfilled my responsibility.

Senator FAULKNER—Because at the end of the day you passed it up the chain of command to your commanding officer?

CHAIR—Can I be clear on this point: what you are referring to as the action taken by the Air Vice Marshal was what came out in estimates—that is, he rang the former Minister for Defence and told him that children were not thrown overboard, and he did so in the presence of Brigadier Bornholt?

Rear Adm. Ritchie—Yes. Then he debriefed other people afterwards.

CHAIR—Yes.

Rear Adm. Ritchie—That is the action that I am referring to. I am not saying that I had intimate knowledge of that at the time either.

Senator FAULKNER—But you are saying that you had some knowledge of that?

Rear Adm. Ritchie—I had some knowledge that there was movement in Canberra in terms of going back to government on that.

Senator FAULKNER—Could you share with us how you gained that knowledge?

Rear Adm. Ritchie—Not really, only to say that it would have been in discussion with the principals in Canberra. I did not get it directly from Air Marshal Houston. I did not get it directly from Brigadier Bornholt.

Senator FAULKNER—So this was a bit of a badly kept secret in the upper echelons of Defence, was it?

Rear Adm. Ritchie—No, I am not saying that I even knew that he went and said that to the minister. I knew that there was activity in Canberra, which was to do with the fact that the Chief of Navy had made a statement, to do with the fact that the photographs had reappeared in the paper, to do with the fact that the whole issue had surfaced again.

Senator FAULKNER—I hear what you are saying; I am just trying to understand how you knew it, that is all. This is the point that I was making before about something and it turned out to be a misunderstanding on my part: you knew that but a lot of other people did not know it including, I suspect, a lot of people sitting around this table and people in the broader community. I would have liked to have known that at the time, I can tell you. You probably appreciate that.

Rear Adm. Ritchie—I cannot help you any more, other than to say that I was aware that in Canberra people were looking at the issue again.

Senator FAULKNER—I think what you are really saying to us is that this was more the status of a rumour that came to your attention?

Rear Adm. Ritchie—No, I am not saying that it was a rumour. It is my business to talk to the people in Canberra on behalf of the operational end of the organisation. I am generally aware of the sorts of things that are happening in Canberra. If I have said that I knew directly what Houston was doing—and I do not think I have—I retract that, because I did not. But I was certainly aware that it was an issue again.

Senator FAULKNER—In a sense, everyone is aware that it is an issue, Admiral, because it is in the public arena again. I think it is fair to say that you are saying more than that, aren't

you? You are saying that from some sources in the Defence organisation you become aware that there is an attempt to correct the record or redress the situation as it is evolving; I am not being unreasonable in saying that?

Rear Adm. Ritchie—No, you are not. I can say to you that the statement that I eventually gave to Powell, I drafted on the night of 8 November at home because I thought that this issue was going to come on very quickly. I did not do anything with it then. In the cold light of day I said, ‘We’ll put that in the drawer and wait until it’s needed.’

Senator FAULKNER—If you ever retire from the Navy, Admiral, you might get a job as a soothsayer or something like that. That is very impressive. Did you provide that draft to Major General Powell?

Rear Adm. Ritchie—No, I did not; I kept it.

Senator FAULKNER—But you were concerned enough to sit down—

Rear Adm. Ritchie—I was concerned enough to sit down and write out my part in this activity.

Senator FAULKNER—and pen some notes about an issue that you thought you would hear a lot more about?

Rear Adm. Ritchie—Yes.

Senator FAULKNER—Are you able to say to us whether in part that reaction—which I am not critical of at all; it is obviously perspicacious and sensible—comes about as a result of discussions with other senior colleagues in Defence?

Rear Adm. Ritchie—It comes about, I suppose, initially because I became aware of what the Chief of Navy said in Fremantle when he made his statement to the press about the information not being passed to government—an issue we went through 10 or so minutes ago.

Senator FAULKNER—Yes, I know, but by the time that you sat down to put pen to paper that evening, the Chief of Navy had also put out a clarifying statement, hadn’t he?

Rear Adm. Ritchie—He put out a clarifying statement, yes.

Senator FAULKNER—Or a so-called clarifying statement—I do not like that terminology, but that is his terminology and I accept it as his terminology.

Rear Adm. Ritchie—I think the point of the original question was to find whether I, at any other time, saw fit to go forward again and correct the record, and my answer to that is no.

Senator FAULKNER—I promised to discipline myself to a short number of questions to kick off and come back to you at a later stage; I do not know whether my colleague or others want to ask questions.

Senator JACINTA COLLINS—I have only one question, Admiral—and I apologise if you covered it earlier, when I was out of the room. It relates to a comment by Mr Hendy in the Bryant report material. He indicates:

... the Minister's office might have undermined the protocols for checking and verifying information—

that is, about the release of the photographs. He also indicates that the minister:

... had spoken to the CDF and senior Admirals before making the decision to release photos ...

Were you consulted or are you aware of other senior admirals, apart from Admiral Barrie, who were consulted?

Rear Adm. Ritchie—No. He did not speak to me.

Senator MASON—First of all, thanks for your quick run-down on the chain of command in this context. I am not sure I quite have the hang of it yet, but I am working on it. I draw your attention to the issue that Senator Faulkner raised with you before and also I think with Brigadier Silverstone—the so-called special arrangements in relation to SIEV4. Page 11 of the Powell report states:

According to Rear Admiral Ritchie's interview with me, the provision of advice to Air Vice Marshal Titheridge by Brigadier Silverstone was a special arrangement that had been agreed on the previous evening—

that is, 6 October—

to allow Air Vice Marshal Titheridge to brief Mr Reith about developments at an early stage. The special arrangement to provide advice to Air Vice Marshal Titheridge was an acknowledgment that there were several new elements that had not been seen with previous vessels, including the fact that the passengers were wearing life jackets.

What were those several new elements that had not been seen before?

Rear Adm. Ritchie—I would take issue with that part of Powell's report to the extent that it indirectly might have been an acknowledgment that there were different things about this—but it was primarily, in my belief, because the minister had intended to go on some sort of media event on the Sunday morning and, knowing that the boat was there, he wanted to be able to talk about it.

Senator MASON—So the special arrangement, to put it bluntly, primarily was there for the convenience of Mr Reith?

Rear Adm. Ritchie—That was my understanding of it, yes.

Senator MASON—I think that is the evidence that Senator Faulkner used from Brigadier Silverstone as well. I just wanted to clear that up. So this special arrangement did not apply to any other SIEV incidents?

Rear Adm. Ritchie—No. I have no memory that we have done that in any other case. That is not to say that we would not.

Senator MASON—So are you aware of other SIEV incidents?

Rear Adm. Ritchie—I am aware of other SIEV incidents.

Senator MASON—I just wanted that on the record.

Rear Adm. Ritchie—But we have not done that in any other incident.

Senator MASON—I have in front of me annex C to the report by Major General Powell. I think you would have seen it.

Rear Adm. Ritchie—Yes.

Senator MASON—I am referring, just for the record, to annex C to the report by Major General Powell. Are you aware of SIEV incidents that occurred after SIEV4—obviously SIEV6 on 22 October, SIEV7 on 24 and 29 October, SIEV9 on 31 October and going into November, SIEV10 on 8 November and SIEV12 on 16 December?

Rear Adm. Ritchie—I am aware of all those incidents.

Senator MASON—This is curious: was the interdepartmental committee on people-smuggling made aware of those other SIEV incidents?

Rear Adm. Ritchie—When you say ‘incidents’—and I suppose that you are now talking about the information that Titheridge provided on threats and all those sorts of things—

Senator MASON—In the Titheridge minute, yes.

Rear Adm. Ritchie—I have no direct awareness of what the IDC knew about each particular incident, but I would be greatly surprised if the IDC was not aware that in each incident something different happened.

Senator MASON—I will just get this straight: you were informed about these other SIEV incidents by Rear Admiral Smith?

Rear Adm. Ritchie—I think you might be leading me down a path to say that I was informed about every particular issue—

Senator MASON—I just want to know—

Rear Adm. Ritchie—and I would not guarantee that.

Senator MASON—Do you know if the minister was informed about these other SIEV incidents?

Rear Adm. Ritchie—No, I do not.

Senator MASON—Did you pass information about these other incidents up the line to CDF and to—

Rear Adm. Ritchie—In particular, and I think in relation to the ones where threats were made, I could guarantee you that SIEV7—the one in which the child was actually dropped—was passed in the AST operational summary—which is sent at the end of the day—on this business. I exclude for the moment SIEV10, because SIEV10 in itself was a totally different incident. SIEV10 is the one that sunk and everybody ended up in the ocean. That was certainly passed up the line in great detail.

Senator MASON—Do you know if it went to the minister?

Rear Adm. Ritchie—I think I could say with some confidence, yes.

Senator MASON—You certainly passed it up to CDF and to—

Rear Adm. Ritchie—As a result of SIEV4—in fact, by the time we got to SIEV10 it was really the next significant thing that happened; SIEVs 5, 6, 7, 8 and 9 are not significant in the great scheme of things as far as we were concerned, but 10 was. SIEV10 was certainly passed very deliberately in written form up the chain of command.

Senator MASON—Let me make this clear then: you passed those incidents up the chain to the CDF and to Air Vice Marshal Titheridge in each case?

Rear Adm. Ritchie—I think that this happened in the course of the night. I think SIEV10 went through Titheridge's organisation, yes.

Senator MASON—What is curious is that there is all this evidence that Senator Brandis adduced the other day in relation to the Titheridge minute that most of the public was totally unaware of until the revelations of the Titheridge minute. We have heard time after time of a certain pattern of conduct that has evolved and yet there was no public discussion and no discussion from the minister or the CDF about these matters.

Rear Adm. Ritchie—It goes to what Senator Faulkner was talking about. I know about it—perhaps you don't—so I am talking about it at a different level. We have never tried to conceal the fact—in fact, we have tried to advertise it—that this is very difficult work; that these people do unusual things. We have continuously tried to get that message through Air Vice Marshal Titheridge's organisation into the IDC. But I would not say that we have gone to the point of saying 'and that person threatened to throw a child over the side'. That really has become part of the background noise.

Senator MASON—I understand that. But I suppose you can see, given what has happened with this committee over the last week or so, that it is striking that all the evidence that Senator Brandis adduced the other day came out, there was comment about it in all the newspapers, and yet none of us had heard about it until then. Yet we pick on one particular incident—SIEV4. Would you agree that compared to some of the other instances SIEV4 is not quite as dramatic?

Rear Adm. Ritchie—If a child had been thrown over the side in SIEV4, I think it is more dramatic. I will put SIEV10 aside again, because SIEV10 is a very dramatic event. But other than SIEV10, SIEV4 is more dramatic than the others. In SIEV7, I personally think that the kid was dropped, it was not thrown, and no-one else was thrown—in the business of threats to children.

Senator MASON—Sure, but the child was dropped overboard—you are right—on 24 October. On 29 October with SIEV7 there were attempts to set fire to the vessel. I do not want to go through it all now—we have been through it all—but you understand my point, don't you?

Rear Adm. Ritchie—Setting fire to the vessels, breaking them up, threatening violence—all those sorts of things.

Senator MASON—Perhaps when we speak to Air Vice Marshal Titheridge I might explore this issue a bit further. I just want to find out where the information went and who made the decision not to take it any further.

Rear Adm. Ritchie—Yes.

Senator MASON—Thank you.

Rear Adm. Ritchie—It would be my certain belief that all the information of that type was known.

CHAIR—Are you trying to make a case for us, Senator Mason, to call Mr Reith in order to ask him that very question?

Senator MASON—I think we are getting some members of the IDC; are we not, Chair? I would like to find out even from that angle.

CHAIR—We no doubt are.

Senator FERGUSON—You have said that you did not think that SIEV7 was as drastic as SIEV4 because you thought the child was actually dropped overboard rather than thrown overboard. Surely, Admiral Ritchie, there has been a pattern of behaviour established with the threats to throw children overboard and, if you continually threaten to throw children overboard and you are hanging them over the side, eventually one of them is going to drop. So I would have that it was a pattern of behaviour that has been established throughout all of those incidents and—

Senator Jacinta Collins interjecting—

Senator FERGUSON—Senator Collins, I know you are dying to have a say, but have it when you are called.

Senator JACINTA COLLINS—I am just making sure you say the truth.

Senator FERGUSON—Can I suggest to you that with this pattern of behaviour that has followed, it would seem to me that, when in relation to SIEV7 a child actually is dropped overboard—

Senator JACINTA COLLINS—An alleged pattern of behaviour.

Senator FERGUSON—You are saying ‘allegedly’ dropped overboard?

Senator JACINTA COLLINS—I am saying it is an alleged pattern of behaviour.

Senator BRANDIS—It is alleged by Admiral Shackleton.

Senator JACINTA COLLINS—Yes. Other things were alleged by Admiral Shackleton, as I recall, on a date in November.

Senator FERGUSON—If Senator Collins can restrain herself for just a minute, Admiral Ritchie, I will get back to the question. The question is that the pattern of behaviour has been established, and Admiral Shackleton alluded to it when we were questioning him; don’t you think SIEV7 becomes just as important as SIEV4 if that is the case? If so, and this happened on 24 October, we have all the suggestions made that this was brought up in the political context in an election environment, if the minister was informed of the incident on SIEV7, don’t you think that the Australian public has a right to know that as well? Do you know whether the minister was advised?

Rear Adm. Ritchie—No, I do not.

Senator FERGUSON—There were further incidents similar to SIEV4 which received all the publicity. Commander Banks, who is now probably a household name throughout Australia, has been here for a considerable number of hours. We have commanders of about half a dozen other vessels who have conducted themselves under just as much difficulty and, I would say, in the case of SIEV10, probably with more stress than SIEV4, who are unknown to the Australian public because the incidents have never been made public. Either they have deliberately been kept from the minister’s view or the information has not been disseminated to the minister in order to keep the Australian public, the government and the opposition in the dark, or else the information has not been given to the minister.

Rear Adm. Ritchie—The information on SIEV7 was known in Canberra—it was known in Strategic Command.

Senator FERGUSON—So it was known to the minister?

Rear Adm. Ritchie—It was known in Strategic Command. I do not know whether it was known to the minister.

Senator JACINTA COLLINS—You will have to ask Admiral Barry.

Senator MASON—We remain curious and will follow it up later with Air Vice Marshal Titheridge. Senator Ferguson did point to an important issue and that is Admiral Shackleton's evidence relating to a course of conduct. I would just like to draw your attention to the *Hansard* evidence from Monday, 25 March before this committee when Senator Brandis put a question to Vice Admiral Shackleton. Let me read that out and ask for your response to it. Senator Brandis asked:

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 Admiral Shackleton replied, 'That is what we found.' Do you agree with that?

Rear Adm. Ritchie—As early as SIEV3, threats to throw children overboard happened, and that was somewhere in the middle of September; so, yes, I agree.

Senator MASON—You agree. Thanks. And in the Defence estimates of 20 February the CDF, Admiral Barry, gave evidence, and let me refer to page 72 of the *Hansard* record of that day. In response to some questions from Senator Faulkner—this is the very last line of the page—Admiral Barry says.

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.

What did naval intelligence tell you about the briefing that was being given to the asylum seekers at their points of departure by people smugglers?

Rear Adm. Ritchie—Nothing.

Senator MASON—Sorry, sir?

Rear Adm. Ritchie—Nothing.

Senator MASON—Nothing. Are you aware of any naval intelligence about that?

Rear Adm. Ritchie—No.

Senator MASON—I ask because Admiral Shackleton said that you and Rear Admiral Smith would be the gentlemen to ask, so I am just following that up.

Rear Adm. Ritchie—In the case of that—and it has been raised a number of times—what actually has happened is that each time we have seen a boat we have seen a different pattern of

behaviour and we have drawn the conclusion that that pattern of behaviour is in reaction to something that we did last time and people are trying to move around us and get somewhere else. We have certainly drawn those conclusions ourselves. We have no direct evidence of what these people are told before they depart.

Senator MASON—So you think there is an evolving, more sophisticated process from the people smugglers?

Rear Adm. Ritchie—Yes.

Senator BRANDIS—One common feature of which, Admiral, in each case is the use of children or the use of threats to children?

Rear Adm. Ritchie—In about half the cases, yes.

Senator BRANDIS—That is a common feature in, I think, seven of the 10 instances. Do you agree with that?

Rear Adm. Ritchie—Yes.

CHAIR—In about half the cases. There were—what?—12 SIEVs all up, weren't there?

Rear Adm. Ritchie—There were 12 all up, and I think that you could reasonably say that there were probably—if you exclude 10 and I do, but I accept that others might not—six SIEVs. In some there were multiple incidents, and that is how you get so many. SIEV9, I think, had four or five incidents, because we had that vessel for a considerable period of time.

CHAIR—Going to this question of pattern of behaviour, my recollection—and I might be wrong so please correct me if I am—is that there were only about three at maximum references in what has become known as the Titheridge report where children were mentioned as being threatened.

Rear Adm. Ritchie—I think there are more than that.

Senator BRANDIS—With all due respect, can I put this to you, Admiral Ritchie. The Titheridge minute, if you analyse it, indicates that between SIEV3 and SIEV12—that is, between 12 September and 16 December—seven out of those 10 SIEVs involved threats to children. They were SIEV3, intercepted by the *Warramunga* on 12 September; SIEV4, the *Adelaide* on 7 October; SIEV6, the *Bunbury* on 22 October; SIEV7, in two instances, the *Bendigo* on 24 October and the *Arunta* on 29 October; SIEV9, in four instances, in each case involving the *Arunta*, between 31 October and 2 November; SIEV10, involving the *Wollongong* on 8 November; and SIEV12, involving the *Leeuwin*, on 16 December. Do you accept that, Admiral Ritchie?

Rear Adm. Ritchie—Yes, I accept that. Sorry, did you say the *Dubbo*?

Senator BRANDIS—I did not mention the *Dubbo* because—

Rear Adm. Ritchie—It is out of context—

Senator BRANDIS—I do not want to overstate the case, so I have deliberately left the *Dubbo* out because that relates to an event as early as November 1999, before the Navy became involved in the border policing responsibilities.

Rear Adm. Ritchie—I have done the same thing: I think 3, 4, 6, 7, 9 and 12 and, as I say, I count 10 as something different, a totally different event.

CHAIR—We will come to that report and those allegations, for which we have not yet examined the evidentiary base, but can I just be careful about what we are saying—

Senator MASON—Sorry, Chair, I had not finished.

Senator BRANDIS—I am sorry. I thought you had.

Senator MASON—No. I have just a few more. Admiral, can I take you to your statement to General Powell, in particular to the handwritten notes attached to your statement of 7 October last year. Do you have that?

Rear Adm. Ritchie—Yes, I do.

Senator MASON—It really relates to the issue we are discussing about course of conduct. It is just a quick point, but I want to put it on the record. It is to the second handwritten page that is annexed to your typed statement, 7 October, about halfway down the page:

0800 ... Threats as usual.

Do you see that?

Rear Adm. Ritchie—Yes.

Senator MASON—What is that referring to?

Rear Adm. Ritchie—It is referring to SIEV4.

Senator MASON—‘Threats as usual.’ What threats were those?

Rear Adm. Ritchie—Somebody has rung me up and said, ‘Well, here is this boat’—and there is no particular time against that, so I am not sure when I wrote that, but it is something I wrote down as somebody was telling it to me—

Senator MASON—‘As usual’ means what?

Rear Adm. Ritchie—I am meaning that there is a pattern. I do not disagree with the fact that what you are saying is a pattern that has been established.

Senator MASON—I just wanted to reiterate the point that Senator Brandis has raised. On the next page, 8 October, about a third of the way down it says:

SIEV is taking on water—destroyed own pump—

Rear Adm. Ritchie—Yes.

Senator MASON—It continues ‘one pump’—and what does that word say? ‘One pump’—something—‘attempting to get another’?

Rear Adm. Ritchie—It says ‘one pump passed—attempting to get another’, meaning that the ship had passed a pump across. It was attempting to pass another pump over to the vessel.

Senator MASON—And that was that the illegal arrivals had destroyed their own pump?

Rear Adm. Ritchie—Yes.

Senator MASON—The note you had taken—

CHAIR—Hang on. We are not clear about that. We had evidence from Commander Banks that these were crude vessels and the crew consisted of people smugglers and the passengers consisted of refugees. And to the direct question, ‘Could he assure us that the refugees damaged the vessel?’ he said no, he could not. He did not know whether it was the refugees or the people smugglers. In this case, do we know whether it was the refugees or the people smugglers?

Rear Adm. Ritchie—We do not, and we do not say that. We say that the SIEV is ‘taking on water—destroyed own pumps’. That is a record of something that I was told and that I passed on to the CDF.

Senator MASON—I say it again: the illegal arrivals destroyed their own pump.

CHAIR—Well, no.

Rear Adm. Ritchie—No, I just said—

CHAIR—They are—

Rear Adm. Ritchie—It does not say that.

Senator BRANDIS—On a point of order, Mr Chair: let Senator Mason’s question be answered before you interrupt.

Rear Adm. Ritchie—What it says is—

CHAIR—Sorry, Admiral, a point of order has been taken and it has been taken on me—which is, of course, the right of Senator Brandis. The point of order, I think, does not stand, but

I am quite happy to withdraw and follow it up, because Senator Mason was putting words in the witness's mouth.

Senator BRANDIS—He is entitled to do that. He is entitled to put a proposition to a witness and see if the witness assents to it.

CHAIR—Yes, but there has been a tendency in this hearing to put propositions to witnesses but to forewarn them that it is a proposition that is being put. It is not words being put in their mouths.

Senator BRANDIS—I think you are insulting Rear Admiral Ritchie's obvious intelligence.

CHAIR—I am not insulting anyone's obvious intelligence, and we shall now move on.

Senator MASON—Could we just clear that up then, Rear Admiral. When I am referring to 'illegal arrivals', it is any particular person on the boat, whether crew or people that paid to be part of the—

Rear Adm. Ritchie—Yes, and that is all that that says: the people on the boat destroyed it—we do not know which people.

Senator MASON—Fine. That is all I wanted to clarify. Thank you.

CHAIR—One of the things that puzzles me in this whole episode is: what efforts were made to identify the people smugglers, who were in our terms the criminals, and the refugees, who were in our terms people seeking refuge—by means that we did not approve of, but who may or may not be granted refuge, if not in Australia then in some other place, because they are genuine refugees? What effort was made to identify those two classes of people on these boats?

Rear Adm. Ritchie—Part of the standing direction for this operation is to try to identify the crew, for obvious reasons and the sorts of reasons that you have given. My understanding is that in this case they never really did identify that crew. They identified four people who they thought were of different ethnic origin to the rest of them and therefore they may well have surmised that they were the crew, but they did not actually identify the crew positively whilst the vessel was in the authority of the *Adelaide*. Commander Banks may wish to correct that but that is my understanding of what happened.

Talking about patterns of things, it is important for you to understand—and I do not think that this has come out—that the pattern that was well established in those boats is that the crew were not in control of the boat. There were always dominant male SUNCs, as we call them, who tended to sort of run the operation. In many of the instances, you would find that a crew who were readily identifiable would say that they were afraid for their lives if they did not push on towards the Australian coast. So there is an issue of patterns to do with crew. This one is a little bit out of the ordinary because the crew were not identified.

CHAIR—This is SIEV4?

Rear Adm. Ritchie—Yes, SIEV4.

CHAIR—My recollection of Commander Banks's evidence is that there were maybe three or four people who appeared to be of Javanese origin and who behaved as separate from the rest of the refugees.

Rear Adm. Ritchie—Quite often it is easy to identify the master, and he will say that he is the master. He will say that he is no longer in control; that these other people are in control. If you wish to return the vessel, it is important for the safety of the vessel to identify the crew and someone who is competent to take charge of the vessel when you release it.

CHAIR—Are you able to point us in the direction of any evidence in which any seaman or officer has given a statement to that effect, Rear Admiral?

Rear Adm. Ritchie—A statement to the effect that—

CHAIR—That the crew were not in charge.

Rear Adm. Ritchie—I could, yes. Not off the top of my head, but I could.

CHAIR—Please take that on notice.

Rear Adm. Ritchie—I could provide that to you.

Senator MASON—Chair, I am still going, thank you.

CHAIR—Sorry, I thought you had completed.

Senator MASON—No, Chair. My problem is my politeness. When you jump in, Sir—

Rear Adm. Ritchie—In fact, you might ask Rear Admiral Smith that, because he will be listening and he will have the chance to look it up.

CHAIR—Sure. Senator Mason, my apologies. Please proceed.

Senator MASON—Thanks, Chair. Rear Admiral, I would like to refer to your typed answers to the scoping questions in the routine inquiry into Relex by General Powell, particularly questions 19 and 20. It is the last page of your typed submission and it relates to the future or the procedures for reform. You say some interesting things, I think; they may indeed help public policy. You flag some ways that, perhaps, this process could be improved. About four lines down, you say:

... the information released in the heat of the moment was thought to be genuine and remained so for some three days.

Rear Adm. Ritchie—Yes.

Senator MASON—You have given evidence again today that that is the case. You go on, a couple of sentences later, to say:

Any failing on Defence's part is not in how the information was managed or passed in the first instance rather, in the process for refuting the information when it was found to be false.

That is interesting, because no one else puts it like that—I do not mean to be critical here, so please do not take this the wrong way—but are you there referring to the fact that, in retrospect, you wish you had, when you spoke to, in particular, the CDF put it in writing or followed it up? Is that what you are alluding to?

Rear Adm. Ritchie—I regret that I did not put it in writing.

Senator MASON—Is that what you are alluding to there?

Rear Adm. Ritchie—Yes. My point here is that there is no issue about whether or not we said it; we did. The issue is afterwards.

Senator MASON—I understand that.

Rear Adm. Ritchie—I think that 19 or 20 asked you to say, 'How do you think the system could be improved?' I think that was the scope of the question.

Senator MASON—I just thought what you said was different. Senator Bartlett will be interested in that because he always talks about improving governance and so forth, so I thought perhaps it was interesting. One last point, and it follows on from the examination by Senator Faulkner, and it is about the video. Did you see the video?

Rear Adm. Ritchie—Not until November.

Senator MASON—I think there is a lot of evidence that the video was inconclusive and was inconclusive because of its poor quality. Is that fundamentally the reason?

Rear Adm. Ritchie—That is certainly my view of the video, yes.

Senator MASON—Thank you very much.

Senator FAULKNER—Could I just ask something that arises out of General Powell's report. If I could take you to page 10 of 13 in the chronology in General Powell's report. This is something that happens on Thursday, 11 October at 10 a.m. In fact, I have just asked Brigadier Silverstone about it. It is this question about the advice you received that Mr Hampton wants to speak directly with the CO of *Adelaide*, Commander Banks. Can you provide any background to that? This issue was raised with you by Brigadier Silverstone. Is that correct?

Rear Adm. Ritchie—Yes.

Senator FAULKNER—Was that done by telephone?

Rear Adm. Ritchie—Yes.

Senator FAULKNER—What was your response?

Rear Adm. Ritchie—My response was that Hampton was not to be allowed to talk to the CO of *Adelaide* and that statements were to be taken and forwarded. And, in fact, as I subsequently found out, those statements were already in the process of being taken—or had been taken, I think.

Senator FAULKNER—Was there any information provided to you about what Mr Hampton wanted—the reasons for Mr Hampton's desire to contact Commander Banks?

Rear Adm. Ritchie—From memory—and you would be better to ask this of Brigadier Silverstone, because he has got the message—I think the way in which this happened is that it came through the public affairs organisation. I think it went a tortuous route down from Canberra through to Sydney back into Brigadier Silverstone's organisation. He might normally have rung Admiral Smith, but I think Admiral Smith was not about on that morning, so he rang me and he said that Ross Hampton wished to talk to the CO of *Adelaide* about the 'children overboard' incident. I really could not, with any honesty, say anything much more than that about what angle Hampton wished to take. My immediate reaction was that we do not want ministers' media advisers talking to the COs of ships who are on operations.

Senator FAULKNER—Would you describe this as bypassing the chain of command?

Rear Adm. Ritchie—Had it happened, yes.

Senator FAULKNER—Had it happened, the approach would bypass the—

Rear Adm. Ritchie—Silverstone did the right thing by saying how it should be done.

Senator FAULKNER—And the brigadier has made clear that that was his view too—that it was unacceptable on that basis. I am wondering whether you could confirm that—

Rear Adm. Ritchie—I agree with that.

Senator FAULKNER—That was your view. Is that the only incident of which you are aware of any attempts by any ministerial staff to bypass the chain of command?

Rear Adm. Ritchie—It is the only one that I am aware of in this instance. I think we raised in the SLC the incident of the *Manoora* much earlier in this whole business, which was to do with a letter of congratulations to the CO. Other than that—and there was nothing unusual or bad about that—this is the only one that I am aware of.

Senator FAULKNER—Given the matters raised with you by the brigadier and that you outlined to the Brigadier a course of action, was there any other action you took in relation to that?

Rear Adm. Ritchie—It was that event that precipitated the next conversation I had with the CDF. I immediately rang him and said that this proposal had been made that Ross Hampton would talk directly to the CO of the ship and that I had directed Silverstone that that was not to happen. The CDF agreed with me that that was an appropriate course of action.

Senator FAULKNER—The thing is that, if you keep working down the chronology and you look at Mr Clarke's witness statement, for example, this may be the only occasion it is drawn to your attention but it is not that uncommon. You have got 10 o'clock in this chronology when you are advised about Mr Hampton's desire to speak to the Commanding Officer of *Adelaide*. After 10 o'clock, as a result of that, you advise the CDF of a course of action and then at 10.55 he is at it again, Mr Hampton is calling John Clarke—and so it goes on. Hence my question to you about—

Rear Adm. Ritchie—I was unaware of those other events outside the two at 10 and after 10, as it says there.

Senator FAULKNER—Thank you. In the broad, Admiral, in your role do you think that there are some lessons for Navy or, more broadly, Defence to draw from the SIEV 4 incident? This was of sufficient concern for you on 8 November to decide, without being requested or prompted by anyone else, to put pen to paper about some of the issues that surround that, and that is to be applauded, but I wondered whether you had drawn any conclusions about the extent to which you felt the ADF had been politicised through this and whether or not you draw any conclusions about future relations between the ADF and government?

Rear Adm. Ritchie—I am not sure that that is a question that I would happily answer. From a strictly ADF point of view, I think we can draw the conclusion that we must be meticulously correct in our dealings with government and that we must be meticulously correct in putting into an understandable form those things which we wish to tell government. That comes to the business that Senator Mason has asked me about: do I have any regrets effectively? And that is one, yes—that I did not put that in writing on 11 October. But that is all that I would care to offer you on that particular question.

Senator FAULKNER—Who would you put it in writing to?

Rear Adm. Ritchie—To the CDF.

Senator FAULKNER—But the CDF does tell you, doesn't he, after the telephone call that you make to CDF on 10 October when you advise the CDF of the fact that the photographs are of the sinking of the SIEV4, as opposed to children being thrown overboard? You were advised subsequently that the minister had indicated that he had dropped the issue. My recollection is that they are the words you use—

Rear Adm. Ritchie—They are in the Powell statement.

Senator FAULKNER—in your witness statement to General Powell. Was the CDF more expansive than that?

Rear Adm. Ritchie—That is about the gist of what was said and I could not, again, honestly expand on that and put words in his mouth. You would need to ask the CDF that. I am not in a position to say that people down the chain of command, such as I am, should have direct contact with government if I think that something that has been done is wrong. That is not the way the organisation works, and it could not work in that way. There is a recognised chain of command in the ADF. I followed it, the people below followed it and, indeed, the CDF follows it.

Senator FAULKNER—Did you have any understanding of what ‘dropping the incident’ might have meant?

Rear Adm. Ritchie—It means that it was not going to be referred to again, and certainly from our point of view that was it.

Senator FAULKNER—Which, of course, did not occur. Dropping the incident is one thing—and I suppose this is one of the issues that you grapple with. Dropping the incident might sound fair enough to some people. I do not think dropping the incident is fair enough; I think clarifying it and correcting it is the right course of action. You and I may or may not agree on that—I do not know. If we do not agree, we are entitled to different points of view. But do you see the distinction?

Rear Adm. Ritchie—I see the distinction you make. But I would put it to you that if I am told that by the CDF, and I think that probably subsequently that is what I told Admiral Smith and Brigadier Silverstone, then as far as they are concerned that is the end of the incident, it is an issue that now lives in Canberra, it does not live at the operational level, get on with whatever else it is we have to do.

Senator FAULKNER—What you mean when you say ‘Canberra’?

Rear Adm. Ritchie—I mean it is an issue between the CDF and the government. And you have heard CDF’s evidence on what he believed happened.

Senator FAULKNER—Yes, but you use the terminology ‘in Canberra’. I think it is worth—

Rear Adm. Ritchie—I am talking about in Russell and in the relationship between him and the government.

Senator FAULKNER—The interface between—

Rear Adm. Ritchie—The interface between Defence and the government.

Senator FAULKNER—CDF, in this case, and the minister?

Rear Adm. Ritchie—Yes.

Senator FAULKNER—Which obviously is very close to being the most crucial Defence relationship. But it was not enough. I think you make a distinction that you have an operational role—is that the point you make?

Rear Adm. Ritchie—I make a very clear distinction that it is not my business to talk to the government; and, indeed, CDF, if you ask him the same question, will support that. It is my business to represent the operational level to him and to conduct the operations on his behalf. And it is his business—and his business alone—to talk to government on operational issues. I think that point has been made on a number of occasions, not only by him but by the secretary and others.

Senator FAULKNER—Okay. So is there an operational impact or effect of this whole issue? In other words, with what I would describe as the misrepresentation of the ‘children overboard’ incident, are you able to say it has an operational effect, maybe in the area of morale in the ADF or Navy? Is that something that it is reasonable for me to ask you? I could obviously ask Maritime Commander, but I think it is reasonable to ask you that.

Rear Adm. Ritchie—It has no direct operational impact in terms of the ongoing conduct of Relex or anything like that. Probably Commander Banks has attested to the fact that there was some disappointment amongst his people at what they saw subsequently. And that, perhaps, does have some sort of morale effect.

Senator FAULKNER—Are we talking about right through the ADF hierarchy—in other words, all ranks?

Rear Adm. Ritchie—Does that morale effect go across all ranks?

Senator FAULKNER—Yes.

Rear Adm. Ritchie—I think it would be pretty much confined to the people who were on the spot, the ship’s company of the *Adelaide*.

Senator FAULKNER—In a way I am surprised to hear that, because we know a little from Brigadier Silverstone’s evidence today about the meeting of the senior officers of Defence and the fact that this was an issue that was pretty prominent there. You would support that, would you not?

Rear Adm. Ritchie—Yes. Subsequently, I suppose you are right, but at the time that we are talking about in terms of operational effect, back in October-November of 2001, I do not think this was an issue for the rank and file of the ADF. It is only an issue since it has become a public issue.

Senator FAULKNER—But what has become public is the government’s role and, to some extent, the government’s interface with the ADF. Would you agree with this statement? Yes, somehow or other—and I have a view about this, but without putting any spin on this—some misreporting took place and, through the chain of command, some inaccuracies and misrepresentations were carried through but that Defence did act quickly, I think, to correct that when those inadequacies were found out. Is that a fair comment to make or not?

Rear Adm. Ritchie—That is a fair comment.

Senator FAULKNER—Do you feel that is the case? Do you think that at the end of the day a mistake was made, yet efforts were put in place within a reasonable time frame to correct it?

Rear Adm. Ritchie—I am certain that is the case.

Senator FAULKNER—But it did not work.

Rear Adm. Ritchie—It did not work.

Senator FAULKNER—And why does it not work? Does it not work because of Defence or does it not work—

Rear Adm. Ritchie—I am not in a position to offer comment on why it does not work. I can tell you what my part was in trying to correct the record, but I do not really wish to comment on what happens beyond that.

Senator FAULKNER—No, but for someone who takes an initiative—

Rear Adm. Ritchie—I know you would like me to comment on it, but I am not going to.

Senator FAULKNER—But I am asking this sort of question of someone who takes an initiative on 8 November—at a comparatively early part in the time continuum that we are talking about—by deciding to go home and put pen to paper about concerns or issues to make sure that the records are, from your own perspective and if and when asked, a pretty accurate reflection of what occurred. That is pretty proactive behaviour on your part, is it not?

Rear Adm. Ritchie—Remember that certainly by 20 November, when the CDF had given a written directive to Major General Powell, there was going to be some sort of inquiry. So things did start to move, as we have discussed previously. I cannot give you any more concrete evidence as to why I knew that, but things started to move from about 8 November fairly rapidly, in a public sense.

Senator FAULKNER—And you say you would like to comment on—

Rear Adm. Ritchie—No, I did not say I would like to comment. You have asked me to comment on how I knew that, and I can give you no more than what I have already said. It is obvious that from 8 November, from the time that Shackleton stands up and makes his first statement to the time that Major General Powell has the directive in his hand on 20 November to conduct an initial investigation, there is a lot more public interest in this activity than there has been between, say, 11 October and 8 November.

CHAIR—Are you concerned that, because the record was not corrected, the Navy is being used as a political pawn here?

Rear Adm. Ritchie—I think that, if I have any concern about the Navy, it is what the public's perception of the Navy is. I think the public perceive that the Navy has done what it has been asked to do, and done it well.

CHAIR—But key authority figures have said no-one told them. That is why they did not correct it. You have given us evidence that you did tell them.

Rear Adm. Ritchie—That has got nothing to do with the Navy; that has got to do with me. And, although I sit here in a naval uniform, I am operating in an ADF joint position—

CHAIR—Well, I will extend it to the ADF.

Rear Adm. Ritchie—It has got to do with the people who sit above me. But it should not impact on the Navy in that way.

Senator FAULKNER—But you could say to us, couldn't you, that there is no impact of this matter, this issue, on morale in the Headquarters Australian Theatre? You could say to us whether there was or there was not. That seems to me a reasonable question to ask. So let me ask it.

Rear Adm. Ritchie—There is no discernible impact on the morale of the Headquarters Australian Theatre by this particular incident.

CHAIR—My question about the politicisation of the defence forces is in this context. We have got an election on. The day after the election is called, 7 October, this SIEV becomes the subject of a statement by a minister and by the Prime Minister, which within days you know to be wrong. You pass that advice up the chain of command. The record remains uncorrected. When, after the election, there is a report into this, the defence of the relevant ministers is to say, 'No-one told us.' But you did pass it up the chain of command. And people voted in an election believing the original circumstances to be true, not that what was true was the truth. They did not know about that. Does that not in any way worry you in terms of using your honesty, loyalty, integrity and commitment to the chain of command and manipulating it politically?

Rear Adm. Ritchie—Senator, my expertise is in what I did, and I have told you what I did. I think that you are quite free to draw your own conclusions as to what I might think about the subsequent use, non-use or whatever of the material that I offered, but I am a public official and I do not really think that I am in a position to offer comment on the business of the government of the day. I really think that is what you are asking me to do.

CHAIR—Are you aware of this directive that came out on 8 August about public comment?

Rear Adm. Ritchie—This is 8 August last year?

CHAIR—Yes. It has now been countermanded by a replacement directive which, if I understand the replacement, returns it back to a more open scenario and pretty much like that which applied before this.

Rear Adm. Ritchie—I would applaud that most recent directive.

CHAIR—Does that mean that you do not approve of this one, which required the centralising of all public reporting of what goes on in the minister's office?

Rear Adm. Ritchie—It means that I believe that the services ought to have a freer hand in explaining to the Australian public what it is they do and how well they do it.

CHAIR—But this directive on 8 August did not give the forces a clear hand, did it?

Rear Adm. Ritchie—Not as clear a hand as they have now, no, certainly.

CHAIR—And it did centralise the final reporting in the hands of the minister's office, didn't it?

Rear Adm. Ritchie—It centralised the public affairs of the department, yes.

CHAIR—Commander Banks was out of order in talking to Channel 10 because he breached that format.

Rear Adm. Ritchie—He certainly was.

CHAIR—If he had not breached that format, we would know nothing about this.

Rear Adm. Ritchie—I do not think so, because his conversation with Channel 10 really did not touch on the issue which has now become of central attention. I think the transcript of what he said to Channel 10 talks about the recovery of those people.

CHAIR—But the whole myth about children overboard started to unfurl with that conversation, because it put Channel 10 and other reporters in the hunt for the photographs; and, when the photographs were later displayed alleging evidence and you saw it on the *7.30 Report*, you knew that that was wrong and you reported it.

Rear Adm. Ritchie—You listen to all the evidence—and you might know more about this than I do—but I have never drawn a direct connection between Norman Banks's interview on Channel 10 and the photographs, no.

CHAIR—But there is the right of the public to know the truth, and there is an obligation on the defence forces to obey a command. This is a command which centralises all of the truth with the minister, which has now been countermanded after the election and which you applaud the countermanding of.

Rear Adm. Ritchie—I applaud the new direction in public affairs.

CHAIR—Commander Banks is quite forthright in that he should not have said what he did. But, had there not been that discussion, there would not have been the hunt necessarily for the photographs. We would have been left with reports in the *Australian* on or around, I think, 7 November that the crew from the *Adelaide* on Christmas Island had allegedly said to residents of Christmas Island that children were not thrown overboard, that it was all a big lie. Maybe your answer is the same as the previous answers—and if that is your position I respect it.

Rear Adm. Ritchie—My answer remains the same, Senator, no.

Senator BRANDIS—I was struck by something you said to Senator Mason. I know that these are not your very words but, as I understood you, you said that one of the features of these various SIEV incidents that became apparent was that the crew had relatively little control over the vessels and that the dominant male SUNCs exercised authority over the crew. That is the effect of what I understood you to say. Is that right?

Rear Adm. Ritchie—Yes, that is correct.

Senator BRANDIS—Perhaps I can show you this witness statement. This is not in relation to SIEV4; this is in relation to the previous SIEV incident, SIEV3, involving HMAS *Warramunga* on 12 September. It is a witness statement by Lieutenant Commander Simon Paul Gregg, who was the executive officer of that ship. The bit I wanted to direct your attention to is at the foot of page 7. Let me read it aloud to you—it is the last paragraph:

At 1558 alongside SIEV 03 ABEWL Dollisson asked the Master if he was lost. The Master acknowledged—

that is, the master of the SIEV vessel—

clearly that he was lost. The chart was handed to the Master and it was explained to the Master in Bahasa—

I take it that that is the language that he spoke—

that he had to steer 270T for 6 hours and then—

is that ‘008T’?

Rear Adm. Ritchie—Yes.

Senator BRANDIS—The statement continues:

While Dollisson was explaining to the Master the courses he had to steer the Master gestured with his hand his throat being cut indicating he was not safe. The PIIs were becoming more and more agitated with women and children crying and pleading to come to Australia. After delivery of the chart to the Master the RHIB returned to WARRAMUNGA.

Is that reaction by the master—gesturing to an apprehension that, if he obeyed or acceded to the request by Able Seaman Dollison, his throat may be cut—consistent with the type of conduct you were describing when you answered Senator Mason before?

Rear Adm. Ritchie—It is exactly the type of conduct, and that is a good example of that.

Senator BRANDIS—And that is one example of many?

Rear Adm. Ritchie—It is one example of many, I believe.

CHAIR—The master of this vessel is someone whom I have previously described as a ‘people smuggler’, is he not?

Rear Adm. Ritchie—I have heard you use that term. I would not use that term. I would use the term ‘people smuggler’ to mean the syndicate that is organising this, the people making the

arrangements. We often find the crew of these vessels to be not necessarily very sophisticated people and perhaps not with a great understanding of what it is that they are doing. I think that they are hired for the purpose, but you could attribute that term to them—that is what they are doing.

CHAIR—Let me put it another way. If his cargo was drugs and not people, you would call him a ‘drug smuggler’, wouldn’t you?

Rear Adm. Ritchie—You probably would, yes.

CHAIR—His cargo is people, so you could call him, rightfully, a people smuggler, irrespective of how innocent or how focused on his role he was, who was manipulating or using him and for what reasons and how much he was being paid to do that job. That is a fair call, isn’t it?

Rear Adm. Ritchie—You could say that, yes.

CHAIR—If he is a people smuggler and he is taken into Australia, he can face quite severe charges, can he not?

Rear Adm. Ritchie—Yes, he can.

CHAIR—So he would say what he said, wouldn’t he? He would want to an authoritative figure like a captain of a vessel coming alongside put the first leg of his alibi down, would he not?

Rear Adm. Ritchie—He probably would, yes.

CHAIR—He would say, ‘Don’t blame me; blame them’?

Rear Adm. Ritchie—Yes.

CHAIR—That is all.

Senator FAULKNER—I would like to ask one question, Admiral, which goes to a lot of your evidence talking about the chain of command, appropriately so, and how the chain of command has dealt with the issue that we have been canvassing, as it should—which is the point, I think, you made to us. I think that is fair, isn’t it?

Rear Adm. Ritchie—Yes.

Senator FAULKNER—But the issue, I suppose, remains: what happens when the chain of command does not work—in other words, the message is not getting through—at least here as far as correcting statements which should be forthcoming from the government are concerned? What happens in that instance? I am asking you that from a Defence and Navy perspective—a chain of command perspective perhaps—to give a slightly different emphasis to some of the questions I have been asking you.

Rear Adm. Ritchie—I think the question that goes unsaid with that is: who decides that the chain of command has not worked? How far down the chain of command do you allow that question to be asked and then, unilaterally, action taken to correct it? Again, I think that is part of the notion of military discipline and military command. You might come to the point where things are patently illegal. There is an expectation that people will say that, if we have moved to the patently illegal, the chain of command has not worked and you do something else. But everything else is not as easy to decide as that when it is something that is patently illegal and it is a question of: who decides? In the case we are talking about, it is very much the role of the Chief of the Defence Force to decide whether the chain of command has not worked—and, again, he has talked about that.

Senator FAULKNER—But you would not say that something had to be illegal? The chain of command—

Rear Adm. Ritchie—I am just saying that is one obvious example of when you say that the chain of command had worked.

Senator FAULKNER—Yes, and I accept that. It is a good example. In this case we have got an example of the chain of command not working on a matter that is misleading the Australian public.

Rear Adm. Ritchie—Again, that is the point on which I take issue with you, Senator. We do not have evidence that the chain of command does not work. The chain of command works. What you might have is evidence that the outcome that you sought from that is different.

Senator FAULKNER—No. With respect, if the chain of command is used to get a message through to the government to correct misinformation in the public arena and that information does not come out until a very long time after the relevant period—

Rear Adm. Ritchie—I do not—and I do not think that you do—have any evidence to suggest that information was or was not passed to the government. What the government does with it is not something I am going to comment on.

Senator FAULKNER—I know that is your position, but this is the problem with an absolute reliance on the chain of command. You say the chain of command did work or was utilised or used appropriately. But at the end of the day it was not good enough to have the impact many in the chain of command, including you, wanted to see occur. That is fair, isn't it? You did not want misinformation in the public arena, did you?

Rear Adm. Ritchie—That is fair.

Senator FAULKNER—You did not want to have people right through that election campaign period thinking that children had been thrown overboard, did you?

Rear Adm. Ritchie—I did not particularly give any great thought to what people in the election campaign period might think or otherwise, but I was concerned that the information that was there was incorrect.

Senator FAULKNER—And you did not want photographs to be misrepresenting an incident that they did not actually relate to. That is fair also, isn't it?

Rear Adm. Ritchie—That is correct.

Senator FAULKNER—And you did not want the video either to be in any sense misunderstood as depicting children being thrown overboard.

Rear Adm. Ritchie—That is correct.

Senator FAULKNER—And you properly say to me—and you did, and I acknowledge it—you did what your responsibilities are through the chain of command to see the misrepresentations and the inaccuracies corrected. Goodwill on the part of you and others in the chain of command in Defence is not enough. I think it is worth reflecting on that as we just defend completely our position in relation to the chain of command.

Rear Adm. Ritchie—I can reflect on that and, indeed, I have. But I do not wish to comment on that.

Senator FAULKNER—So I ask you: how relevant is it to be able to depend totally on the chain of command if you have bloody-mindedness and bastardry on the part of a government absolutely determined in a very sensitive period to cover up an important public issue?

Rear Adm. Ritchie—I am going to take that as a statement.

CHAIR—Rear Admiral, we are going to make an effort to get you out of here by 6 p.m. at the latest. Is that a comfortable time for you?

Rear Adm. Ritchie—That is fine.

Senator BARTLETT—Just to make sure that I target the questions at the right person, in terms of the overall operations of Operation Relex are you the best person to give the finer details of the various incidents and the whole conduct of those?

Rear Adm. Ritchie—No, Rear Admiral Smith would be far better than I for the details.

Senator BARTLETT—I will save some of the questions for him in that case. Your role in relation to that operation—and I know you have stepped through the chain of command—is much more of a supervisory role than a hands-on one?

Rear Adm. Ritchie—Yes. The notion of the Australian Theatre is relatively new. It has only been in existence since 1997. It is designed to put in at the operational level—the tactical level is Commander Banks doing his business and the strategic level is CDF talking to the government—an ability to plan across the breadth of more than one operation and to conduct more than one operation in a coordinating sense. So that is what I am doing, and that is what my headquarters is doing. All of the operations that the ADF are conducting are conducted under my auspices, but there are individuals then conducting the detail of particular business.

Senator BARTLETT—In terms of getting the most informed insights—and I am not saying you cannot provide us insights—into the so-called pattern of behaviour and other atmospherics surrounding all the various SIEV incidents, would Admiral Smith again be the one?

Rear Adm. Ritchie—I am aware of those patterns, obviously, because I have talked to them, but he will give you much more detail on that.

Senator BARTLETT—When the Navy was brought in to be used in this way and in the development of Operation Relex, were you involved in formulating that?

Rear Adm. Ritchie—We at the Australian Theatre Headquarters developed—on direction, again, from the CDF—the broad concept, the way in which we would do this particular business.

Senator BARTLETT—That included new rules of engagement as well?

Rear Adm. Ritchie—Yes, that included the rules of engagement.

Senator BARTLETT—Are the rules of engagement able to be outlined?

Rear Adm. Ritchie—The rules of engagement are indeed classified, and they remain classified because they are exactly what they say. The rules of engagement are the limitations that are placed upon operational units in engaging with those things that they are going to come up against. Before Relex there were really no specific rules of engagement for this business. There are what are known as standing peacetime rules of engagement, which really talk about the inherent right to self-defence if that sort of event should happen, and they were the rules that were used—and indeed they are used by all maritime and other units who have no other specific operational direction—for the patrol boats that were out there and used to see the SIEVs coming into Christmas and Ashmore.

The whole notion of Relex was to prevent SIEVs from entering the Australian territorial sea; therefore, we are now talking about a positive action against these boats. Therefore a set of rules of engagement were developed which, in essence, outlined the degree of force that can be used and whether or not fire can be used—those sorts of things. It is not the plan for the operation; it is a set of rules of engagement which really talk about the specific levels of force that you can use. We could certainly give you in private a more detailed briefing on those rules of engagement if you would wish, but that is essentially what they are.

Senator BARTLETT—I presume—and I put this in a shorthand way—that it basically authorised more significant use of force than would have been used previously against vessels arriving in this way.

Rear Adm. Ritchie—Yes. Normally, other than in self-defence, the use of force is not authorised. That is the norm. So we are moving up the scale a little and saying, ‘Okay, you can use a degree of force in order to turn these boats away. You can be armed, for example.’ You need a specific rule of engagement to keep moving up the continuum of the application of force. But it is a fairly low level in this operation and safety remains the overriding factor in this business.

Senator BARTLETT—You have said that you were involved in developing the overall objectives of Operation Relex. Commander Banks quite often talked about his aim to prevent a mission failure. Is there a mission statement or a specifically codified order of priorities for the mission?

Rear Adm. Ritchie—The mission statement, for example, was to conduct surveillance and response operations in order to deter unauthorised boat arrivals from entering Australian territorial waters within the designated area of operations. The area of operations was quite expansive—it encompassed Christmas Island at the one end and Ashmore at the other.

Senator BARTLETT—You could not have sat through all the questioning we had of Commander Banks. It probably would have been a bit of an ordeal.

Rear Adm. Ritchie—For him as well, I think.

Senator BARTLETT—You may be aware that one of the issues I was trying to pursue with him was in terms of when that primary mission of keeping people out gets overridden by the safety of life at sea situation—

Rear Adm. Ritchie—I can give you some advice on that. This is not within the rules of engagement so put the rules of engagement aside—it is about the application of force. In terms of the concept of the operation and the specific directions as to how to go about doing this, the basic direction was to warn vessels before they entered the Australian contiguous zone that they are not allowed to come in and that there are heavy penalties for people who bring people in illegally—and all those sorts of things. If they came inside the contiguous zone the direction was to board and move them out. That is where the ROE comes in—because you might need to apply a certain amount of non-lethal force in order to be able to do that. The direction was to do that up to two or three times and if they kept on coming back then, in the end, to go back through the chain of command and seek direction as to what we were going to do with this particular vessel. There was a specific direction given that said if people jumped, fell or otherwise were removed from a seaworthy vessel they were to be returned to that vessel—

Senator BARTLETT—I am sorry to interrupt you. Was that part of a standing pattern of requirement or was that a direction for the SIEV4?

Rear Adm. Ritchie—That was a direction that was specifically given in early September for this operation.

Senator BARTLETT—For SIEV4 or for the whole lot?

Rear Adm. Ritchie—No, for the whole lot. What I am saying applies to SIEVs 1 to 12.

Senator BARTLETT—That directive was decided by whom?

Rear Adm. Ritchie—It was a direction from CDF to me saying, ‘You are to make sure that this is the way the game is played.’ Then if people were in a vessel which was sinking they were to be rescued and treated as survivors at sea. In the notion of returning the vessels to Indonesia or the place whence they came, the uppermost issue was always:

The safety of ADF personnel and the wellbeing of the unauthorised boat arrivals and Indonesian crew members is to be held paramount.

That is an extant direction that overrides everything. We are talking about people coming to Australia illegally. It is not World War III.

Senator BARTLETT—Thank you for that; it is helpful. A few times during the hearing we have heard evidence about orders coming from the Prime Minister or the Prime Minister's office on where to tow a vessel. Where does that fit into that?

Rear Adm. Ritchie—I think some of that has been incorrect or misunderstood. In fact, I note that on the night of 7 October, when the vessel was taken in tow by the *Adelaide*, I gave the direction to do that, and I wrote in my notes—which you probably have—that I said to take it in tow and keep it at sea overnight until we get to the next step in deciding what to do with it.

Senator BARTLETT—I think the suggestions about the Prime Minister's office came from log recordings and things like that.

Rear Adm. Ritchie—I know. What I am saying to you is: how would the boarding party officer really know whether or not the Prime Minister or his office had given a direction? That is something which is a bit beyond me, and I was surprised when I heard that.

Senator BARTLETT—So there was no involvement of the Prime Minister's office in any of the commands?

Rear Adm. Ritchie—Again, I think you would need to talk to the man himself and ask CDF. But I believe that, once we had got to the point that SIEV4 had sunk and we had recovered the people on board the *Adelaide*, the issue of what to do with them certainly had some direction coming from either the Prime Minister or his office.

Senator BARTLETT—But, as far as you are aware—and I will pursue this more with Rear Admiral Smith because, as you say, he can probably better answer this—there were no orders or directions in relation to operational matters?

Rear Adm. Ritchie—Not directly. I made the point of saying in my opening statement that I run this and I do not take any direction from anybody else, other than the CDF.

Senator BARTLETT—I do not know whether you have had a chance to examine any of the submissions we have received from the public—I am not suggesting that you are required to do so—but a few of them relate to the broader issue of the impact on the defence forces. I am talking here not so much about the impact of the SIEV4 incident alone but about the whole use of the Navy in this Pacific solution turning around and, as we have already established, creating a new role for the Navy. The submissions have referred to the impact on the overall operational capacity of the Navy and to the use of the defence forces for political purposes.

Firstly, the submissions from the Australia Defence Association and a couple of professors at the Australian Defence Force Academy raise the issue of defence for political purposes and see the 'children overboard' incident as just one incident in a broader, worrying trend, if you like.

My initial question probably relates to your reference to Brigadier Silverstone's comment about being concerned about a certain trend in defence issues, including defence management. I assume you would agree that even the perception of the Defence Force being used for political purposes is an undesirable situation?

Rear Adm. Ritchie—I do not want to go back into Senator Faulkner territory, but what is a political purpose? Is the war against terrorism a political purpose? Was the Second World War a political purpose?

Senator BARTLETT—I suppose these things are always a matter of judgment.

Rear Adm. Ritchie—What else do you use the defence forces for, really?

Senator BARTLETT—I will put it to you a different way. I am certainly not trying to put words in your mouth, unlike others. You would agree that there is a need for—

Rear Adm. Ritchie—I think the business that is going on in Relex, if you are asking, is a legitimate task for the Defence Force.

Senator BARTLETT—No, I am not actually asking that, but I appreciate your opinion on it. We have had evidence about issues to do with the line of command and the control that existed previously by the ministerial office in terms of Defence communications. The issue has been raised, and it has been raised, as I say, in submissions from people from the Defence Force Academy, so I do not think it is a partisan sort of statement. They have emphasised the importance of ensuring that the defence forces are seen to be above politics. Would you agree that to be seen above partisan or party politics is a desirable situation?

Rear Adm. Ritchie—I would agree that to be seen to be above partisan or party politics, I would agree that that is desirable.

Senator BARTLETT—Professor Smith's submission from the Defence Force Academy states, in part:

Ministers and those who work for them must respect and understand the traditions and conventions that govern political-military relations. At the same time, opposition parties must also play their part by recognising the special status of the ADF and of defence in the political arena.

It is my belief, and I do not ask you to comment on it, that aspects around this episode have made it a bit more problematic for the defence forces in being seen to be—not an active player—used for issues in the political arena. To try to get something constructive out of this inquiry is to try to find ways to prevent situations like that from happening again. So without you having to pass an opinion on whether you would agree with my view, what mechanisms do you believe are desirable, or are there improvements that you believe would be desirable, to guard against the defence forces being used for political purposes or being too much under the control of the government of the day?

Senator Ferguson interjecting—

Senator BARTLETT—I am asking for improvements on the way we can do things in future.

Senator FERGUSON—Is it a sermon or an opinion? I am not sure what he is asking for.

Rear Adm. Ritchie—The only thing that comes to mind is for the defence forces, with the government of the day, to come to an agreement as to how they will disseminate public information. I think that step has been taken in the new instruction that has come out, which Senator Cook has referred to. As I said, I applaud that instruction and I think that that is a way in which you can seek to prevent the sorts of things you are talking about.

Senator BARTLETT—When Operation Relex was being put together, were you specifically aware of the number of Navy vessels that would be required as part of that or was that a fluid thing?

Rear Adm. Ritchie—As part of the concept of operations that we proposed we said, ‘We think we need about this many vessels and this many aircraft.’

Senator BARTLETT—The three frigates?

Rear Adm. Ritchie—I think at the start it was three frigates, yes.

Senator BARTLETT—How many are involved now?

Rear Adm. Ritchie—There are two major units and a number of other units.

Senator BARTLETT—So that was an assessment by you.

Rear Adm. Ritchie—It is a sort of professional assessment. We looked at the area, we looked at the patterns and said that was what we would need.

Senator BARTLETT—As to what would be needed to meet the requirements, did that also include assessments about what that would mean for the overall operational capacity of the Navy or the defence forces?

Rear Adm. Ritchie—Yes, very much so, and that is an ongoing process. Every operation that we do is an ongoing process of saying what impact is that having on other things that we might wish to do or training that we should be doing, or whatever.

Senator BARTLETT—I might leave it there because most of the questions that I have left to ask, I can ask of Rear Admiral Smith.

CHAIR—Rear Admiral, I think your evidence is complete. Thank you very much for your attendance at the inquiry.

[5.56 p.m.]

SILVERSTONE, Brigadier Mike, Commander Northern Command, Royal Australian Navy

CHAIR—Welcome back, brigadier. Please feel free to blame me for putting you in an invidious position earlier. I will accept that responsibility. Your oath continues through. Senator Mason can lead the questioning.

Senator MASON—I might yield to Senator Brandis, who has just a couple of questions.

Senator BRANDIS—I have just two issues, Brigadier Silverstone, which perhaps I should have raised with you in the earlier questioning, regarding your evidence, as I understood it, of your telephone conversation with Commander Banks at the critical time, which according to your diary was 0720 Darwin time. As I heard your evidence, you said that Commander Banks was ‘emotional’. Would you care to expand on that? Why do you say that? How did he evidence signs of emotionalism in his conversation with you?

Brig. Silverstone—It was only in connection with his response to my question about how old was the child. He said, ‘Five, six or seven—I can’t tell,’ and there was just an increase in pitch. The sense I had was that he was dealing with the situation there and it was, sort of, that he wanted to get on with it rather than answer my questions.

Senator BRANDIS—Did he seem upset?

Brig. Silverstone—No. He was not emotionally upset; it was just a sense of a frustration. When you are dealing with a relatively chaotic activity and then are called to have a conversation about that activity with a superior, that can be annoying because it is interfering with you doing your job. The sense I had was it was Commander Banks’s way of indicating some frustration with having to have that communication. That is one of the reasons why the conversation was very short: because I was monitoring what he was saying, listening and taking his tone, and we kept it a very short talk.

Senator BRANDIS—Commander Banks is obviously a courteous gentleman, but would it be fair to say that, allowing for that and allowing for appropriate deference to a superior officer, he was trying to get you off the phone as fast as possible?

Brig. Silverstone—That is my sense, yes.

Senator BRANDIS—One other thing on the conversation you had with Commander Banks: at any time up to and including 8 November did Air Vice Marshal Houston have a conversation with you about that event?

Brig. Silverstone—No.

Senator BRANDIS—Did Brigadier Gary Bornholt have a conversation with you about that event?

Brig. Silverstone—No.

Senator BRANDIS—Did either of them to your knowledge ever seek to communicate with you up to and including 8 November in relation to that event?

Brig. Silverstone—Not to my knowledge.

Senator BRANDIS—Had they done so in the ordinary course of events, would you be aware that they had done so—that is, sought to get in touch with you?

Brig. Silverstone—I believe so.

Senator BRANDIS—Thank you.

Senator MASON—I will not hold you up for too long. I have just a few quick questions. You mentioned in response to questions from Senator Faulkner that this special arrangement with respect to SIEV4 where you spoke directly to Air Vice Marshal Titheridge only related to the SIEV4 incident.

Brig. Silverstone—It only related to 7.30 on the morning of 7 October.

Senator MASON—Brigadier, are you aware of other SIEV incidents after the SIEV4 incident of 7 October?

Brig. Silverstone—Yes, I am.

Senator MASON—Brigadier, what are the reporting arrangements for those other SIEV incidents? I will hold up this document again—annex C to the report by Major General Powell—which, as I understand it, is the chain of command. Is that correct? Does that operate with respect to SIEV incidents following the SIEV4 incident in early October?

Brig. Silverstone—The chain of command is from the responding vessel's CO to me, to NCC AST, to Headquarters AST and then into Canberra.

Senator MASON—Thank you. In response to a question from Senator Faulkner about a conversation with Mr Moore-Wilton, you mentioned that Mr Moore-Wilton and the IDC had shown some interest in the SIEV issue. Do you know—you may not know this but let me put it to you—whether reports of other SIEV incidents after SIEV4 have reached the interdepartmental committee on people-smuggling?

Brig. Silverstone—I am aware that they have, especially on issues to do with where we are attempting to return a vessel to the vicinity of Indonesian territorial seas. The management of that receives, as far as I am aware, considerable discussion.

Senator MASON—For example, brigadier, with SIEV6 on 22 October, SIEV7 on 24 October and SIEV9 in late October and in November, the IDC would have been apprised of those particular SIEV incidents; is that right?

Brig. Silverstone—I am confident that that would be the case.

Senator MASON—Thank you, that is fine. Senator Ferguson, I will pursue that later on. Were you listening to the evidence of Rear Admiral Ritchie?

Brig. Silverstone—Yes.

Senator MASON—I will not dwell on it now, but the question has been asked about the fact that, until Senator Brandis asked questions relating to the Titheridge minute, many of these other SIEV incidents were not really part of public knowledge. It will be interesting to discover exactly what the chain of command was, who decided not to report and who decided to report and so forth.

Brig. Silverstone—I do not think I am in a position to respond to that.

Senator MASON—I understand that, sir. I just raise the issue and lay it on the table.

Senator FERGUSON—In the light of what Senator Mason has said and in relation to all of the other SIEV incidents, which I presume were reported directly to you as commander of the task force, are you surprised that none of those other SIEV incidents have seen the light of day until this inquiry—in other words, they have never been in the public domain and they have never been a matter of public discussion?

Senator JACINTA COLLINS—Yes, they have.

Senator FERGUSON—They have not really.

Senator JACINTA COLLINS—The SIEV10 incident was reported publicly in the papers.

Senator FERGUSON—But SIEV7 was not.

Senator BRANDIS—Is it the SIEV10 incident to which we have drawn attention for the first time in this committee?

Senator JACINTA COLLINS—I am just wanting Senator Ferguson to be factual.

Senator FERGUSON—I am asking Brigadier Silverstone, Senator Collins, not you. Brigadier Silverstone, of these incidents with all the other SIEVs, which I have no doubt were fully reported to you in your role as commander of the task force group, are you surprised that none of them reached the public domain in the light of the fact that SIEV4 did?

Brig. Silverstone—I would not say that I was surprised, but it is an issue I remarked on to the Maritime Commander.

Senator FERGUSON—So you have remarked on it to Maritime Command?

Brig. Silverstone—I have, yes.

Senator MASON—You spoke to Mr Reith on 31 October—

Brig. Silverstone—That is correct.

Senator MASON—about ‘children overboard’?

Brig. Silverstone—I spoke to him about the video. Then I followed on by saying that we had concerns about whether children had been thrown into the water or not, and we had investigated that.

Senator MASON—In that conversation with the minister, did you raise with him the SIEV7 incident of 24 October where a child was dropped over the side into the water?

Brig. Silverstone—No, I did not.

Senator MASON—You did not?

Brig. Silverstone—No, I did not.

Senator MASON—That was just one week before you spoke to Minister Reith. Can I ask you why you did not raise it. I am just curious.

Brig. Silverstone—The minister was in my office for a very short period of time. On 29 October, we had concluded removing SIEV7 back to Indonesian territorial seas. SIEV6 was at Christmas Island, it had ultimately sunk, and we had moved the people on board that SIEV onto Christmas Island. On the 30th, we put SIEV8 on some transport to move them to Christmas Island. Then, on the morning that the minister walked into my office, SIEV9 had arisen. So this had been a period of frantic operational activity. I had this very brief discussion with the minister and my office, and I had actually taken the decision not to talk to him about the SIEV9 issue, which had just started. While he was in my office, I was down getting a quick briefing on where that was, and my view was that it was better for me to pass this information through the chain of command.

Senator MASON—So, even though you had this sort of focused discussion on ‘children overboard’ relating to SIEV4, you did not think it was appropriate to raise the issue that a child was in fact dropped overboard just a week earlier; you did not think that was appropriate?

Brig. Silverstone—It was not in my mind, because so many things had happened in that previous week.

Senator BRANDIS—On reflection, do you now think that you should have informed the minister of the SIEV7 incident when you had that conversation?

Brig. Silverstone—I had not considered that proposition until you asked the question.

Senator BRANDIS—Can I invite you to consider it now? We are talking in the context of your having a conversation with the minister about whether or not a child or children had been thrown overboard from a vessel on 7 October. You expressed some views to the minister as to the strength or lack of strength of evidence for that proposition. You knew at the time that, whether or not it had happened with SIEV4 on 7 October, it had happened in relation to another vessel even more recently on 24 October. So the very conduct which was of concern to the minister was verified conduct, although occurring on a different occasion. Having regard to those considerations—I do not mean any particular criticism by this, but let us be candid—don't you think, on reflection, it would have been appropriate to mention the fact that such conduct had been engaged in even more recently?

Brig. Silverstone—It may well have been, but I—

Senator BRANDIS—If you had your time over again, would you mention it?

Brig. Silverstone—No, I do not think so.

Senator BRANDIS—Why not?

Brig. Silverstone—Because, as I said, at the time I was talking to the minister there was a whole range of issues such as the caretaker arrangements and it was inconceivable that the minister had not been told by the CDF. As far as I was aware, we were passing detailed reports of these activities up the chain of command and these issues, which would have been of interest to the minister, I would have thought, may have been quite properly brought to his attention. At that time, in my view, I was concerned to conduct myself appropriately within the chain of command.

Senator BRANDIS—So, in short, it was a chain of command issue; it was not appropriate for you to mention the dropping of the child into the water from SIEV7 because that was a piece of information for your superior to communicate?

Brig. Silverstone—If the minister had asked me a question such as 'Have you seen the video?' I would have spoken to him directly about the issue. If he had said to me, 'And have there been other incidents?' I would have been in a position to talk to those issues for him. But the time he was in my office was constrained and it was occupied with this very brief conversation about SIEV4.

Senator BRANDIS—With respect, brigadier, there strikes me as being a certain artificiality about that. The minister is asking you whether or not, in effect, a child has been tossed into the water on 7 October and you cast doubt on the reliability of the earlier information. You know, though, that the very conduct about which the minister was concerned to inquire does happen and has happened even more recently—just a week before—and yet, knowing that and having that in your mind, you refrain from telling the minister that.

Brig. Silverstone—You do not know what was in my mind, Senator.

Senator BRANDIS—I thought we had established that at the time you had your conversation with the minister you did know about the SIEV7 incident on 24 October.

Brig. Silverstone—I was aware of that but, as I have indicated, that was a period of particularly frantic operational activity involving SIEV6, SIEV7, SIEV8 and SIEV9 and—

Senator BRANDIS—We know that this was happening all the time and that there was a lot on your plate, as it were. But I put it to you, Brigadier Silverstone, that what the minister was apparently concerned about was whether this conduct was engaged in and you knew it was and you knew it had happened even more recently than the minister believed that it had happened but you refrained from telling him. That is what it amounts to, isn't it?

Brig. Silverstone—No, it does not amount to that. I did not have a conscious thought about SIEV7. You put it to me, 'Did you know about the reported incident with SIEV7?' Yes, I did. 'Did it come into your mind when the minister was in my office?' No, I do not think so. I have no recollection of that.

Senator BRANDIS—All right, thank you, brigadier.

Senator MASON—Brigadier, you did report the SIEV7 incident, though, up the chain of command?

Brig. Silverstone—Yes, we did.

Senator FERGUSON—Brigadier Silverstone, I want to go back to your telephone conversation with Commander Banks, because there are one or two things I want to clarify. In the chair's final questioning of Commander Banks just before he concluded his evidence this morning, he put a series of propositions, to which Commander Banks responded. In one of those, Commander Banks said that the *Adelaide* had never conveyed a message that a child had been thrown overboard, which is in contradiction to your evidence this morning. So we have these two positions: Commander Banks's position and your position and your diary notes which you took at the time of the conversation. Since that time, have you discussed that conversation with Commander Banks?

Brig. Silverstone—Only two weeks ago. He rang on coming back into town, made contact, and we had quite a stiff conversation in which we agreed we had a fundamental disagreement about what we spoke about on that morning.

Senator FERGUSON—So you told him that you had your diary notes—

Brig. Silverstone—Yes.

Senator FERGUSON—which included '5, 6 or 7' at the end of one of those sentences?

Brig. Silverstone—Yes.

Senator FERGUSON—It just seems inconceivable to me that someone could suggest that you would write down ‘5, 6 or 7’ in your diary notes—just as one instance—if in fact a child had never been mentioned. In your discussions with him, did you talk to him about your notes and the fact that you had written down ‘5, 6 or 7’ and the time of the conversation?

Brig. Silverstone—Not in this conversation a couple of weeks ago. On 11 October, when he had forwarded the statements from the personnel on his ship, we had a discussion in which I read to him my notes and, indeed, the text of the email I was in the process of sending onto the Maritime Commander—to NCC AST—that was also forwarding the sailor statements.

Senator FERGUSON—From what has been presented to us today, we have on the one hand Commander Banks, who was commanding the *Adelaide* in the middle of an operation, which was a hectic operation and, to use Commander Banks’s own word that he said during his evidence, a ‘confusing’ time as well, when in fact he had the incidents being reported to him by boarding parties and he was on the phone to you—he had no time to take any notes and has only the recollections of what he believes he said to you or did not say to you—and on the other hand you have your own recollections, which you have stated quite clearly to us today, and to back up your recollections you have notes that you actually took at the time of the conversation. It just seems to me inconceivable that, once presented with those facts, Commander Banks would not perhaps admit that he may have said those things, because not only do you have your recollections but also you have notes taken at the time which were quite specific, particularly your writing down ‘5, 6 and 7’. Is that a fair assumption to make?

Brig. Silverstone—What was your question then, Senator?

Senator FERGUSON—My question is that when you were discussing this with Commander Banks at any time—presenting the evidence that you had in your written notes and the fact that you had clear recollections because you were not at the scene of the action and it was a brief conversation; you have your clear recollection and your notes—Commander Banks was not prepared to accept your version of the events.

Brig. Silverstone—That is because it is apparent from his evidence that he has another recollection.

Senator BRANDIS—Can I come in on that. I want to direct you on this very point to three pieces of the transcript of Commander Banks’s evidence to this committee. There are many to this effect, but I have just picked out three good bits. On page 172 this is Commander Banks:

I do not ... recollect having used the phrase that I have been reported as saying that children were thrown overboard.

He goes on:

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.

Then, at page 204, in response to Senator Collins, Commander Banks, again referring to this conversation, said:

It would be my assessment that if he—

that is, you, brigadier—

recollected that I said something then I would have said it ...

Then at page 213, in response to my learned friend Senator Faulkner, he said:

Throughout the whole thing I would love to be emphatic and say ‘I said’ or ‘I didn’t say’. With the passage of time, I have moved much closer to clearly saying ‘I believe I didn’t say’, because of all the other pieces of information that I have been made privy to. In early October I remained confused and was a bit more able to swing each way ...

And then—I can’t remember exactly where it is—in response to a question from me, ‘Do you accept that Brigadier Silverstone’s version of the conversation is correct?’ Commander Banks said no, and then I asked, ‘Do you accept that Brigadier Silverstone’s version of the conversation may be correct?’ and he said yes. So it is not all that clear to me, Brigadier Silverstone, that Commander Banks is saying that your version of the conversation is wrong. It sounds to me much more the case that he is saying, ‘I just don’t know. To the best of my recollection, I don’t recall saying that, but I may be wrong.’ He very freely said that, and that is why I am perplexed that you would have had a dispute with him, unless in that dispute he was taking a more adamant view of the conversation with you than he has taken on oath before this committee. What do you say about that?

Brig. Silverstone—What I would say is the conversation that he and I had happened back on 11 October, at a time when it was clear that this was a very high profile issue, and quite clearly one of us had said either a child was being threatened to be thrown into the water or a child was being thrown in the water—a fundamental disagreement. And when we had this discussion my view was that he disagreed with that position. What his position is now is for him. All I can say is I know what I heard him say, and I have continued to repeat that and I—

Senator BRANDIS—You have a diary note and he doesn’t and your recollection is clear and his evidence is that his recollection is not clear.

Brig. Silverstone—Yes.

Senator FERGUSON—At no stage, Brigadier Silverstone, have you been confused about your recollection of the events?

Brig. Silverstone—Of course I have asked myself the question but it is very clear to me: I know what I heard, I wrote down what I heard and I have not shifted from that.

Senator BRANDIS—You are quite clear in your own mind that what you have related is the actual conversation that took place?

Brig. Silverstone—The notes reflect the content of the conversation. Obviously, some of those notes, where I have asked questions and things, are ‘words to the effect that’ but, yes, the spirit of the conversation was that he told me that a child was thrown over the side and when I asked the age he said that it was five, six or seven.

Senator BRANDIS—I suppose for completeness we should say that at the time you had this conversation you were sitting in your office, neither under pressure nor emotional nor distracted by the press of events; whereas he was on the bridge under pressure, as you say, emotional and distracted by the pressure of events.

Brig. Silverstone—He was not emotional. He had a tone of frustration in his voice in response to my specific question about the age. With regard to where I was sitting, yes, I was sitting in my office. I had gone to my office specifically to take this phone call, jotting the notes as I took the phone call because I knew I had to turn around and talk to Air Vice Marshal Titheridge some moments later.

Senator BRANDIS—You knew it was an important conversation, didn't you, for the very reason that you had to give an account of it as soon as it was over to your superior in the chain of command?

Brig. Silverstone—To Air Vice Marshal Titheridge, yes.

Senator FERGUSON—In accordance with the special arrangement that had been made?

Brig. Silverstone—In accordance with that requirement, yes.

CHAIR—On that last point, I am not sure whether you saw the statement that Commander Banks read to the inquiry upon being sworn all those days ago. On page 25, it says:

In summary, by 10 Oct, and certainly by 11 Oct it was clear to the CO ADELAIDE, CJTF 639 and MCAUST that no children had been thrown overboard and no children had been recovered from the water. In my mind—

and I want to emphasise this—

this had never been an issue and had not been raised by me.

That was the statement which he wrote and read into the record at the commencement of his evidence and which he confirmed at the conclusion of his evidence in answer to questions from me. We have other references but it seems to me that that is a considered reply. That does seem to square with what you have said about this difference of view and this clarity on the part of Commander Banks, doesn't it?

Brig. Silverstone—That is your view, Senator.

Senator FAULKNER—And you apparently do not adopt it.

Brig. Silverstone—My position is that Commander Banks has taken a range of positions on this issue for his own reasons and in response to his understanding of the circumstances. My position is that we had this conversation at about 0720 and he made the report to me that I have presented to this inquiry.

CHAIR—What hour was 7.20 where Commander Banks was?

Brig. Silverstone—0720 was 0450.

CHAIR—0450?

Brig. Silverstone—Yes.

CHAIR—Is that 0450 in the morning?

Brig. Silverstone—Yes.

CHAIR—This is prior to sun-up?

Brig. Silverstone—Yes, indeed.

CHAIR—Sun-up was at 0530 in the morning, wasn't it?

Brig. Silverstone—First light was about 10 or 15 minutes away. Sun-up was another 30 minutes away.

CHAIR—Yes.

Brig. Silverstone—Sun-up was 30 minutes further on from where I am.

CHAIR—I wanted to go back to that point because in his written statement he does say, and I quote it accurately for you:

In my mind this had never been an issue and had not been raised by me.

Brig. Silverstone—‘Had it not’ or ‘and it wasn’t’?

CHAIR—He said:

In my mind this had never been an issue and had not been raised by me.

We had a lot of things read into the record a moment ago. I am just going to the original statement made by Commander Banks and confirmed by Commander Banks, at least to my mind, when he concluded his evidence.

Senator FERGUSON—He has given 10 hours of evidence since, Mr Chairman.

CHAIR—That was what he said at the beginning and that was what he confirmed at the end.

Senator FERGUSON—He had not been questioned at that stage.

CHAIR—You have had put to you, brigadier, a number of things which suggest a wavering of view, but that evidence would seem to be pretty straightforward on Banks's part, which does suggest that what you have said is right: that there is a difference of opinion between you.

Brig. Silverstone—Yes.

CHAIR—That is my only point. I do not think there is doubt about Banks's position, that is all.

Senator BRANDIS—The question is: is it a position or a recollection?

CHAIR—We will debate that in due course.

Senator JACINTA COLLINS—Brigadier, I have a number of questions following through your account of that conversation. Some of the issues we travelled over earlier, but there is some further clarification that I would like on them. The first of them is obviously the timing matter. I think that is fairly critical, because on the one hand you indicate that you are adamant that the timing was 7.20-odd—

Brig. Silverstone—0720 my time, yes.

Senator JACINTA COLLINS—and yet, according to the ship's logs, the event had not occurred at that time.

Brig. Silverstone—No, the event that the ship's log reports had not occurred at that time.

Senator JACINTA COLLINS—Yes, and no man overboard is reported in the ship's logs at that time.

Brig. Silverstone—I understand that there is a report in the summary of events.

Senator JACINTA COLLINS—You will have to take me to the specific document that you are referring to.

Brig. Silverstone—Yes, I am looking for it.

Senator JACINTA COLLINS—Is this the Banks summary of logs document?

Brig. Silverstone—It could well be. I cannot put my finger on it at the present time, but from my point of view it does not matter what it says in the ship's log in that the ship's log reflects a whole collection of material that is sifted through. Reports are made, reports are not made; things are included in it. All I know is that we had that conversation at about 0720 or 0721 and he reported those things to me. It was at the time that the ship's boarding party had just gone on board and there was a great deal of confusion there. My sense of that is that we were having this conversation at that time and there may have been a range of contrary reporting occurring. I was not there; all I know is what he told me.

Senator JACINTA COLLINS—What you are suggesting is that there is one potential scenario that makes the timing situation consistent, which is that at the time when the boarding party was first boarding the SIEV4 there were reports of a man overboard and that may have been a child?

Brig. Silverstone—No. I have no knowledge of what was reported and what was said; all I know is what he told me. If we look at this differentiation in time when people were talking about the child on the roof of the SIEV, for example—

Senator JACINTA COLLINS—Which was hours later.

Brig. Silverstone—it was clearly later. The only explanation I can offer, not having been there, involves the confusion of the boarding party boarding. I am fairly certain that during dinner, if it is there, I will find the comment about a person going in the water. I would suggest that in the darkness there is a range of confusion and that it is at that time that I ring, that it is when they are still trying to assert control on this darkened vessel that I get this report. That is the only possible explanation I can give, because I was not there.

Senator JACINTA COLLINS—If your report on the timing is accurate, that is right?

Brig. Silverstone—If it is, but I spoke to Air Vice Marshal Titheridge just before 0730 and I spoke to Rear Admiral Smith just after 0730 my time, having already spoken to Commander Banks.

Senator JACINTA COLLINS—The problem we have at this stage is a lack of information on that point. We have your very strong assertion that the report occurred at 0720-odd. In part this leads to my next question, which is: what corroboration for that phone call do you have? Air Vice Marshal Titheridge, for instance, is very vague. He cannot recall even whether he had a phone call, let alone what time it occurred or what he might have been doing at the time. Even though there was this special arrangement in place for this one-off phone call, Air Vice Marshal Titheridge seems to know nothing about it. So we are relying on your understanding of what time this phone call was meant to have occurred. You have told us earlier today that you did not actually record in your notebook the phone conversation—

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—but your understanding that it was to be at 0730 was because that is what you were instructed to do by Admiral Smith—is that correct?

Brig. Silverstone—That is correct.

Senator JACINTA COLLINS—Do you have notes on your discussion with Admiral Smith that say that this phone call was to occur at 0730?

Brig. Silverstone—Yes, I do.

Senator JACINTA COLLINS—Can we have a copy of those.

Brig. Silverstone—Yes, I shall provide that to you.

CHAIR—Is that an appropriate place to pause for dinner?

Senator JACINTA COLLINS—I have just one final question which can be clarified quickly on this point. Brigadier Silverstone, the other point in relation to the phone calls that I need to understand is the practice of NORCOM recording telephone conversations and when that occurs and when it does not occur and, in any of these incidents, did it occur.

Brig. Silverstone—We have no capacity to record telephone conversations, in terms of physically recording.

Senator JACINTA COLLINS—No capacity.

Senator FAULKNER—Some operational command centres do, of course, as you know, brigadier.

Brig. Silverstone—Yes.

Senator FAULKNER—It was never clear to me whether that occurred in NORCOM or not.

Brig. Silverstone—One of the things about this operation is that previously Northern Command had not been involved in the detailed tactical control of an operation of this type. We are more typically in more operational and lower tempo activities with regard to fishing vessels, and so there has not been a requirement to date. This operation has a whole bunch of new processes required to be put in place including managing these issues.

Senator JACINTA COLLINS—Yes. In part one wonders whether, given the discrepancy between the event and the time, the ‘0730’ was a reference to 0730 Titheridge time rather than 0730 your time.

Brig. Silverstone—No. The instruction from Admiral Smith was to ring Air Vice Marshal Titheridge at 0800 his time, and I wrote in my book 0730 hours my time. I rang Titheridge before 7.30 and I straightaway rang Rear Admiral Smith having done that to say, ‘I have spoken to Air Vice Marshal Titheridge and told him these things.’

Senator JACINTA COLLINS—So when we speak to Rear Admiral Smith we have got an opportunity for him to indicate his recall of when these calls actually occurred.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—The other issue related to the records and the timing of matters is that you say unfortunately the watch keepers had not logged, as they should have, these interactions.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—Is there anything that has been logged that gives some corroboration to the timing of events?

Brig. Silverstone—With regard to the 0730 conversation?

Senator JACINTA COLLINS—Yes.

Brig. Silverstone—No.

Senator JACINTA COLLINS—In relation to contacts coming in from *Adelaide*?

Brig. Silverstone—Not that I am aware of.

Senator JACINTA COLLINS—For instance, your statement—and we went to this point earlier today—refers to:

My telephone call to CO ADELAIDE, on AM 7 Oct, represented an exception to the practice described above.

Was that the only phone conversation you had on the morning of the 7th?

Brig. Silverstone—No. I had something of the order of eight or nine that day.

Senator JACINTA COLLINS—That is why I wondered when I read this that you referred to ‘my telephone call’ in the singular.

Brig. Silverstone—On this particular call, it is as I have indicated earlier: I do not as a matter of policy make phone calls to COs when they are in the middle of an event such as a boarding activity.

Senator JACINTA COLLINS—I appreciate that. But this commentary here at (b) is under the subheading ‘Initiating contact with commanding officers’. If you had seven or eight calls that morning with the CO of *Adelaide* I cannot understand why you would refer solely to one call in that context.

Brig. Silverstone—The phone call that was initiated, as far as I am concerned, was the prearranged one for 0720 when the other phone calls were quite likely made, with him ringing me because they are at a particular point in the activity and he was passing a report on to me of that.

Senator JACINTA COLLINS—Do we know whether you had a later call about the time of this incident?

Brig. Silverstone—I do not have a record of that. The next phone call I received was roughly timed about 1000 hours, I believe, Senator.

Senator JACINTA COLLINS—So you dispute Commander Banks’s assertion that he took a call from you during the ‘man overboard’ incident on the *Adelaide*?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—That was witnessed by one of his officers. You dispute that phone call occurred?

Brig. Silverstone—Yes.

Senator FAULKNER—Is it likely that over the dinner break you might be able to get any information to the question on notice you took from me?

Brig. Silverstone—I can respond to that now, if you like. With regard to the question on notice, the only approach made by any ministerial adviser that we are aware of was by Mr Hampton through the PACC organisation that went to Lieutenant Herring at Maritime Headquarters, who then came to my headquarters with a request for Mr Hampton to directly approach CO *Adelaide*, at which point I rang Admiral Ritchie and got his guidance on that matter. With regard to other contacts from other ministerial advisers, neither I nor my staff are aware of any.

Proceedings suspended from 6.36 p.m. to 8.08 p.m.

Senator JACINTA COLLINS—Brigadier, I noticed over the dinner break that we now have—or we should now formally table—further notes of yours in relation to your conversation with Rear Admiral Smith regarding the instruction to ring Air Vice Marshal Titheridge. Can you take us through what that note says.

Brig. Silverstone—At the top it says:

Treasurer: Boat People, Sunday 0730, Al Titheridge—

Senator JACINTA COLLINS—It does not say in what time?

Brig. Silverstone—It says 0730 hours.

Senator JACINTA COLLINS—In which time? It does not say IK or—

Brig. Silverstone—It is my time. He told me to ring him at eight o'clock eastern time. I have written 0730, which is my time.

Senator JACINTA COLLINS—In your other references, such as your other log, you have 0720 k.

Brig. Silverstone—No, that is an asterisk.

Senator JACINTA COLLINS—Fine. Keep going.

Brig. Silverstone—Then 'Al Titheridge' and two mobile numbers are next.

Senator JACINTA COLLINS—And under it?

Brig. Silverstone—'Update:' and we go on to talk about a range of issues with regard to advice that the Indonesian crew need to know about the penalties. DIMA had authorised a document to be read out that identified the range of penalties that would be levied on Indonesian crews—and there is a brief summary of it. I just captured some of that. Then I moved on to discussion about whether we had a Bahasa linguist convert to Bahasa. There is the comment:

Try to comment. Tell them—force them—do it once. Withdraw: BP—

which stands for ‘boarding party’, and then there are my drawings, if you like, in terms of the CZ shown and then two boxes moving towards the CZ. I have a third CZ and an arrow turning around and it has something like ‘if out, take charge’ and ‘0730’ written again. It has got ‘six knots, 3-4’ and then it has got ‘Max Moore-Wilton, no choice: CDF DIR ensure MSN aim deter from coming to’.

CHAIR—Let me interrupt at this point and say that these documents have not been tabled formally and I think we have just had a complete reading of this document, other than the actual telephone numbers on it for Air Vice Marshal Titheridge. I do not think that we should necessarily table it, as such, and make public Air Vice Marshal Titheridge’s phone number.

Senator JACINTA COLLINS—Yes. That’s fine.

CHAIR—Nor have we tabled the other one.

Senator JACINTA COLLINS—Brigadier, the second 0730 here appears to be crossed out. I have a photocopy so I am asking for your guidance.

Brig. Silverstone—There is a sort of a slash with a line coming back from it—I do not know what that is.

Senator JACINTA COLLINS—You do not know what that means?

Brig. Silverstone—No.

Senator JACINTA COLLINS—Do you know what the 0730 refers to?

Brig. Silverstone—No.

Senator JACINTA COLLINS—But you know there was a 0730 that you crossed out.

Brig. Silverstone—No, I do not think it is crossed out. There is a line drawn through it and there is a loose line coming off the bottom of the slash.

Senator JACINTA COLLINS—Maybe we should circulate your original so we can see what it looks like rather than the photocopy where it certainly does look like a cross-out.

Brig. Silverstone—Sure.

Senator JACINTA COLLINS—I understand also that you have referred to the ‘logs in our absence’ and in relation to op rep 8—

Brig. Silverstone—It is op rep *Adelaide* 069 Oct sit rep 8—

Senator JACINTA COLLINS—Do we have the same document?

Brig. Silverstone—Paragraph 6 states:

Some SUNCs making threats to jump overboard, commit suicide and other veiled threats including gesturing with wooden sticks. One SUNC jumped overboard and was recovered by RHIB.

Senator JACINTA COLLINS—This was at what time?

Brig. Silverstone—This was prior to 2200 Zulu, which is 0730 India-kilo.

Senator JACINTA COLLINS—Just on the original source document, can you take me to where the time is indicated on it?

Brig. Silverstone—Yes. If you go down five lines from the top of the page there is 'I3M'. One line further down there is OP 062200 Zulu October 01.

Senator JACINTA COLLINS—So 6 October at 2200 hours—at 10 o'clock at night—at the time where the *Adelaide* is. Is that correct?

Brig. Silverstone—No. That is Greenwich Mean Time. So that is at 0730 my time, 0500 where *Adelaide* is.

Senator JACINTA COLLINS—So 0500 where the *Adelaide* is on 7 October—there is reference to one SUNC jumping overboard.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—And to give it no more status at this stage one theory is that, if your time understanding is the correct one, then you had a telephone conversation at 0720 a.m. This is after 0720 a.m.

Brig. Silverstone—No. The signal is released at 0730 which means that it is reporting events that have gone on before that and it is reporting events of the boarding party.

Senator JACINTA COLLINS—There is reference to one SUNC jumping overboard and being recovered, and you are suggesting that this may relate to a child who might be five, six or seven.

Brig. Silverstone—No, I am not suggesting that at all. I am suggesting that there was a range of events happening in the dark and this was at the time that I know that I had this conversation with CO *Adelaide*. I am just suggesting that there is a range of activities of which we have no detailed knowledge. I was not there so I do not know what happened.

Senator JACINTA COLLINS—Whereas the CO *Adelaide*'s clear recollection is that he had a conversation with you at the time of the 'several men overboard' incident where he indicated to you that he saw a child on the roof of the wheelhouse. You indicated just before the break that you made no such phone call.

Brig. Silverstone—I indicated that I had no recollection of such discussion with him.

Senator JACINTA COLLINS—Does the Inmarsat telephone system keep logs?

Brig. Silverstone—Yes, it does.

Senator JACINTA COLLINS—What do we know from the logs of the phone system?

Brig. Silverstone—That *Adelaide* made a phone call at 0721 that morning to my watch keeper.

Senator JACINTA COLLINS—That could be the call that then carried information to Air Vice Marshal Titheridge?

Brig. Silverstone—It could be the call that came to me that then carried information to Air Vice Marshal Titheridge.

Senator JACINTA COLLINS—And after 0721?

Brig. Silverstone—Apparently, just talking to CO *Adelaide*, there was a call at 0816 and a range of other calls. He has the records for those.

Senator JACINTA COLLINS—What time would it have been on the *Adelaide* with the 0816?

Brig. Silverstone—That is 0546.

Senator JACINTA COLLINS—About the time that the first of the several ‘man overboards’ was occurring?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—And we do not know who that call went to?

Brig. Silverstone—It did not come to me but it may well have come to my J3, my senior ops officer at that time, who may have taken that call and may have had that discussion.

Senator JACINTA COLLINS—You cannot tell me, at the moment, about other calls?

Brig. Silverstone—No, Senator. I can tell you that there were a number of other calls but I do not have the record.

Senator JACINTA COLLINS—Can you undertake to provide that record?

Brig. Silverstone—I can do that through a request to the Maritime Commander because he is responsible for *Adelaide*. I will do that.

Senator JACINTA COLLINS—This indicates the calls from *Adelaide*.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—Can we also see the calls into *Adelaide* on this system?

Brig. Silverstone—Not that I am aware of.

Senator JACINTA COLLINS—It records calls out but not calls in?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—Your answer was, ‘Not that I am aware of.’ Could you confirm that for us?

Brig. Silverstone—Yes, Senator.

Senator JACINTA COLLINS—Do the logs which we were provided with from the *Adelaide* actually record the material at the times this report refers to?

Brig. Silverstone—I do not know.

Senator JACINTA COLLINS—This one starts on the 4th. This one starts on 6 October, so that would have. This one also starts on 6 October. I will not take the committee’s time with this at the moment. We obviously need to check that in terms of how it relates to the report that you have referred us to about a man overboard who was then collected. Whilst I have looked through these logs once, apart from the later incident there seems to be no reference in the logs to the issue of children. Do you know any different to that?

Brig. Silverstone—No, Senator.

Senator JACINTA COLLINS—Is there anything further on the timing issue that you believe corroborates your understanding?

Brig. Silverstone—I do not understand that I am required to corroborate.

Senator JACINTA COLLINS—Pardon?

Brig. Silverstone—I do not understand that I am required to corroborate this, Senator. My evidence is that I had that phone call at 0720 and I passed it on to Air Vice Marshal Titheridge.

Senator JACINTA COLLINS—Yes, and this committee’s task or brief is to try to understand that evidence in context—

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—and I am asking you from your perspective: is there any other information that you are aware of that confirms your evidence?

Brig. Silverstone—I am aware from discussions that Air Vice Marshal Titheridge made a call at 0805 his time, which is 0735 my time, and—

Senator JACINTA COLLINS—Sorry, just slow down a minute: 0805—

Brig. Silverstone—His time, which is 0735 my time, I understand to Jane Halton, and I understand that—

Senator JACINTA COLLINS—How do you understand that? I have not been able to find that in any of the evidentiary material before the committee.

Brig. Silverstone—Because the other day Air Vice Marshal Titheridge passed through here and mentioned that to me.

Senator JACINTA COLLINS—Yet he did not choose to mention that in any of his written reports.

Brig. Silverstone—He may; I cannot answer that.

Senator JACINTA COLLINS—So he may later have checked further, as have several people, to try to ascertain the timing discrepancy here and discovered that he has a record of a phone conversation between himself and Ms Halton at 0735?

Brig. Silverstone—I understand from his phone bill there is a call made at that time.

Senator JACINTA COLLINS—Okay, fine. Anything else?

Brig. Silverstone—And the only other thing is that Rear Admiral Smith has a record, apparently, of a phone call he made at 0732 to Commander Australian Theatre, which would follow my phone call to him, if I made that call at about 0730.

Senator JACINTA COLLINS—So Rear Admiral Smith to—

Brig. Silverstone—Commander Australian Theatre, Rear Admiral Ritchie.

Senator JACINTA COLLINS—Ritchie. It is just easy for us to remember who is who when we know the name rather than the rank or title. So at 0732 Smith possibly followed your conversation with a call to Ritchie relaying much the same information.

Brig. Silverstone—You will have to ask Rear Admiral Smith that, Senator.

Senator JACINTA COLLINS—Yes, but what you are saying to us now is that you are aware—

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—of a phone call that occurred at this time.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—And the source of that knowledge is Rear Admiral Smith himself, is it?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—Anything further?

Brig. Silverstone—No.

Senator JACINTA COLLINS—Obviously we will take up those issues further with Rear Admiral Smith and Air Vice Marshal Titheridge. Let me see if there is anything else relating to the timing issue. Your recollection was that between this 0720 call with the *Adelaide* your next call was at around 10 o'clock; is that correct?

Brig. Silverstone—Yes, Senator.

Senator JACINTA COLLINS—What would that have been *Adelaide* time?

Brig. Silverstone—Around 0730.

Senator JACINTA COLLINS—So 7.30?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—So it was after the several people overboard incident?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—Okay. What is your understanding of that conversation?

Brig. Silverstone—We had no discussion of people overboard in that conversation, Senator.

Senator JACINTA COLLINS—What did that conversation deal with?

Brig. Silverstone—It dealt with: 'vessel dead in the water, engine sabotaged, hoses cut, pump out of oil, bearings, large amount of smoke, overheating, evacuation, steering compartment, contemplate tow/CZ'. We had a discussion about recommendations. Apparently there is a note here about seaworthiness, with no comment after it. 'What is the mood on board? It has been tolerable. It is crowded.' He could not ascertain the number, yet he thought about 200 to 250, I would say from this note. They gave them water and threw it overboard. 'One more man overboard. Cut the steering. Engine'—

Senator JACINTA COLLINS—Sorry, did you say 'one more man overboard'?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—At that time?

Brig. Silverstone—At about 1000 hours—this is from this conversation.

Senator JACINTA COLLINS—Okay.

Brig. Silverstone—These are my notes of our conversation at about 1000 hours, but I did not write the time down. I have drawn this from marrying it up with the range of events described here and matching it against the op reps.

Senator JACINTA COLLINS—The SIEV was not yet in tow at that point, was it?

Brig. Silverstone—No, not from these notes.

Senator JACINTA COLLINS—Okay. But what has been suggested here? Is it one man overboard at around about that time, or is it just a report that it had happened previously?

Brig. Silverstone—No, it is suggesting that at about this time, when these events were happening, there was another man overboard.

Senator JACINTA COLLINS—Are you aware of anywhere in the logs that actually correlates to that report?

Brig. Silverstone—There is *Adelaide* sit rep 11, which is released at 070030 hours, which is 7.30 in the morning his time. It shows one SUNC jumped overboard, but was recovered with RHIB.

Senator JACINTA COLLINS—When you had this conversation with the *Adelaide*, were you aware of the previous several men overboard incident that is recorded in the logs?

Brig. Silverstone—I expect so, yes. I would have read that coming in in the op reps, which came in earlier, and then the subsequent conversations. So, yes, I would have been.

Senator JACINTA COLLINS—But your evidence to this committee is that whilst you were aware of the incident you did not actually discuss that particular incident with Commander Banks.

Brig. Silverstone—No.

Senator JACINTA COLLINS—Is it possible that you had a call, but it is not recorded in your notes, between those two times?

Brig. Silverstone—It is possible, but unlikely, in that I appear to have kept pretty comprehensive notes of our discussions throughout the night and that day. I do not recall having the conversation with him about the multiple overboards, but I do recall reading it.

Senator JACINTA COLLINS—You indicated that you were probably aware of it from reading the previous reports.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—One query I have in relation to your evidence in the report is why you would have reported to Air Vice Marshal Titheridge a child thrown overboard, or over the side—to get the words right—when later that day, in your report to COs, you described the situation as, ‘The deliberate displacement of personnel overboard, including allegations of children in life jackets put over the side.’ In this instance you refer to ‘children’, whereas I think it is a fair characterisation of the other statements that you only ever said ‘child’.

Brig. Silverstone—Sure.

Senator JACINTA COLLINS—And you are only referring to allegations here whereas the other evidence we have seems to be that the statement was far more unequivocal than that.

Brig. Silverstone—I do not recall the circumstances around the thought process that went into the drafting of that document, but it seemed that ‘children’ is the generic subject of ‘children over the side’, as opposed to ‘a child over the side’, so we are talking about risk to children. And, then, allegations—I recall having a discussion with my staff about what had we seen about this and what else we knew about this.

Senator JACINTA COLLINS—So the information you conveyed to Air Vice Marshal Titheridge referred to ‘a child put over the side’?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—But you are suggesting perhaps that other information was included for you to make the statement that there were ‘allegations of children put over the side’?

Brig. Silverstone—No. All I am saying is that ‘children over the side’ is just a generic threat to children. We were talking about generic threats and generic activities, as opposed to specifically citing the experience of *Adelaide* that morning.

Senator JACINTA COLLINS—So you are commenting here about actions taken by PIIs thus far, during the SIEV4 incident. They include, to actually quote the report:

The deliberate displacement of personnel overboard, including allegations of children in life jackets put over the side.

Apart from the singular reference to ‘child’ that you reported up the line—or it was not quite up the line—to Air Vice Marshal Titheridge, what other allegations are being referred to there?

Brig. Silverstone—None.

Senator JACINTA COLLINS—So one report of ‘a child put over the side’ becomes ‘allegations of children in life jackets put over the side’?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—You can say that is a generic term, but it seems like a fairly considerable shift from the singular to the plural to me.

Brig. Silverstone—That may well be the case, and if that is the case it is inadvertent.

Senator JACINTA COLLINS—To clarify the other issue of contention in this, that could explain why Rear Admiral Smith and others thought that the reference was to ‘children’ rather than to ‘child’?

Brig. Silverstone—I think not in the sense that I used my notes, and my conversation with CO *Adelaide* was immediately followed by those two conversations with Admiral Smith and Air Vice Marshal Titheridge.

Senator JACINTA COLLINS—But you used those notes for this report too, didn’t you?

Brig. Silverstone—No. I have just been handed *Adelaide’s* Inmarsat telephone record, and I have been advised by CO *Adelaide* that the Inmarsat does not record incoming calls.

Senator JACINTA COLLINS—Okay. But we can see the record for outgoing calls? We probably should not necessarily table that at this stage but circulate it to committee members. Going to the note of your recall of the 7.20 telephone conversation—and we covered some of this earlier—if we deal with it in its very original form, it first said, before you amended it immediately after the phone conversation, ‘men thrown over side 5 6 7’, and then immediately after the phone conversation, you have noted on the record:

NOTE: ‘child’ added after phone conversation with COADE before discussion with HSC.

Is HSC Air Vice Marshal Titheridge?

Brig. Silverstone—Yes, that is correct.

Senator JACINTA COLLINS—Okay. Last week I asked to have a look at your original of these notes because it was not clear to me that there was something written underneath ‘child’, and that ‘child’ was actually written on top of something. I must say, even after looking at your original notes, that is still not clear. The reason I asked, and in part you alluded to this earlier, is that you said you left space when you recorded the notes. Is that your evidence to the committee, that it was actually space underneath ‘child’, or was there actually something under it?

Brig. Silverstone—There might have been a dash showing a space and then on, but there were no words written there. My recollection is that I left space there or room there to come back and add in ‘child’ because I was writing quickly.

Senator JACINTA COLLINS—Although what appears to be underneath it is like a middle dash rather than a lower dash which would normally imply something yet to be filled in in notes.

Brig. Silverstone—I have no recollection, Senator.

Senator JACINTA COLLINS—Senator Ferguson was covering with you earlier the issue relating to the ‘5 6 7’. If these notes related to the ‘several people overboard’ incident, could the ‘5 6 7’ not refer to how many people there are overboard?

Brig. Silverstone—You could read it as that, but that is not the case, Senator.

Senator JACINTA COLLINS—Do we know in the earlier ‘person overboard’ incident whether the SIEV at that point in time was actually seven to eight nautical miles south?

Brig. Silverstone—The text of that indicates that the vessel here is 15 nautical miles north of Christmas Island, which is nine miles south of the contiguous zone. Bearing in mind that that is taken, I would expect, from a satellite navigation system, and I am talking to the CO at a time before the signal is represented, he could have been giving me an approximation.

Senator JACINTA COLLINS—Was the vessel dead in the water at that point?

Brig. Silverstone—You would have to ask the CO. I do not know.

Senator JACINTA COLLINS—My impression was that the vessel was actually moving when they boarded it. You do not know.

Brig. Silverstone—No.

Senator JACINTA COLLINS—Okay. Now in your notebook, which I presume you use in a chronological way—

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—this 7.20 reference is recorded before the next one you referred to.

Brig. Silverstone—That is correct.

Senator JACINTA COLLINS—It does not need to be done right now, but could we have a copy of that other one that you referred to as well?

Brig. Silverstone—Yes, absolutely.

Senator JACINTA COLLINS—When you put the note in your notes on 2 December about when it was you added ‘child’, why was that notation made at that point in time?

Brig. Silverstone—Because I was preparing a statement for General Powell, and when I looked at my notes I looked at the ‘child’ there and thought, ‘That looks odd,’ and then I recalled that the circumstance was that I added that word after I had finished the conversation with Commander Banks.

Senator JACINTA COLLINS—So your recollection in December was that you had added ‘child’ immediately after the phone conversation back in early October.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—And then when you added the time changes into your record, you did not add a notation at that point in time, which is understandable in part because you did not add this other notation until December, and then in March—last week—you put in the notation that you added the times in three to four days after the event.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—Why did you add the times in at that point?

Brig. Silverstone—I added the time in three to four days after the event because it was becoming apparent that this was a major issue. I directed CO *Adelaide* that he was to gather information on that. I reviewed my notes. I noticed that I did not have a time there, as it is my practice not to—I was not adding times to all the conversations we had—and I then entered the time based on my recollection of when we had that phone call.

Senator JACINTA COLLINS—So this would have been around 10 October; is that right?

Brig. Silverstone—Yes, somewhere around then.

Senator JACINTA COLLINS—We heard earlier from Commander Banks that around 10 October one of the reasons he was not quite so adamant about his own recall was that he understood that you had quite detailed notes and one of the reasons he has become more adamant is that, through looking at the statements, he has seen that the notes are not quite as detailed as he believed them to be on 10 October. Is that your understanding?

Brig. Silverstone—I understand that is his evidence.

Senator JACINTA COLLINS—I think you indicated earlier that it is possible to put interpretations on to these notes other than the ones you provided in your statements such as that ‘5, 6, 7’.

Brig. Silverstone—It is possible to interpret it as that, but ‘5, 6, 7’ was the answer in response to my question, ‘How old is the child?’

Senator JACINTA COLLINS—Yes, that is your evidence, there is no doubt about that, but in terms of what you actually wrote here on this page it is possible to build other interpretations than the ones you did in your statement to explain how those notes explain a story.

Brig. Silverstone—Mine is not an interpretation, Senator.

Senator FERGUSON—He wrote them.

Senator JACINTA COLLINS—I am still interested in following up some other material. In some respects this situation is actually getting murkier rather than getting resolved when we start talking about a potentially earlier incident that was never considered by either Powell or Bryant. Until we look at that earlier incident and see what the logs say—for instance, references to the vessel being dead in the water and some of the other contextual facts—this situation about the timing seems to be even more unresolved rather than clearer.

Senator FERGUSON—Only in your mind, Senator Collins.

Senator JACINTA COLLINS—What is it in your mind, Senator?

Senator FERGUSON—It is quite clear.

Senator JACINTA COLLINS—And what do you think is quite clear?

Senator FERGUSON—It is quite clear the interpretation that was put on it.

CHAIR—Is it?

Senator FERGUSON—Can I say, Mr Chair, the only person who can interpret the handwritten notes that have been made is the person who actually wrote them, not somebody else who is reading them. I make a lot of handwritten notes when I have telephone conversations and I will bet nobody else here could interpret them.

Senator JACINTA COLLINS—I would be somewhat sceptical of your interpretations two or three months after the event as well.

Senator FERGUSON—This was done two minutes after.

Senator JACINTA COLLINS—Sorry?

Senator FERGUSON—The insertion of the word ‘child’ was done two minutes after, because it was included in the report to Air Vice Marshal Titheridge.

Senator JACINTA COLLINS—But the notation and explanation of it was made more than two months after the event and the further change about the timing was made four to five months after the event.

CHAIR—This is something you might care to debate in a private meeting.

Senator FERGUSON—No.

Senator JACINTA COLLINS—Yes, I think so.

Senator FERGUSON—That is not so.

Senator JACINTA COLLINS—I want to move on to some of Brigadier Silverstone's explanation as well. Brigadier, your explanation at point 6 of attachment 2 is what appeared to me at the time to be a fairly adamant description of why you interpret the notes the way you do, referring to why you have put past participle 'thrown' in a particular way, why the noun 'child' is as an object, and you seem to go into a fair amount of grammatical detail to explain the way you have made the notes and expanded the notes in the way you have in your statement.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—And yet further on in your statement, when you refer to what you believe to be corroboration of your position from the statement of Wayne Gerrits, the detail seems to disappear at that point and you quote Wayne Gerrits as saying 'a child thrown overboard, see enclosure 4'. That is actually not what Wayne Gerrits says.

Brig. Silverstone—No, Senator.

Senator JACINTA COLLINS—So you are quite detailed about the grammar and how you would have said certain words, fairly confident that you put 'child' in the right place in your notes and many of these things, but you then go on to use Wayne Gerrits's corroboration and misquote him. Do you have anything further to say to us about your statement in light of that?

Brig. Silverstone—No, I do not, Senator. I have nothing else to say. I cannot offer an explanation as to how that became, but it would have been inadvertent.

Senator JACINTA COLLINS—In the context of what you had said earlier about how this issue was developing, your quote says—Wade Gerrits was reported as saying—he saw 'a child thrown overboard'.

Brig. Silverstone—Yes. But I enclose Gerrits's statement, so I made sure—

Senator JACINTA COLLINS—Yes, I know, you put it in quotation marks.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—Wade Gerrits never indicated that a child was thrown, but yes, 'I believe one child also went overboard'—

Brig. Silverstone—'One child also went overboard', yes.

Senator JACINTA COLLINS—Not 'thrown'.

CHAIR—Keep reading.

Senator JACINTA COLLINS—And then he also indicates that he understands:

All persons who dove overboard did so by their own accord and were all wearing lifejackets.

Quite a different characterisation to the one you use as corroboration of your version of events. You do not have anything to add?

Brig. Silverstone—No.

Senator JACINTA COLLINS—Rear Admiral Smith has indicated to us his understanding that you referred to children. You told us just a moment ago that you believe Rear Admiral Smith might be able to give the committee further information about the timing of phone calls, which might help us resolve the timing problems.

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—Is there anything further you understand, in relation to your communications to Rear Admiral Smith, that is not on the record at this stage?

Senator FERGUSON—Can I seek clarification? Senator Collins refers to ‘timing problems’. I am wondering what she means by ‘timing problems’?

Senator JACINTA COLLINS—I am referring to Ms Bryant’s reference to the discrepancy in timing.

Senator FERGUSON—You did not say that before. You just talked about ‘timing problems’.

Senator JACINTA COLLINS—I am sorry, but at this hour of the day I am summarising what I am saying but, if you want me to refer everything back to Ms Bryant or the appropriate documentation, we can take much longer about it.

CHAIR—Proceed.

Senator FERGUSON—Please do.

Senator JACINTA COLLINS—Brigadier, is there anything further in relation to these events that you are aware of, in terms of your communications to Rear Admiral Smith—

Brig. Silverstone—No.

Senator JACINTA COLLINS—aside from what you indicated earlier about the timing of calls?

Brig. Silverstone—No.

Senator JACINTA COLLINS—You also said earlier that you only had one conversation with Air Vice Marshal Titheridge?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—I think the rest of those questions can probably wait until we have the air vice marshal and Rear Admiral Smith.

Senator FAULKNER—While we wait for Senator Collins, brigadier, can you please help me with the acronym on the tabled document. It is ‘Inmarsat council service details’ or whatever, the document you have just tabled for us, on the front page. ‘Commander NORCOM’ is there, but what is the other—‘WK’?

Brig. Silverstone—‘WKPR’ is watch keeper.

Senator FAULKNER—Yes, it is WKPR. It could be ‘wicket-keeper’.

Senator JACINTA COLLINS—Whilst I am checking this, it might be worth—while filling time—also to check whether anything on this log relates to our earlier discussion that you wanted to bring our attention to, or are you just tabling the document?

Brig. Silverstone—The document was passed to me by—

Senator JACINTA COLLINS—So you are not, at this stage. Okay.

Senator FAULKNER—It comes from Commander Banks, I assume.

CHAIR—Are you referring to this document?

Senator JACINTA COLLINS—Yes.

CHAIR—This is not being tabled.

Senator JACINTA COLLINS—No. It has been circulated.

CHAIR—Yes.

Senator JACINTA COLLINS—Brigadier, one reference in your report at page 3 of attachment 2 is an email communication. You conclude the first paragraph there with the statement:

... there had persisted a perception amongst some that this [a child overboard] had happened.

Who were the ‘some’ you were referring to there? Is that some on the *Adelaide* or some on the joint task force?

Brig. Silverstone—It is some on the *Adelaide*.

Senator JACINTA COLLINS—How were you aware of that?

Brig. Silverstone—That was from the discussion with CO *Adelaide* that I had on the morning of Wednesday, the 11th when he said he was still looking for someone on the other

side—on the far side or the disengaged side—of the SIEV who may have seen something and also from referring to Gerrits's statement.

Senator FAULKNER—As I understand it, brigadier, you became commander of joint task force 639 on 22 September last year.

Brig. Silverstone—That is correct.

Senator FAULKNER—I appreciate the task force is part of Operation Relex. That is a fair description, is it not? Did task force 639 exist before then?

Brig. Silverstone—Yes, it did.

Senator FAULKNER—Who was the commander before you?

Brig. Silverstone—Commodore Stapleton, Commodore Flotillas.

Senator FAULKNER—I thought that was right. One thing that I am not clear on—and I did ask a brief question in estimates and I am going to go back very briefly to this matter with you so I can understand it—is in relation to some naval ships under your operational command. You gave us a short time ago a list of approximately half a dozen ships that were in that category. All operational orders effectively come from you, as the commander of the joint task force. Is that effectively what occurs?

Brig. Silverstone—Those vessels are under my operational control and, yes, the orders come from me.

Senator FAULKNER—There are other lines of command. You stress operational command. There are other naval commands, I suppose.

Brig. Silverstone—Operational control is the technical term for that level I was exercising.

Senator FAULKNER—Yes, thank you for that. Members of other services might be on board a ship. For example, it was not unknown to have a significant number of Army troops on some individual ships in Operational Relex. That is true, isn't it?

Brig. Silverstone—That is correct.

Senator FAULKNER—What I still do not understand—if you could very briefly explain to me—is whether they are also under your operational control or not.

Brig. Silverstone—Yes, they are, but the operational control of them is also delegated to the COs of the ships on which they are on.

Senator FAULKNER—So in this case did that operating procedure apply? Was that well in place before you became commander of joint task force 639? You inherited those arrangements or procedures for operational control?

Brig. Silverstone—Yes.

Senator FAULKNER—Do you know when they were put in place?

Brig. Silverstone—I imagine at the start of the operation.

Senator FAULKNER—Do you know when the operation started?

Brig. Silverstone—From recall, 7 September, or so—I would have to check that. Do you want me to confirm that for you?

Senator FAULKNER—I have heard that date. I just accept it; I do not think there is any need to confirm it. What about naval operations—and this might be better directed to Admiral Smith, and you may point me in that direction and I would accept that—pre Relex in the same vicinity? I know *Warramunga*, for example, was intercepting the *Aceng* on Ashmore Reef, I think, in late August. Was that a differently named operation at that stage?

Brig. Silverstone—No, that is Relex.

Senator FAULKNER—How does that fit with that date of the commencement of Relex that you—

Brig. Silverstone—Relex occurs and *Warramunga* intercepts 01 on 7 September, by my record here.

Senator FAULKNER—Is that the starting point for Relex then?

Brig. Silverstone—Maritime Commander Admiral Smith will be in shortly—

Senator FAULKNER—If you say to me that this is better directed to him—

Brig. Silverstone—Yes, this is better directed to him.

Senator FAULKNER—There are some brief questions. I am just trying to get an understanding of this to assist me, because I frankly have not understood this. On one other issue—and again you may direct me to Admiral Smith, and I am happy if that is the case—Admiral Barrie CDF has given evidence before about the letter from the Prime Minister to the *Manoora*. Are you aware of this issue?

Brig. Silverstone—No, I am not.

Senator FAULKNER—It is best directed to Admiral Smith then?

Brig. Silverstone—Yes.

Senator FAULKNER—I will not waste time if that is the situation. Very briefly, on the other matters that we are discussing—children overboard and related incidents—were you ever at any stage given specific orders or instructions not to publicly discuss that incident?

Brig. Silverstone—Other than the specific instruction that all—

Senator FAULKNER—Yes, that is right—other than the general instruction that I appreciate is an obligation placed on you and other Defence personnel.

Brig. Silverstone—That is the only direction.

Senator FAULKNER—I just want to go back very briefly to this issue that we canvassed before the dinner break of bypassing the chain of command. Can I take you to where you address this in paragraph 10(a) on page 2 of your statement—on bypassing the chain of command. I think I mentioned paragraphs 10(b) and 10(c) to you before. You express some concern, I think it is fair to say, in that paragraph that Admiral Smith and CSO Ops—I am not entirely sure who that is; who was that at the time?

Brig. Silverstone—Captain Thomson.

Senator FAULKNER—You express some concern that Admiral Smith and his staff at Maritime Headquarters and Captain Thomson and his staff are in frequent telephone contact with HMAS *Adelaide*. On my brief perusal of this document that you have passed through from Commander Banks, it seems that there is at least some traffic going from *Adelaide* to those destinations. You make the point that this is complicating the chain of command and confusing communications. Do you stand by those comments?

Brig. Silverstone—Yes, I was not aware of the number of phone calls occurring, but I became aware that these calls were occurring and I made the point to the admiral that this was inappropriate.

Senator FAULKNER—It was of sufficient concern for you, then, to take it up with Admiral Smith?

Brig. Silverstone—Yes.

Senator FAULKNER—You have indicated in your statement that he informed you that, while he reserved the right to speak to the commanding officers of his ships, he directed his staff to cease bypassing your—Brigadier Silverstone's—chain of command. Are you satisfied that that occurred?

Brig. Silverstone—Yes.

Senator FAULKNER—Were you able to get to the bottom of why this had occurred prior to your raising it directly with Admiral Smith?

Brig. Silverstone—Other than having a view about it, no, I did not investigate it in detail.

Senator FAULKNER—How does it manifests itself? How does it come to your attention? How does your awareness of the complication of the chain of command grow and lead you to that level of concern?

Brig. Silverstone—Members of my staff mentioned that they were aware that this was happening. At times, during my conversations back to maritime headquarters, there was an indication that they had to talked to CO *Adelaide* and I made the point that I thought that this was poor practice, confused communications and should cease.

Senator FAULKNER—Beyond the fact that this was during the conduct of operations on SIEV4, are you able to be more specific about the time frame when this was taking place?

Brig. Silverstone—No, I am not. I became aware of this issue some time during this period of SIEV4 and, in the aftermath of that, I took the issue up with the Maritime Commander.

Senator FAULKNER—I might progress those issues with Admiral Smith, because I do not want to waste too much of the committee's time if it is better dealt with there.

Senator JACINTA COLLINS—I might go back, brigadier, to the Inmarsat log. Regarding times, the column here refers to UTC. What is that?

Brig. Silverstone—That is universal time. That is the same as Zulu—Greenwich Mean Time.

Senator JACINTA COLLINS—Which is which of the relevant time frames we are looking at?

Brig. Silverstone—That is the Zulu time frame, so Golf, which is the time frame for *Adelaide*, is seven hours plus of the time shown here. My times, India-kilo, are 9½ hours plus of the time shown in that column.

Senator JACINTA COLLINS—So I have to add seven hours to all these references to convert it to the *Adelaide*?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—Okay, we need then to look at the 6 October references. '1846' is one, which would relate to what time?

Brig. Silverstone—0416 India-kilo, which is 0146G.

Senator JACINTA COLLINS—I think if we look over on the right we have got I-K, which is which time?

Brig. Silverstone—It is Darwin.

Senator JACINTA COLLINS—That is Darwin time?

Brig. Silverstone—Yes.

Senator JACINTA COLLINS—So this was your time you were operating on. I understand that now. I have had the opportunity to have a quick look back at the ship's logs in relation to that first man-overboard incident. If we refer to the *Adelaide* boarding log, for example, at 4.55—that was the time that would be relevant, I think; you indicated it would have been about 5.05—

Brig. Silverstone—0450.

Senator JACINTA COLLINS—That would relate to the 7.30 time in the op report.

Brig. Silverstone—It would relate to the 7.20 time—yes.

Senator JACINTA COLLINS—‘Night crew jumped overboard’. The statement in the boarding log—the log that was being recorded at the time, associated with the actual boarding of the SIEV—says:

Night crew—jumped O/B.

3 members of crew remaining on board.

That appears to be the overboard reference there. Later on you have a reference to—

Brig. Silverstone—This is not my reference.

Senator JACINTA COLLINS—The timing is wrong, is it?

Brig. Silverstone—No. You said, ‘Later on you have a reference to’. I have no reference. I have not seen that log.

Senator JACINTA COLLINS—I am not referring to you; I am saying ‘we’—generally, there is a reference—excuse my shorthand. There is a reference. Further down the page, at 5.06:

SUNC jumped O/B—1.

Then later on, at 5.10:

Do not believe that a SUNC entered H₂O.

Later that hour we get to the multiple overboard incident—several people overboard—but there is no reference to anything associated with a child. We are yet to track down whether the SIEV was stationary at the time—if that correlates with your notes. I do not have anything further, Chair.

CHAIR—If we can, I would like to bring this to a conclusion. Please proceed.

Senator FERGUSON—Senator Collins just read from the ship’s log. Brigadier Silverstone, you rely entirely on your telephone conversation for the information that was relayed to you by Commander Banks, not the logs and other material that Senator Collins has been reading out to you. Is that correct?

Brig. Silverstone—That is correct, Senator.

Senator FERGUSON—Can you confirm once again that you have a very clear recollection and notes of that conversation, regardless of what is supplied in logs at some subsequent time?

Brig. Silverstone—Yes, Senator.

Senator FERGUSON—You used that conversation as the basis of your report to Air Vice Marshal Titheridge—that is, the conversation you had at 7.20 when you were provided with that information—and you also recorded that conversation with notes.

Brig. Silverstone—That is correct, Senator.

Senator FERGUSON—So much of the information that Senator Collins has been putting to you is information that was in somebody else’s hands, not yours, when you passed the information on to Air Vice Marshal Titheridge?

Brig. Silverstone—That is correct, Senator.

Senator FERGUSON—I do not have any further questions.

CHAIR—As soon as you became aware that the story that children had been thrown overboard was not true, you sought to correct it.

Brig. Silverstone—Yes, Senator.

CHAIR—Within the chain of command.

Brig. Silverstone—Yes, Senator.

CHAIR—So, whether we believe, for example, Commander Banks’s version or whether we believe your version of what happened, we know from what you have said that you reported your version and, as soon as you learnt it was wrong, you sought to correct it?

Brig. Silverstone—Yes, Senator.

CHAIR—Were you in any way surprised that the correction was not made by the various public spokesmen for the government?

Senator FERGUSON—The government?

CHAIR—The government—yes.

Senator FERGUSON—By the naval officers, perhaps.

CHAIR—Are you asking the naval officers to correct the Prime Minister?

Senator FERGUSON—No—down the chain of command.

CHAIR—Were you in any way surprised that the correction was not made, since you moved so promptly to correct the record?

Brig. Silverstone—I noted that it was not made. I was aware that no active step was taken to correct it.

CHAIR—Did you do anything about that yourself, other than note it?

Brig. Silverstone—No.

CHAIR—You are aware of the order on 8 August about public comment—the order I have referred to a couple of times during these hearings?

Brig. Silverstone—Yes.

CHAIR—Was that a factor in causing you not to say anything publicly?

Brig. Silverstone—No. The factor is that I work within a chain of command and I am required to perform within that chain of command.

CHAIR—As far as you are concerned, you moved as swiftly as was reasonable, once you became aware that the information that had been passed on by you was not right, to correct it.

Brig. Silverstone—Absolutely, Senator.

CHAIR—Would you normally have expected it then to have been corrected?

Brig. Silverstone—That is a matter for government to judge.

CHAIR—It is not a matter for the defence forces?

Brig. Silverstone—It is a matter for the defence forces to provide the advice and then for the government to decide—

CHAIR—You are aware, though, that government spokesmen have said, ‘We weren’t advised by Defence’?

Brig. Silverstone—You would have to be more specific about that.

CHAIR—The Prime Minister has said that he was not advised by the defence department.

Brig. Silverstone—Yes. I know that I informed my chain of command and thus met my requirements with regard to that.

CHAIR—Did ONA contact you at any stage?

Brig. Silverstone—I have had a discussion with ONA in the last month or so, Senator, but not before.

CHAIR—So ONA never sought from you any information about this incident, directly?

Brig. Silverstone—Not in the months surrounding it, no.

Senator FAULKNER—Did your subsequent discussion with ONA go to this incident?

Brig. Silverstone—Yes, it did.

Senator FAULKNER—Who did you have that discussion with?

Brig. Silverstone—I would have to check my notes. His name has slipped my mind at the present time.

Senator FAULKNER—Was it Mr Jones?

Brig. Silverstone—No, it was not Mr Jones. It was a senior officer working for him.

Senator FAULKNER—I am always careful not to trample into inappropriate areas, and no doubt you will let me know if I do; but, in the broad, could you explain the nature of that contact and its relevance to the SIEV4 incident?

Brig. Silverstone—This discussion, in which I was asked what happened, occurred about a month ago. I explained to them what happened from my perspective, that what became apparent was a misreport, and we moved to correct that.

Senator FAULKNER—Was this done in a formal sense? Was the officer involved in some analysis work?

Brig. Silverstone—I went to see him about intelligence support for this operation and in the course of our conversation this issue arose. He sought clarification of what happened at our level so he could be better informed about the process, I presumed.

Senator FAULKNER—Would you describe this as an informal discussion around the issue?

Brig. Silverstone—Yes.

Senator FAULKNER—You did not see it as a formal communication with ONA on the substantive issue?

Brig. Silverstone—It was an informal discussion with me offering an explanation as to what I understood had happened, and the events surrounding that, at that time.

Senator FAULKNER—Did you think to ask ONA for an explanation of their behaviour—which would have been perfectly reasonable for you to do?

Brig. Silverstone—No, I did not.

Senator FAULKNER—Next time maybe you will.

CHAIR—Let us hope there is not a next time.

Senator JACINTA COLLINS—Is there anything in NORCOM records that can clarify for us who received the two phone calls between the 7.20 call and the 10.30 one?

Brig. Silverstone—No, there is not.

Senator JACINTA COLLINS—There is no means to?

Brig. Silverstone—The personnel who were involved in receiving these phone calls at that time are long gone and have been replaced numerous times by other people.

Senator JACINTA COLLINS—And, as you indicated, it had not been logged.

Brig. Silverstone—To the best of my knowledge, it has not been logged.

CHAIR—There are no further questions of the committee to Brigadier Silverstone. Thank you, brigadier. Once again, I apologise for pushing you back. I hope you understand, but I will not hold it against you if you do not.

[9.15 p.m.]

SMITH, Rear Admiral Geoffrey, Maritime Commander, Royal Australian Navy

CHAIR—Rear Admiral Smith, welcome to the hearing. I understand you have been waiting patiently over a long time, and I do apologise to you for that. Do you wish to make an opening statement?

Rear Adm. Smith—If I may, Senator.

CHAIR—Please proceed.

Rear Adm. Smith—Thank you.

CHAIR—If it is in writing and—let me be careful here—if you have no annexures that are not part of your statement and if you have no objection, would you be kind enough to make it available at some point to the secretary so that it can be copied?

Rear Adm. Smith—I have a spare copy here to give to the secretary.

CHAIR—Thank you very much.

Rear Adm. Smith—And there are no annotations to it. I am the Maritime Commander of Australia, a position that I have been appointed to since 12 July 2000. My primary responsibilities are twofold. I am directly responsible to the Chief of Navy, Vice Admiral Shackleton, for the raising, training and sustaining of Her Majesty's Australian fleet and to the Commander Australian Theatre, Rear Admiral Ritchie, for the conduct of operations involving maritime forces. In this latter capacity, as the Naval Component Commander of Headquarters Australian Theatre, I am the senior adviser to the Commander Australian Theatre on maritime operational matters.

It was in my capacity as the naval component commander that I was delegated command of Operation Relex, the Australian Defence Force operation in support of the government's revised border protection policy. My mission was to deter unauthorised boat arrivals from entering Australian territorial waters. In the execution of this mission under Operation Relex, I was directed through the chain of command that it was an imperative that CDF and the government were rapidly and accurately updated on events as they occurred. I was instructed that this was to occur to maximise time available for consideration and policy decision making at the national strategic level. To meet this requirement, CDF implemented special reporting arrangements for Operation Relex. COMAST, as the senior operational commander and the interface with the strategic level of military command, was directed to pass information by the quickest means available to Australian Defence Headquarters. COMAST in turn directed me to advise him by commander-to-commander telephone calls when significant SIEV events occurred.

Prior to implementation of this revised border protection policy, the longstanding role of the Navy was to support Coastwatch and client agencies with the interception, boarding and escorting of suspected illegal entry vessels, SIEVs, or the transportation of their occupants, the unauthorised arrivals, to an Australian port for reception and processing by the concerned government departments. This role was undertaken almost exclusively by the patrol boat force operating within Australia's maritime zones. With the prospect of being taken to Australia for processing, unauthorised arrivals were invariably cooperative and compliant, with Navy boarding parties able to operate in a relatively benign environment.

Operation Relex required the establishment of an enhanced and continuous presence and response capability by the Australian Defence Force deep offshore to in effect establish a barrier between Christmas Island and Ashmore Island. Larger and more capable surface combatant vessels were therefore required in order to effectively intercept, warn and, if necessary, board in an attempt to turn away the SIEVs to a position just outside the Australian contiguous zone.

Amendments to the Migration Act in late September permitted actions to turn away SIEVs and return them under Navy escort to the close proximity of Indonesian territorial waters. Amphibious vessels were also tasked to transport some unauthorised arrivals to a Pacific Islands country for processing. Actions taken following boarding in each case were specifically directed by government. As a consequence of Australia's revised stance against unauthorised boat arrivals, the operational environment for naval forces involved in border protection operations changed significantly. It was assessed that the people smugglers' and the unauthorised arrivals' most likely and most dangerous course of action to overcome the revised stance was to ignore attempts to be turned away and if necessary provoke a safety of life at sea—SOLAS—incident, thereby obliging the Navy to render assistance to inherently unseaworthy or deliberately sabotaged vessels.

International law imposes positive obligations upon mariners to render assistance to those in danger of being lost at sea. Australian Navy commanders understand such obligations to render assistance in circumstances where that can be done without seriously endangering ship or crew. Ensuring the safety and preservation of life at sea is a fundamental mariner's skill and for which all units deployed for Operation Relex were well trained. My orders and instructions stressed the overarching requirement for commanding officers of RAN ships to take every reasonable means to achieve the mission without needlessly risking the safety and wellbeing of their ships' companies, their vessels and the lives of the unauthorised arrivals on board the SIEVs.

Not unexpectedly, the Navy encountered displays of non-compliance and belligerence by unauthorised arrivals when their apparent aim of being taken to Australia was frustrated by the Navy's intervention. Numerous instances of threatened or actual violent actions against Australian Defence Force personnel occurred, as well as various acts of threatened or actual self harm and the inciting of violence throughout Operation Relex. Australian Defence Force personnel had not previously encountered these circumstances during non-warlike operations. They were extremely hazardous and volatile situations. What was a law enforcement activity had real potential to rapidly escalate into a violent situation or just as quickly deteriorate into a major safety or preservation of life situation or, worse, both.

Although the mission was fundamentally to deter SIEVs from entering Australian territorial waters, the provision of humanitarian and medical assistance was also a major planning

consideration for Operation Relex. It was anticipated that many unauthorised arrivals would be at risk of or suffering from a variety of illnesses, ailments and diseases. The provision of humanitarian and medical assistance was also deemed a potential means of de-escalating potentially violent situations and overcoming non-compliance and belligerence through the development of trust. Standard practice throughout the operation was to provide a safe, clean and secure environment, sufficient food, water, personal items, bedding and shelter and, where possible, alleviate the cramped and overcrowded conditions that prevailed.

Deployed medical and dental staff provided a range of ongoing health services during Operation Relex, including emergency assessments, treatment, health screening and clinics during the boarding, containment and transportation operations. For example, during transportation of unauthorised arrivals on board *Manoora* and *Tobruk* the ships' companies went to great lengths, despite the difficult and trying circumstances, to provide fresh clothing and laundering services, toiletries, toys, videos and games, and to prepare halal meals and national dishes. Saltwater showers were rigged along with squatting stands in toilets to accommodate cultural differences. Whenever the ship's program allowed, exercise periods on the upper decks were scheduled. ADF personnel maintained their disciplined yet humane composure and attitude towards the unauthorised arrivals throughout the operation.

In closing, Operation Relex was a demanding operation conducted in operationally difficult circumstances during an extended period of abnormally high operations and personnel tempo for the ADF and the RAN in particular. I can only re-emphasise the valuable contribution made by the maritime command sailors and officers, the Army medical and transit security elements, the airmen undertaking surveillance duties and supporting Australian Customs and Coastwatch personnel for their commitment to the tasking. It is a credit to all those personnel involved that injuries were kept to an absolute minimum and that the Navy has played its part in protecting Australia's national interests while meeting its obligations in ensuring the safety of life at sea. This statement is provided to you, ladies and gentlemen, to place the operational issues surrounding this maritime incident, the subject of the Senate inquiry, into context. I look forward now to assisting the select committee in any way that I can.

CHAIR—I understand there has been some consultation up this end of the room and you, Senator Bartlett, have agreed to draw the short straw.

Senator BARTLETT—The short straw for me or the short straw for everyone that has got to listen to me?

CHAIR—It is the late-night shift—put it that way.

Senator BARTLETT—The graveyard. Thank you for that statement and for waiting on us patiently—or I presume patiently—all day. We have had a range of documents before the committee that continue to appear and some of them I wish to refer to, and I am sure others in the course of later questioning will wish to also. I want to make sure that you are aware of them first and to make sure of what you have access to before I start delving into them. One is what has now become known as the 'Titheridge minute', which details various incidents. There are further documents, an information package, provided with further statements backing up those—it is reasonably thick. There is a third, very thin, one which has just arrived tonight, with

very brief excerpts from signals from the *Arunta* in relation to those. Are you aware of that third document?

Rear Adm. Smith—Yes, I am.

Senator BARTLETT—So you have had a copy of that or can refer to it if need be.

Rear Adm. Smith—Yes.

Senator BARTLETT—Having said that, I will not refer to that straightaway. I just wanted to clarify that up front. You have been involved in Operation Relex since its commencement?

Rear Adm. Smith—That is correct.

Senator BARTLETT—Were you involved in the drawing up, if you like, of the structure of the operation, of the new rules of engagement, the mission statement and those sorts of things?

Rear Adm. Smith—The mission was provided to me but the detail that sat behind the mission and the way that we went about the initial stages of the operation were developed within my headquarters.

Senator BARTLETT—When you say the mission is provided to you, what form does that take and who does it come from? Is it a succinct, brief thing or is it a larger document?

Rear Adm. Smith—Our process is that the CDF would produce a warning order to the theatre commander, Rear Admiral Ritchie. Rear Admiral Ritchie in turn would produce a warning order to whichever lead headquarters he wished to conduct the planning for that particular operation. In the case of Relex that was passed to maritime headquarters. So the direction came from the CDF.

Senator BARTLETT—What is the form of that direction?

Rear Adm. Smith—It is an official Defence signal.

Senator BARTLETT—Is that classified? Is that able to be viewed?

Rear Adm. Smith—They are classified but, as I understand it, most of the signals or the messages associated with Operation Relex have now been declassified. However, at this point I do not think these particular ones have been released to the committee, and I would need to have those put through the process.

Senator BARTLETT—If you could. I would be interested in the original message that outlined the mission.

Rear Adm. Smith—I am happy to read that to you if you wish.

Senator BARTLETT—That would be good, thank you.

Rear Adm. Smith—The CDF warning order was produced in late August. It specified that the ADF was to ‘provide a maritime patrol and response option to detect, intercept and warn vessels carrying unauthorised arrivals for the purpose of deterring SIEVs from entering Australian territorial waters’. It went on to task COMAST to do some things. In this particular case he was told to prepare a concept of operations for this particular operation.

Senator BARTLETT—COMAST is Rear Admiral Ritchie?

Rear Adm. Smith—Yes, the theatre commander Rear Admiral Ritchie. Then there is a whole bunch of detail there about the things that he must take into account in doing that. That signal was sent from the CDF in late August and then in turn Rear Admiral Ritchie produced an order to me to conduct that planning, and that is what we did in late August, early September.

Senator BARTLETT—If that signal is able to be provided, it would be handy. I would let you follow that up. Is there a formal start date when operation Relex was under way?

Rear Adm. Smith—The warning order I referred to is followed by a CDF execute order. The execute order for Operation Relex had a start time of midnight on 3 September.

Senator BARTLETT—So it is from that time onwards that the numbering sequence of the SIEVs, 1, 2, 3 et cetera, commences?

Rear Adm. Smith—That is correct.

Senator BARTLETT—Is there a record or details we can access of each of those SIEV incidents, in terms of the nature of the intercepts, in particular the length of time there was engagement, the nature of engagement and the number of people that were on each vessel?

Rear Adm. Smith—I have summaries of all of those SIEVs. The documents that sit behind those summaries total some 1,500 to 1,700 messages. I am sure you would not want all of those.

Senator BARTLETT—I think we have got enough paper. My understanding of some of them—and I know more about some than others—is that they can be extended over quite a long period of time and with a range of escalations and then calms and that type of thing. But are summaries of each of the incidents, and also the final outcomes in each case, readily available?

Rear Adm. Smith—I have prepared working documents for myself for this appearance, which do exactly as you have asked.

Senator BARTLETT—Are you able to make those available to us?

Rear Adm. Smith—I certainly have them available here. I have not got copies of them. It would take us some time to pull them out and produce copies, but we could do that.

Senator BARTLETT—I know there will be questioning. We have further information that has been provided to us about some specific incidents, in isolation of the broader SIEV engagement. I would certainly find it helpful to have the whole picture and the context. I do not

need it straightaway. I am sure it would not be a great surprise to you to suggest you would be back in the morning. I do not know if it is possible for some assistant to see if some summarised version of that can be provided. I am not looking for hundreds of pages. You could probably get all the information on a single page. If you could take that on board I would appreciate that.

Rear Adm. Smith—Yes, certainly.

Senator BARTLETT—I may be wrong but it seems like the SIEV4 incident was the first major test of the new rules of engagement that were developed. Is that correct?

Rear Adm. Smith—No, not at all. In fact there were three before SIEV4. They each have some uniqueness about them. Really from the very beginning of this change of policy we began to encounter similar sorts of things to what you have been exploring over the last few days.

Senator BARTLETT—You mentioned training as being one of your responsibilities. What extra training has been required for Navy, and other personnel for that matter, with Operation Relex? Could you just outline that.

Rear Adm. Smith—We prepare all ships for basic boarding operations. When Relex was commenced, the ships that were initially committed to Operation Relex were in fact in South-East Asia participating in a number of activities in that area. They were brought back and thrown straight into the patrol line. We were expecting that there could be activity that would not be the sorts of things that our boarding parties would be used to encountering, so we developed quickly a training package. A number of members of what we call our ‘sea training group’, which is a group that works for me that does all our operational training, were deployed to the ships where they were in theatre. They conducted training on the spot to try to prepare the boarding parties for what could eventuate out of this particular activity. We have been able to do subsequent rotations of vessels into Operation Relex in a more considered way and have prepared them before they have deployed by providing them appropriate training.

Senator BARTLETT—Has that required extra costs on the part of Navy to develop those changed training or extra training requirements?

Rear Adm. Smith—Not particularly because, at the same time as we were doing this, we were also preparing ships for deployment to the Persian Gulf, which required the same type of preparatory training as that for the boarding parties. So this did not attract any additional expense.

Senator FAULKNER—Just on this, Admiral—if you do not mind me interrupting, Senator Bartlett—the training of non-naval personnel—I appreciate that it may not necessarily be your direct responsibility—obviously has an interface with naval training as well?

Rear Adm. Smith—When you say ‘non-naval’, do you mean Army?

Senator FAULKNER—I mean the other two services, and I assume it is almost exclusively Army, but that is an assumption that I just did not want to make.

Rear Adm. Smith—There was certainly preparatory training for the attachment of the Army people into the ships. At the beginning of Relex there were no Army people embarked in the ships. All the boardings were done, as they continued to be done, by naval people. It was only as we got into the operation that we identified a need for the Army presence, and the land commander, General Abigail, prepared through his organisation those people to be embarked in the ships. I am not aware if there was an additional cost for him to do that, but there was certainly training for the Army people. From the Air Force perspective, they have not participated on board the ships in the way that the Navy and Army have.

Senator FAULKNER—Given the circumstances, we might be best to place some questions on notice specifically for Army. That might be the easiest way to deal with them, because we all understand that you might not be in a perfect position to be able to answer any detailed questions.

Rear Adm. Smith—Certainly.

Senator BARTLETT—Just in terms of the extra requirements under the whole of Operation Relex, you mentioned in your opening statement the other part of the role that probably has not got so much attention—everyone has focused on the blockade—and that is providing health assistance. Has that required different staffing of vessels—for example, extra health professionals? Do you have people on board who are trained in counselling or dealing with tortured and trauma survivors and that sort of thing?

Rear Adm. Smith—We were very much aware in our planning that there was a potential of a humanitarian dimension to this whole operation and that it would be important to have embarked in the ships participating medical staff to be able to support the unauthorised arrivals. We in fact took measures to ensure that each ship that was involved in the operation had a medical officer and in some cases some additional medical staff to support them. We sourced those people from the naval reserve largely. Reserve doctors came in and were deployed. There were additional people put into the ships for this particular aspect.

Senator BARTLETT—Did that include people specifically in that area of counselling or mental health? Did that include torture and trauma or psychiatric professionals?

Rear Adm. Smith—Not directly. Certainly, some of the medical practitioners that were there had some of those skills, but our priority was to provide first aid, essential medical support to people, rather than those other psychological aspects that you are referring to. Having said that, there were some people that we did pull from the reserve who had those particular skills, but it was not those skills that we were sourcing in the first instance.

Senator BARTLETT—Does calling up people from the reserves generate extra costs?

Rear Adm. Smith—They are in the reserve and they are available, in the naval sense, to be called up. We call for volunteers, actually; it is not a call-up. These people come forward and this counts as their reserve time. They are paid as we would normally pay them, as reserve officers or sailors.

Senator BARTLETT—In the accounts we have read of at least some of the SIEV incidents and the role of boarding parties in particular, which obviously are a fairly key point of engagement, there seems to be a constant thread—at least through the ones that we have been provided details of so far—of usually very tightly packed, if not overcrowded, boats and stressed-out people who have probably been on the water for some time already. As you have noted in your opening statement, given the new forcible type of engagement—which I presume people on board would be aware of; they certainly start to be aware of it once they get boarded—you potentially have a very volatile situation. It seems to me to be a situation that would require extremely good negotiating skills, particularly when you are outnumbered 20 to one or whatever and those sorts of things. Do people get special training in how to handle those sorts of situations? Do you specifically select boarding party officers who have those skills?

Rear Adm. Smith—That was one of our considerations early in the piece. The extra training that I referred to for people that were sent into theatre was actually dealing with that very issue—how to deal with large numbers of people and keep it under control. It was a situation that could very quickly escalate into an out-of-control situation, so we put a lot of effort into preparing the boarding parties for that. We also made sure that the boarding officers were experienced officers. In fact, in many of the cases the executive officer, the second in command, of the ship concerned—the *Arunta*, the *Warramunga* or whatever—was in fact the boarding officer, so we were ensuring that we had very experienced people controlling the boarding operation as it was being conducted. We found out very early in the piece that that was a very wise move because of the pressures that were placed upon the boarding parties when they were on board.

Senator BARTLETT—Obviously I want to visit some of the SIEV incidents in a bit more detail, which we will probably need to leave until tomorrow. Firstly, with regard to the 12 SIEV incidents, I would like to confirm my instinctive assumption that, since the start of Operation Relax, 12 different vessels have been intercepted and none since?

Rear Adm. Smith—Yes.

Senator BARTLETT—Is it just two that ended up sinking—SIEV4 and SIEV10?

Rear Adm. Smith—There were only two; that is correct, Senator.

Senator BARTLETT—Could I get a clearer idea on something, although I realise that there might be some operational issues involved that you cannot reveal. We have heard a number of times—and we saw this in looking at, for example, the detail in SIEV4—that obviously the vessel at some point is made aware that a SIEV is on its way and the vessel is directed to intercept it or monitor it. Who is that information provided to and where does it come from? Does it come from intelligence in Indonesia or from other observational methods—satellites or whatever? Who is it communicated to?

Rear Adm. Smith—There is intelligence that sits behind each of these activities, and I am not really at liberty to be able to share that information at this time.

Senator BARTLETT—Sure.

Rear Adm. Smith—On the basis of some of that information, we were able to make some assessments on windows when these vessels might appear. We then were able to adjust our patrols and so forth to make those intercepts.

Senator BARTLETT—So normally you would be confident that you have a fair chance of knowing, of being told, of finding out, when a SIEV of significant size was departing, where from and that sort of thing?

Rear Adm. Smith—It would be very foolish of me to say that we knew every time that these things were going to happen. We planned on not knowing, and indeed the whole surveillance effort between Christmas Island and Ashmore Island involved not only ships but also aircraft—RAAF P3s and also the Coastwatch aircraft. We had a patrol arrangement in place, and we were relying upon a whole series of activities to give us the information that we needed.

Senator BARTLETT—So, out of the 12 SIEVs, there were not any surprises; you had a fair warning with all of them that they were appearing?

Rear Adm. Smith—We certainly had some information that boats might be being prepared in different parts of the archipelago. The first time that we found one of the SIEVs—I will have to check which number it was—was when it ran aground on Ashmore Reef. But, apart from that, we pretty much knew where things were going.

Senator, I may have misled you, and I would like to correct that. You asked me whether there were only two SIEVs that foundered and sank—in fact, there were three: SIEV4, SIEV6 and SIEV10.

Senator BARTLETT—I will try to find out a bit more about SIEV6 at another time or a bit later on. Normally, through whatever means, you would have information that a vessel was approaching. That information would come to you and you would then direct ships to move to a particular area?

Rear Adm. Smith—The process would be like this. We have daily briefings where we analyse all the information available to us—the results of our patrols and that sort of thing. I would agree with the JTF commander, Brigadier Silverstone, as to where the priority for the effort would be, and he would then execute that direction.

Senator BARTLETT—In terms of lines of command—and we have explored this a little bit with various people—could I get a bit more clarification about the level of government involvement in particular decisions or activities. I do not know whether you heard some of the earlier evidence that was read out from ships' logs et cetera saying that they were waiting on advice from the PM as to whether to tow and where to tow. Whether it is the PM personally, his office or the government that gives the direction about where to take the vessel, is there any other form of involvement from government in relation to the conduct of Operation Relax?

Rear Adm. Smith—I will make two points in relation to that. When you are a sailor in a ship, government equals Prime Minister; that might explain some of those comments that were in some of the logs. As I said in my opening statement, once these vessels were intercepted in the early stages of Operation Relax, every decision that was taken in terms of what to do with

that particular vessel and the people in it was in fact directed from Canberra. It is my understanding that that came out of the interdepartmental committee process and therefore, from our perspective, it was a government direction.

Senator BRANDIS—Senator Bartlett, could I jump in with one question? Rear Admiral Smith, when you say that as a sailor on a ship government equals PM, do we take it from that that there is no significance to be read into the fact that in some of the documents there is a reference to the order having to come from the PM—that that is to be understood merely as a reference to the fact that the order has to come from the government in Canberra, from whatever organ of the government is responsible for giving that order?

Rear Adm. Smith—That would be my interpretation of those entries.

Senator BRANDIS—Not from the Prime Minister personally or from the Prime Minister's office?

Rear Adm. Smith—No.

Senator BARTLETT—For any order to be put into effect, it would have to go through you anyway, wouldn't it?

Rear Adm. Smith—That is correct.

Senator BARTLETT—So, in that sense—to fully put to rest the point that Senator Brandis is getting it—did you receive any orders or directions that, in your understanding, were direct from the PM, so to speak?

Rear Adm. Smith—No, I did not—at no time.

Senator BARTLETT—You just said that all decisions were generated out of that interdepartmental committee. So they would fairly regularly provide directions to you about what should be done?

Rear Adm. Smith—Not directly to me, but certainly as these incidents unfolded that particular committee, as I understand it, met regularly and decisions were taken out of that process as to the next step in the particular operation, whatever the SIEV happened to be. That message was relayed through the chain of command to Admiral Ritchie and then from him to me, and my job was to get on with it.

Senator BARTLETT—So if reports were received of a SIEV making its way to Australia, for example, that interdepartmental committee would probably be made aware of that pretty promptly?

Rear Adm. Smith—I would assume so, yes.

Senator BARTLETT—So would the committee then suggest, direct, request or propose that the SIEV be intercepted or that vessels be moved to intercept it—in that sort of detail—or would that be left to you?

Rear Adm. Smith—No, it was left to the Navy to do that. Part of our mission was to intercept. What I was referring to was that, once that interception had occurred, in the early stages in fact we needed approval to board. That was subsequently relaxed as the operation unfolded. But really, once we had intercepted, everything that occurred after that in terms of major decisions—such as boarding, removal of people or whatever it happened to be—actually came from Canberra.

Senator BARTLETT—You said in your opening statement that it was an imperative that CDF and government were rapidly and accurately updated on events as they occurred, and I assume by ‘government’ you mean this joint interdepartmental committee—

Rear Adm. Smith—Correct.

Senator BARTLETT—or the minister?

Rear Adm. Smith—No.

Senator BARTLETT—So when each of these events was happening I presume that there would have been a lot of information flowing both ways and that would always go through you.

Rear Adm. Smith—It was through the chain of command—that is correct—and from me to Admiral Ritchie, from Admiral Ritchie, as I think he has said, to the CDF or at other times to Air Vice Marshal Titheridge and certainly through Air Vice Marshal Titheridge it would then go into that IDC process.

Senator BARTLETT—Air Vice Marshal Titheridge’s role, as I have understood it, is not part of the chain of command—

Rear Adm. Smith—No, it is not.

Senator BARTLETT—but part of the chain of communication.

Rear Adm. Smith—He is a staff officer to the CDF for operations, and Admiral Ritchie would deal with CDF directly and also with the head of Strategic Command.

Senator BARTLETT—A question has been raised a couple of times to date about some of the other incidents whose details have been released in the Titheridge minute and why those were not communicated to government. As far as you are aware, were they communicated to government?

Rear Adm. Smith—I do not know if they were communicated to government.

Senator BARTLETT—In earlier evidence from Brigadier Silverstone—I think it was his evidence but I might be wrong—when we were talking about the SIEV4 incident and the child-over-the-side specific, he basically said in an operational sense that was not particularly significant; what was significant was that if anyone were in the water they got out. So is it possible that in an operational sense—without going through all of these individually one by one although I am sure we will be doing that at some stage—that many of them would not be seen at the time as significant and as needing to be communicated?

Rear Adm. Smith—With all the information through all of the SIEVs 1 to 12, the tactical messages that were relayed from the ships to the JTF headquarters and from the JTF headquarters to my own were subsequently relayed to Defence headquarters in Canberra, to Strategic Command. From there I cannot really comment as to where that information was taken.

Senator BARTLETT—So it is really a matter for Strategic Command as to how much detail they pass on or what is necessary to be done with it?

Rear Adm. Smith—That would be my assessment, yes, and Air Vice Marshal Titheridge would be the best one to answer that.

Senator BARTLETT—So how much detail would be passed on? Would it be this level of stuff that we are getting? What specifically do you provide?

Rear Adm. Smith—Much more than you have there. I referred to it earlier on. We have a suitcase out the back here with about 1,500 or 1,700 messages. All of those messages were relayed to Defence headquarters in Canberra.

Senator BARTLETT—Do you have any mechanism that highlights which bits are of crucial importance?

Rear Adm. Smith—I provided Rear Admiral Ritchie, on a daily basis, with a summary of the events of the last 24 hours. He in turn produced the same type of message which he then forwarded to the CDF, and that was the way we distilled the information that was contained in these detailed messages into a picture—a snapshot—of the last 24 hours of operations, and that is our normal operation method.

Senator BARTLETT—So if you had been providing a summary of events of the last 24 hours it would not necessarily have been the case that that summary contained the fact that one sailor reported that someone threatened to throw a child overboard?

Rear Adm. Smith—It would not necessarily contain that. What we try to capture are extraordinary things, things of interest and things that may have changed from the preceding 24 hours—in other words, to try to alert the chain of command to anything significant that may be there. An incident that is not uncommon would not necessarily be included in that summary message, and I guess I would have to go back through every one of those summary messages to see if we did in fact exclude a particular incident. But normally if there were a SIEV operation under way and there were activities going on like some of the things that I referred to—threats of harm and those sorts of things—we would normally capture that message in the summary.

Senator BARTLETT—I guess it is the level of detail. The interesting thing from reading the statements—at least the ones that we have in some detail—is that when you actually can get the picture of something that goes on over a whole day rather than the five-second snapshot of a child—it is not even clear in some cases whether it is physical action or just someone making a verbal threat—it is part of all the action that happens in a day and is not particularly significant.

Rear Adm. Smith—It would depend—

Senator BARTLETT—It's a case by case—

Rear Adm. Smith—It is a case by case basis. If there were, as I said, a SIEV incident unfolding where there had been a range of actions taken by some of the people on board, we were doing things like fixing pumps or fixing engines, or whatever it happens to be, we would normally capture that sort of information in the daily summary.

Senator BARTLETT—In your involvement in previous activities in the Navy prior to Operation Relex what experience or awareness would you have had of the detail of Navy engagement with asylum seekers? You mentioned in your opening statement that prior to the implementation of the revised border protection policy at that time unauthorised arrivals were invariably cooperative and compliant in a relatively benign environment.

Rear Adm. Smith—Yes.

Senator BARTLETT—Would you have a fair bit of knowledge of that previous environment and the activities that occurred?

Rear Adm. Smith—I have probably got as much as anybody else, having been a Maritime Commander since 2000. We had about a year's worth or a bit more of normal operations before the change of policy, so I was very familiar with that. My job two removed was Brigadier Silverstone's job as the Commander Northern Command where I had responsibility for an operation we called Cranberry, which was not just illegal immigrants but fishing vessels and those sorts of things. So I have had some experience of this type of operation.

Senator BARTLETT—It is an interesting contrast that you have drawn in that part of your opening statement. In a sense it is possibly commonsense, but it is also important that you have specified that it is the case that, in the Navy's previous role with interception, boarding and escorting of SIEVs and transporting their occupants, invariably it was incident free. I am probably slightly rephrasing your words, but you say that in a relatively benign environment unauthorised arrivals were invariably cooperative and compliant.

Rear Adm. Smith—Yes.

Senator BARTLETT—So it was very different from the nature of what people have to confront now. That would seem to me to very clearly demonstrate that it is the changed nature of the engagement that has impacted on people's behaviour rather than the fact that people are inherently prone to this type of threatening behaviour.

Rear Adm. Smith—I think that is a fair assessment.

Senator BARTLETT—You mentioned the requirement of international law imposing positive obligations on mariners. I am not sure if it is worth getting too legally technical here, but I might try anyway. Where does that actually engage? You have the laws that are now passed—which I think you referred to in your statement—that empowered Navy vessels to prevent, to intercept and to tow back to Indonesia. How does that interact with international law? Obviously there are safety of life at sea situations. Does that actually have legal power under Australian law and obligation? Could you outline a bit of the standing of that?

Rear Adm. Smith—Certainly. Under the 1974 International Convention for Safety of Life at Sea and the law of the sea conventions, there are well established principles of customary international law, where obligations do exist for mariners to render assistance to other mariners in distress. We inculcate within our training of young officers with the Navy that responsibility, and I have no doubt at all that every commanding officer understands and respects that responsibility. I have been in the Navy for 34 years. I have commanded four warships. At no time was I ever in any doubt as to what my responsibilities as a mariner were to other mariners in distress. And I have no doubt at all that every commanding officer currently at sea in one of Australia's Navy vessels also understands it as well.

Senator BARTLETT—I do not dispute that in any way whatsoever, but does it have a legal status under Australian law?

Rear Adm. Smith—Under international law we have that responsibility. I would have to take that on notice. I assume that that same thing would apply under Australian law.

Senator BARTLETT—Who would make the judgment of where that kicks in? Would it be the commander of the vessel in that situation, once they determine that this is a safety of life at sea situation and that overrides—that is possibly not the right word—the other mission obligations?

Rear Adm. Smith—Yes. Every commanding officer would be in no doubt that if, in his judgment, a safety of life at sea situation had developed his priority would be to effect the rescue of the people involved in that, and that would take precedence over any other direction he would have received.

Senator BARTLETT—You may not be aware of this, but there was a report—I am fairly sure it was in the *Weekend Australian* in January—about plans by the Australian Maritime Safety Authority to change the requirements in relation to other people engaged in rescue situations and having to notify the Navy first and get Navy permission. Are you aware of that report? I have not heard anything on it since.

Rear Adm. Smith—I am not familiar with that report.

Senator BARTLETT—You are not aware of any pending changes to the role of the Navy in terms of rescue at sea situations?

Rear Adm. Smith—Not at the moment. As you were speaking, I do recall having read something along those lines, but I would have to refresh my memory on that. It is not with me.

Senator BARTLETT—It is not something that is about to be done tomorrow by the sounds of it. In general terms, once you are made aware that a SIEV is on its way, does that normally include information such as how many people are on board or any of that sort of detail? Or would it vary from case to case?

Rear Adm. Smith—It would vary from case to case. Again, this would be information drawn from the intelligence that we would be provided with. I would like to leave that alone if I could until I have clearance to talk about it.

Senator BARTLETT—It would be normal practice, though, once you knew that a vessel was on its way, to start moving one of yours in their direction?

Rear Adm. Smith—Yes, if we had information that a vessel was being prepared, we would probably have a rough idea of the sorts of numbers that might possibly be embarked. We never really had a strong idea of when things would sail, but our operation and the disposition of the forces available to us would take into account that we might not have any warning at all, and therefore we would be prepared in any eventuality.

Senator BARTLETT—Are you aware of the newspaper articles by Mr Tony Kevin in relation to the boat that sank on 19 October last year with the loss of significant numbers of lives?

Rear Adm. Smith—I certainly am.

Senator BARTLETT—We established last week pretty categorically that the report by one of the survivors that there were Australian Navy vessels in the area was not the case. I note that he is now raising questions about why the nearest vessel was so far away. He has put the proposal that they would have been aware that it was coming and asks why it was south of Christmas Island. Do you have a response to that?

Rear Adm. Smith—First of all, I must say I cannot pass up the opportunity to get this on record. I took great offence on behalf of the Navy at the suggestion that a professional organisation such as our Navy would even allow or ignore such a circumstance if we were in a position to assist. As to why we were not there in that particular case: if my memory serves me right, we had some information that a boat might have been being prepared in the vicinity of Sunda Strait but we had no real fixed information as to when it was going to sail. Indeed, the first time that the Navy knew that this vessel had sailed was when we were advised through the search and rescue organisation in Canberra that this vessel may have foundered in the vicinity of Sunda Strait. At that time our nearest ship was about 150 miles away. The reason it was so far away was that we were not permitted to intercept or board vessels in Indonesian territorial waters. Indeed, our patrols were such that we were intercepting closer to our own territorial waters rather than to Indonesia so as not to create any tensions in those sorts of areas. That is the reason why there was no ship nearby. We were not in a position to do anything, so it was better to have the ship where it could do something, which was closer to Christmas Island.

Senator BARTLETT—So, normally speaking, when you talk about moving a ship towards a place to intercept, it is not necessarily going to the nearest crossover point; it is going to Christmas Island or Ashmore Reef or wherever you think it will be going.

Rear Adm. Smith—It is important to understand the way the operation was done, Senator. We were authorised to intercept these vessels on the high seas, and to provide them, if the master was willing, with some warnings—‘Please don’t come our way’—but we were not authorised to do any boardings until the vessel had entered the Australian contiguous zone. The contiguous zone is 24 miles from Christmas Island, so our boarding could not have occurred until 24 miles out from Christmas Island in that particular case. Our intercept could have been further out but we would not have gone as far up as to Indonesia to do that, otherwise we would spend the whole time following that particular vessel back towards Christmas Island before we could do anything. By having the vessel too far ‘up threat’, as we would call it, you run the risk of another vessel coming along and getting in behind you.

Senator BARTLETT—What are the requirements under the directions of Operation Relex with vessels once you have turned them around to monitor what they do?

Rear Adm. Smith—Once we had intercepted these vessels we had no authority to board. Once we boarded—that is, in contiguous zone, 24 miles—we then turned them around and escorted them back to international waters, at which time our boarding party extracted—in other words, they got off the ship and we took it back. Our ships then withdrew over the horizon and monitored just to see what the vessel was going to do, and I think in almost every case they just turned around and came back again. So our monitoring was just to see what they were going to be subsequently doing, and that was what we did.

Senator BARTLETT—It is basically monitoring to see if they would come back.

Rear Adm. Smith—That is correct.

Senator BARTLETT—Again it is probably best to wait to see if we can get this information from paper rather than dragging it out verbally which will take a lot longer. In all of these 12 incidents, did a boarding occur?

Rear Adm. Smith—In all the incidents boardings did occur, yes.

Senator BARTLETT—As part of your overview of responsibility for the operations, does that include those trips taking asylum seekers to Manus Island, for example, or the *Manoora* voyage? Does that come under your command as well?

Rear Adm. Smith—Yes, it does.

Senator BARTLETT—You have mentioned the difficulties and the great lengths that the ships’ companies went to in terms of clothing and laundering et cetera. I did note in one of the many memos we have got that there was at least a request to consider the possibility of the *Adelaide* taking SIEV4 people over to Cocos Island, and it is detailed that the ship really was not equipped. How well equipped are the Navy vessels for that sort of long-range transportation of that number of people in terms of life rafts and safety equipment as well as basic shower and toilet facilities?

Rear Adm. Smith—It depends what ships you are talking about. In the case of SIEV4 and, say, *Adelaide*, an FFG guided missile frigate which *Adelaide* is really only suitable for

emergency transportation of people in a SOLAS type situation. I was very conscious of that fact when it was suggested that the ship may be used for the purposes of transportation of those people rescued from SIEV4. It was one suggestion that did come through, and I had some concerns about that.

In the case of the ships that did do the transportation task, which is the *Manoora*, which is an amphibious ship, and *Tobruk*, which is also an amphibious ship, both of those ships are designed and equipped to carry 450-odd troops, so embedded into the ships' organisation and facilities are appropriate cooking and sanitary type facilities to support those extra people. In both those cases there were no troops embarked so that was additional capability within them. We embarked in both *Manoora* and *Tobruk* additional life rafts to cover the extra people that were on board, and I was quite satisfied that at all times the safety of not only the RAN crew and the Army crew on board but also the UAs that were on board were covered by the equipment that we put on board.

Senator BARTLETT—Nevertheless, you called them difficult and trying circumstances. There were reports of various instances of misbehaviour—for want of a better word—of some of the asylum seekers during the *Manoora* voyage. There were some specific allegations of significant damage done to the *Manoora*. Can you outline what the extent of that damage was?

Rear Adm. Smith—It was fairly minor in monetary terms. It was largely confined to the areas of the ship in which we had some of these people. I make the point that as much as we could we tried to keep these people out of the insides of the ship because in those circumstances it is much more difficult to control the movement of people. For example, in *Tobruk*, which has a large internal deck called the tank deck on which we normally stow tanks and trucks, we set up accommodation, stretchers, curtains and that sort of thing to keep all the people there. In that way we could keep them contained. On board *Manoora*, because of the numbers—we had some 650-odd people on board *Manoora*—there were too many people and there were two different groups of people. It was thought inadvisable to mix the two groups—they were ethnic groups. One group were largely Afghani and the other group were largely Iraqi. There was a concern—

Senator BARTLETT—They were from the *Tampa* and the *Aceng*, I think.

Rear Adm. Smith—Correct. So we had the Afghani group—the larger number—on the tank deck of *Manoora* and the Iraqi group were actually internal to the ship in the accommodation that is normally used by the embarked troops on board. It was with respect to that latter group inside the ship where there was some damage done to the accommodations—the bunks—and there was some damage done to the bathroom facilities that were the troops' bathroom facilities that had been made available to those people. That damage, as I said, was fairly minor in monetary terms, but there was some damage done.

Senator BARTLETT—The quote I was looking for, which I have found, was from the *Daily Telegraph* on 13 October last year—the front page story saying what really happened aboard HMAS *Manoora*—purporting to quote sailors from that vessel. The article detailed allegations including those that boat people broke the arm of a little girl, that Special Air Service troops conducted covert surveillance of a man believed to be a sleeper agent with connections to Osama bin Laden and that a woman tried to throw her daughter over the side of the landing craft. It also concluded that a total of 36 hours of video footage and 800 digital photos showing

riots, fights and ship damage had been taken by the Maritime Commander for review and evidence. Can you verify the accuracy of that?

Rear Adm. Smith—There are a few incidents in there, Senator. We were advised of the incidents that you mention through that particular report. We investigated it and found that there was no evidence to support any of those allegations: no evidence to support the child having her arm broken; no evidence to support any covert surveillance of anybody—I think a small camera was mentioned in that particular article—it did not happen. There was no evidence to support someone trying to drop a child over the side of the LCM. So in fact, with all those claims, there was no evidence to support them. The CO was asked to investigate all of those. I have just forgotten what you said in the second part of that.

Senator BARTLETT—That was about the 36 hours of video footage of riots, fights et cetera.

Rear Adm. Smith—There is video footage and still photographs of the conditions on board *Manoora* and the activities primarily involved with removing those people when they arrived in Nauru. That video footage is contained at my headquarters.

Senator BARTLETT—Would you say it is accurate to suggest that it is predominantly showing riots, fights and ship damage?

Rear Adm. Smith—It is certainly showing a riot, a riot of some significance—and this was the Iraqi group internal to the ship. I must say the Afghani group on the tank deck caused very little trouble. The real issue concerned the other group that was located internal to the ship. These other people refused to leave, which also got a lot of publicity. Part of the video footage certainly shows a riot developing within the mess deck where they were and that was of sufficient concern to the ship that the ship's staff and the army people withdrew and sealed the hatch until they cooled down.

Senator BARTLETT—Given all of those reports you investigated that were found to be false, did you try to ascertain the source of those pieces of information that were allegedly from sailors on board, or communicate your findings to the *Daily Telegraph*?

Rear Adm. Smith—No, we did not. I provided answers to those particular allegations through the chain of command. What actually happened to that information I am unaware of. I certainly did not attempt to locate any sailors who may have spoken to the media about that incident. In fact, I came to the conclusion that this probably occurred when the ship arrived back through a very difficult time in its program, and over a couple of drinks in a bar someone from the media had approached a couple of sailors. Sailors have got great imagination when they want to use it. I can only assume that was part of that particular process. Certainly, we found no evidence to support any of those allegations.

Senator BARTLETT—Over the course of the hearings we have talked a bit about the communication guidelines in place for this period of time in terms of public communications. When those sorts of allegations are made about activities on board a vessel that have been found not to have occurred, is there some expectation—in this case it would be government as they

have to give the approval—that those reports would be corrected? Or is it purely a decision for them as to whether they think it is worth the time?

Rear Adm. Smith—I believe that was a decision of at least our minister. We operate under the guidelines which you have been exploring for some time now, and they still applied for this particular case.

Senator BARTLETT—That incident of trying to encourage the people off the *Manoora* onto Nauru, which did get a fair bit of coverage, would have been one incident where you were rapidly updating government about events as they occurred. Would that situation have been one where government directions would have been involved in how to deal with the situation?

Rear Adm. Smith—It was a very difficult time, Senator, because some of what was going on was not even within the control of our own government as it involved United Nations authorities—in particular, the International Organisation for Migration, who were taking responsibility for the people being landed from *Manoora*. They made it very clear right from the start that they would not accept people who were forcibly removed from *Manoora* so we had to go through the process of trying to convince these people to leave. As I said, the Afghans were very good and did as they were asked. The Iraqi group that were internal to the ship proved very difficult.

Senator BARTLETT—What is the difference in the conditions between internal and external? It does not sound terribly pleasant being locked up inside the troop carrier for long periods of time.

Rear Adm. Smith—I guess the main difference between inside the ship as opposed to on the tank deck was that internal to the ship was airconditioned. The conditions on the tank deck were just forced ventilation and, if you recall, this was operating in the tropics and it was getting quite hot in there. The ship's captain was routinely allowing the people to get out of there and to get onto the upper deck to get some fresh air and some respite from the conditions.

Senator BARTLETT—Do you think that the lower level of cooperation of that group was to do with their environment? Would that have made them more prone to be grumpy?

Rear Adm. Smith—You have asked me to make an assessment there. I guess my assessment would be that they were being difficult because they knew they were on Australia—a warship is Australia. They were reluctant to get off it because they knew that by getting off it they were not achieving their objective.

Senator BARTLETT—Chair, you are wanting us to finish at 10.30 p.m., aren't you?

CHAIR—We are, yes.

Senator BARTLETT—There has been a little bit of questioning about the specific internal—

CHAIR—Unless we can dispose of this witness tonight. The advice I have—I am sad to report—is that we cannot.

Senator BARTLETT—Okay. A few people have been interested in the specific incident on SIEV4 about reports of a child being thrown overboard, which I thought I would just touch upon briefly. We have the record of interview that you have done for the Bryant investigation.

Rear Adm. Smith—Yes.

Senator BARTLETT—Obviously, initial advice was provided to you from Brigadier Silverstone based on his understanding of the telephone call. That was then corrected by written information within a couple of days, passed on to you, and you passed it up the chain of command, which would be to Admiral Ritchie—

Rear Adm. Smith—That is correct.

Senator BARTLETT—and that was your job done, basically. Is that right?

Rear Adm. Smith—In the broad, that is correct. There are a lot of details in there which I am happy to explore if you wish but, yes, that is the end result.

Senator BARTLETT—And your job is not about what happened to it then and to whom it was passed, who knew what and when, and who chose to say what or not. That is not in your responsibility.

Rear Adm. Smith—No, that is correct.

Senator BARTLETT—The issue which Brigadier Silverstone talked about, the special circumstance of communicating with Air Vice Marshal Titheridge, as I understood it, is evidence that occurred specifically only with SIEV4. Did that not occur again because of the confusion that arose over this particular incident?

Rear Adm. Smith—No, there was only one occasion when that particular chain was used. As I said in my introductory statement, there were special reporting arrangements put in place for this whole operation. But in the case of Air Vice Marshal Titheridge there was only one occasion when I directed Brigadier Silverstone to ring the air vice marshal direct and that was on the morning of 7 October.

Senator BARTLETT—Why was that the only occasion?

Rear Adm. Smith—I had a call from Admiral Ritchie on the Saturday evening at about 9.30 p.m., explaining to me that our minister was due to appear on a television show on the Sunday morning, and I just assumed that to be the *Sunday* program or something. He had agreed with Air Vice Marshal Titheridge that he, Titheridge, should be rung at eight o'clock eastern standard time to be updated on the events that had occurred given that we were already in contact with this SIEV, and Brigadier Silverstone was to do that. I subsequently rang on Saturday evening at 2142—from my own phone records to be precise—and told him that information, and that is what occurred.

CHAIR—Would this be an appropriate point?

Senator BARTLETT—I have one more question. The fact that was the only time was not because of the confusion that arose around the incident? It was just because it was the only time you got that request?

Rear Adm. Smith—That was the only time I was asked to facilitate that direct communication. It was to support a media appearance by the minister.

CHAIR—Before we close tonight's hearing, I think we have got an organisational problem again. It is my understanding that tomorrow you take over from Rear Admiral Ritchie as he is leaving Australia for Japan and his office is in Sydney, not here in Canberra. We have also coaxed Air Vice Marshal Titheridge back from leave a day early. I understand he has driven all day today from Adelaide, about a 12-hour drive, to be here to give evidence tomorrow. Perhaps you can give us a bit of guidance, Rear Admiral. Are you able to complete your evidence tomorrow or are there pressing affairs of defence that require you to be in Sydney?

Rear Adm. Smith—I can be available tomorrow, Senator. I have prepared myself for the fact that I would be here and I made some arrangements with Admiral Ritchie that will allow us to do what we have to do. So I am available at your disposal.

CHAIR—Having been burnt by us once, you have boxed clever this time. Fair enough. We will resume at 9 a.m. tomorrow.

Committee adjourned at 10.30 p.m.