



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Reference: Certain maritime incident

FRIDAY, 5 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
Friday, 5 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

SMITH, Rear Admiral Geoffrey, Maritime Commander, Royal Australian Navy470

Committee met at 9.08 a.m.

CHAIR—I call the committee to order. Today the committee will continue its hearings in relation to its inquiry into a certain maritime incident. Today's hearing is open to the public. This could change, of course, if the committee decides to take any evidence in private. The committee has authorised the broadcast of the public aspects of proceedings.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege, and the Senate will use its powers to protect witnesses against any adverse consequences arising from the giving of 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 address questions to counsel. When we adjourned last night, Senator Bartlett had the floor and was questioning Rear Admiral Geoffrey Smith.

[9.11 a.m.]

SMITH, Rear Admiral Geoffrey, Maritime Commander, Royal Australian Navy

Rear Adm. Smith—Before you start, Senator Bartlett, you asked me some questions last night that I have an answer to. You asked me a question specifically about Australian domestic law and safety of life at sea. I mentioned to you that there are two international conventions—the 1974 International Convention for the Safety of Life at Sea, and the 1982 Law of the Sea Convention—both of which place responsibilities on mariners to assist other mariners in distress. The provisions of those international conventions are contained within the Commonwealth Navigation Act and thus are part of Australian domestic law. Further to that, within my Maritime Commanders Orders, called MARORDS, there are clear directions to all naval commanding officers:

In normal peacetime circumstances, HMA Ships are to render assistance in accordance with article 98 of the Law of the Sea Convention.

Senator BARTLETT—Thanks for that. I also asked last night whether it was possible to get any sort of summary of the various 12 SIEV incidents.

Rear Adm. Smith—I was going to get to that, Senator. In fact, there are a number of documents that I can table for the benefit of the committee to help you work your way through this. In answer to your particular question, I do have summaries for each of the 12 SIEVs. They are not official documents in the sense of a minute; they are my briefing notes, which are a precis of all the information and signals that sit beneath each of these SIEV incidents. I am happy to table that summary.

You will notice that there are a couple of sections that have been blacked out. What was contained in those are merely ports of departure from Indonesia, which have been drawn from intelligence background and which I am unable to release at this time. I am happy to table the document.

CHAIR—If it is passed up, we will receive it and then agree to the tabling.

Rear Adm. Smith—There are also a couple of other documents, if you would care to consider those in the same context. Senator Collins, in *Hansard* at page 123, sought the provision of a copy of the Maritime Commander's report on SIEV incidents that dealt with the same information as the brief, titled 'Unauthorised arrivals', from the head of strategic command. I think the committee have called it the Titheridge report. I have my document here, and I am prepared to offer that also. That is available for your consideration.

The final one is one that I have produced personally—a matrix document which covers SIEV1 to 12. The matrix shows the dates of the activities, the naval ships involved in the operation, the outcome of that particular operation and a range of activities that could have occurred—children thrown overboard, threat to children, threatening of offensive behaviour, threat of suicide or self-harm, sabotage or fire et cetera and hunger strike. I have noted for each

those SIEVs when those sorts of events occurred. There is also a summary table at the end with some other incidents. I am happy to make that available to the committee should you wish.

CHAIR—Perhaps you should hand up those documents. We will receive them and make a decision about tabling.

Senator BRANDIS—Could I ask a question of Rear Admiral Smith in relation to the bundle of documents that has just been handed up under the generic title ‘events summary’? I am just flicking through them. On page 2 of the SIEV6 event summary, the word ‘restricted’ appears at the head of the page. From the Navy’s point of view, are there any limitations—whether for reasons of security or otherwise—on the committee publicly releasing these documents?

Rear Adm. Smith—There is no reason; in fact, we should have deleted that particular heading, and we will do so.

CHAIR—I have before me the first group of documents that you have handed up, Rear Admiral. These have been typed up from your handwritten notes, have they?

Rear Adm. Smith—These have been typed up as a result of taking all the source documents that underpinned each of these 12 SIEV activities, and I have precised in that document that information from those source documents.

CHAIR—So this represents a precis by you of those source documents?

Rear Adm. Smith—That is correct.

CHAIR—And, as you said, it is not an official document?

Rear Adm. Smith—It is my notes.

CHAIR—It is an aide-memoir for you?

Rear Adm. Smith—Correct.

CHAIR—Is there any reason why we should not table them?

Senator BARTLETT—No.

Senator JACINTA COLLINS—Let me clarify: regarding the document in answer to my earlier question, have you made it available for copies to be taken?

Rear Adm. Smith—Yes. I believe the secretariat has that.

Senator JACINTA COLLINS—Which one is it?

Rear Adm. Smith—It is this one here, with a minute up the top, and it is addressed to the CN, Chief of Navy.

Senator FAULKNER—Could I ask you about the numbering of the SIEVs? Prior to the key date being midnight 3 September—you provided that key time and date to us yesterday—there of course were other vessels that one could generically describe as suspected illegal entry vessels—in other words, that predate SIEV1? I think that is fair to say, isn't it?

Rear Adm. Smith—That is correct.

Senator FAULKNER—Could I just ask so I understand—and, of course, there will be events surrounding the *Tampa* which are well known—what system did you use prior to SIEV1? Did you use the actual names of the vessels? How did this work prior to the commencement of Operation Relex in a formal sense?

Rear Adm. Smith—There was not a formal numbering system for the incidents prior to the commencement of Relex. The numbering system of SIEV1 to 12 applies only to those events that occurred under the auspices of Operation Relex. Prior to that, the reporting methodology would have been either the name of the vessel or some other distinguishing feature. They were not tracked in the same way as the Relex ones had been.

Senator FAULKNER—If we were to go back through the month of August 2001, would you be able to similarly provide some information to the committee about the number of suspected illegal entry vessels although they are not numbered? If you were to do that, would you do that by name of vessel or by description of event? How would that work?

Rear Adm. Smith—For the events prior to 3 September, it was not the ADF's lead in this matter. The Coastwatch and the Department of Immigration and Multicultural and Indigenous Affairs had the lead for these. The department of immigration allocated code names to these various vessels when they were reported. If I were asked to go back through our records, all I could provide would be that information that we inputted into Coastwatch from our own interception of those particular vessels. I would not have information on what happened to those vessels after we had handed over custody of them.

Senator FAULKNER—So you make the key distinction here that it was with SIEV1 that there was an absolute ADF authority, which was a result of the legislative changes. Is that the point you would make?

Rear Adm. Smith—It was not the result of the legislative changes; it was a government decision that the ADF would take the lead. Prior to 3 September, we were a supporting agency; after 3 September, we were the lead agency.

Senator FAULKNER—Just so I am clear, this is Operation Relex. I do not know what the basis of the terminology 'Relex' might be. But prior to Relex was there a Naval or ADF operation or relevant operational name?

Rear Adm. Smith—Yes, there was. It continues today. It is known as Operation Cranberry and it has been going for some years. It sweeps up the ADF support for the national surveillance effort, which is coordinated by Coastwatch, and it covers illegal immigration and also illegal fishing and any other Customs support that we may be asked to provide.

CHAIR—The question is: do we release these documents? I have a question of whether they are relevant to our terms of reference.

Senator FERGUSON—We have been talking about these things right through the whole of the inquiry.

CHAIR—I know I have been liberal in my interpretation, but we have to come to a point of looking at our terms of reference and deciding on the question of whether they are relevant to our terms at some stage because the amount of time this inquiry is taking is blowing out and making it very difficult for us to keep our deadline. I am just a bit uncertain as to whether these documents do relate in any way to our terms of reference. Our terms of reference seem to me, as handed to us by the Senate, to relate to the SIEV4 incident and this introduces a whole range of new material.

Senator BRANDIS—May I speak to that?

CHAIR—You may.

Senator BRANDIS—Paragraph (c) of the terms of reference reads that we are to inquire and report on:

(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.

May I simply make two points. First, plainly that paragraph of the terms of reference is not limited by the limiting words in paragraph (a) as paragraph (b) is so limited: that is, it applies generally and not merely to SIEV4, and that is the way it has been understood throughout the public hearings by you, if I may say so with respect, correctly. The second point I wish to make is that nor is paragraph (c) of the terms of reference limited to incidents involving the safety of children; rather, it deals with all matters concerning the safety of asylum seekers of illegal entry vessels.

CHAIR—Does anyone else wish to comment on this question?

Senator FERGUSON—If I could support what Senator Brandis has said, right from the very start of this inquiry you said you wanted to be exhaustive and to look at all the issues that are covered by the terms of reference. We have discussed all of those SIEV incidents all the way through this inquiry and when Rear Admiral Smith supplies us with further detailed information, I think it would be quite contrary to all the actions that we have taken in the past three days to not allow all the evidence that is available to this inquiry to be used by the inquiry and made available. What we do with that evidence is up to us. As Senator Brandis said, that part of the terms of reference that he quoted clearly covers incidents outside of SIEV4.

Senator MASON—I will be very brief. Two things: I think, as Senator Brandis and Senator Ferguson said, this discussion is clearly within the terms of reference and perhaps not just paragraph (c) of the terms of reference but also elsewhere within the terms of reference; and, secondly—perhaps less importantly but still I should raise it—it has always been this

committee's understanding that these issues can be canvassed, as they have been over the last few days.

Senator FAULKNER—The point I would make here is that in paragraph (c) of the terms of reference we are not using the 'upper case' terminology 'Suspected Illegal Entry Vessels'; we are using the terminology 'vessels entering or attempting to enter Australian waters'. Hence I asked the question of Admiral Smith in order to get a broader understanding of what occurred before the actual numbered Suspected Illegal Entry Vessels 1 to 12. I would be interested in your interpretation of whether that falls within the terms of reference. You might well argue, given the way the terms of reference are structured, that any vessel after 1901 might fall into that category.

Senator BRANDIS—Chair, if it helps, can I respond by saying we will limit ourselves to—

CHAIR—Wait a minute. I was not aware that Senator Faulkner had finished.

Senator BRANDIS—I am sorry; I thought he was directing a challenge to the government senators. Perhaps I misunderstood.

Senator FAULKNER—I never direct challenges to government senators. I was merely drawing the chair's attention to the fact that my questioning involved vessels that, just a moment ago, you would not define as upper case and numbered 'Suspected Illegal Entry Vessels'. In other words, it is not one of the so-called 'SIEVs' in a formal sense, using 'SIEV' as the technical terminology which applies from midnight on 3 September. So there is that issue which we have not considered, Chair. It is probably useful for us to make some sort of determination; I think that will have an impact on the timing of the inquiry because it does bring into play a range of other issues, particularly those that occurred prior to the interception of SIEV1.

CHAIR—Any other comments from anyone who has so far not spoken?

Senator BARTLETT—In terms of this information, as well as the conduct of the inquiry to date, we have received other documents, kindly provided by Senator Hill, despite the cabinet directive, that have gone to other incidents and other SIEV situations. I think it would be difficult to argue that it did not come under paragraph (c) of the terms of reference or, indeed, I would probably argue at least in part, under the second part of paragraph (d) of the terms of reference in terms of the activities of the *Manoora*, engaging at Nauru and that sort of thing. I am a bit reluctant in a sense, because I am fully aware of what this sort of information is going to be used for today. I should note the talk about operational procedures not assessing the moral character of asylum seekers, but I can make that point later. In terms of the documentation about this being summaries of operational procedures, I think it is relevant.

Senator JACINTA COLLINS—Chair, I do not have any particular objection to this documentation being taken as a more general description of events. In fact, I think part of the material that Rear Admiral Smith is providing is in response to a request of mine that these incidents be taken in their full context rather than just any reference that might pertain to a child, taken out of context, which is what I believe the earlier documentation did do. Further to Senator Bartlett's comments, I think it was deliberately used to do that. I, too, concur with his

concerns that at the moment we have a drip feed of information from the Minister for Defence. I would seek some clarification as to where our request for a full response from Defence in relation to our terms of reference is at. Simply dealing with a selection of documents on a selection of issues within our terms of reference is not appropriate. We still do not have a full brief from Defence with respect to our terms of reference, and I think it is important to note that at this stage.

Senator FERGUSON—Mr Chairman, if we are going to discuss this further, I think it should be at a private meeting, not as part of the public hearing.

CHAIR—It is a matter that relates to our publicly published terms of reference. I raised the question in the first place. We have had a position put by everyone other than me. I am mindful, Senator Brandis, that you seek the call to comment on something that Senator Faulkner has said.

Senator FAULKNER—He was just asking whether I was—

Senator BRANDIS—I will waive that.

Senator FAULKNER—I was not issuing a challenge to the government.

Senator BRANDIS—I just thought it might be helpful to indicate that, since it was Senator Faulkner's principal concern, as I understood it, that at least theoretically this could be an endless inquiry, from the point of view of at least the government senators, we will restrict ourselves to nominated or defined SIEV incidents and not go beyond that.

Senator FAULKNER—My point is that in the terms of reference no such restrictions apply.

Senator BRANDIS—We can narrow it by a self-denying ordinance.

Senator FAULKNER—You can self-deny. Senator Brandis, if you begin to self-deny, that would be a step forward.

CHAIR—Let me just go to the question from the Chair's point of view. It has been raised by Senator Ferguson—and it is a reasonable suggestion—that perhaps this discussion should continue in private if there is a desire to do so.

Senator FERGUSON—It should not be on the public record.

CHAIR—It may be that that is an appropriate place to continue this discussion. However, I raised the question of terms of reference because it goes to the jurisdiction of this committee. Term of reference (c) has been identified as the one in which this documentation would be allowable. I just want to state for the record that term of reference (c) was an amendment moved in the Senate by Senator Mason but foreshadowed to the committee and moved with the unanimous approval of the committee. It was accepted unanimously by the Senate. I also further want to observe that it reads:

(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.

That means we look at every single effort. This is indeed a very big inquiry, much bigger than the deadline we have allowed. It is much more exhaustive and demanding on the resources of the defence department and other agencies than we have privately considered was likely. That is the second point.

The third point is that at this stage no-one has bothered to ask any questions about what were the operational procedures but rather to concentrate on what events did occur. There is a distinction between what this term of reference provides and where the line of questioning is going. I have been liberal about that interpretation but there needs to be a consideration to balance our timing against our objectives. When this term of reference was introduced it was represented to the committee that, for want of a better term, the Kevin hypothesis—

Senator FERGUSON—I imagine you are now talking about discussions that took place at a private meeting of the committee. I do not think the public record is a place for that to be discussed.

CHAIR—This is on the public record. I put it on the public record in the Senate when I made an explanation—

Senator FERGUSON—I accept your explanation.

CHAIR—as to the attitude of the opposition in accepting the terms of reference. I want to simply go to that and say that the Kevin hypothesis was presented to the committee as the basis for the need for this term of reference. I do acknowledge that Senator Mason has asked questions concerning that.

Senator MASON—Yes.

CHAIR—If that was the intended reason for this term of reference, precious little attention is being paid to what I thought was, and what the committee believed was, the need to clear the Australian Navy of any accusations that might be contained in, for want of a better term, the Kevin hypothesis. It was to set that thing to rest rather than to hold a wide scoping inquiry into every single event. I hope we have not been misled about that and that is still the intention of this provision.

I do think that this provision is now being expanded to be more than what was meant. I do share the concerns expressed by Senator Collins about material coming forward in a piecemeal manner and late in the day. If that were to continue, my intention would be to slow the proceedings to enable the committee to digest that material and be primed to properly examine it with witnesses that appear before us.

I do note that the chief of staff of the minister has written to Mr Holmes, the secretary of the committee, querying what it is that we want when we ask for all material to be available and saying that they will respond to specific material. I do think it is appropriate for the committee to note that any material relative to our terms of reference should be made available, lest the defence minister be subject to a suspicion that he is providing selective material to suit a case that he might wish to present, rather than enabling this committee to conduct an inquiry into what did occur.

Having said all that, and having heard the views of the committee, the position of the committee is that we should proceed in this manner. I also think that this matter should be pursued further in private discussions. What we are now facing up to is a much more expanded inquiry and almost an incident by incident in-depth analysis, which will tie up resources not only in the Senate but in the defence department and elsewhere to a considerable degree. I am not entirely sure that that was in the mind of the Senate at the time that we adopted the terms of reference that we have.

Senator BRANDIS—Mr Chairman, I know you rule but may I say two things to this, if only as deputy chair?

CHAIR—Yes.

Senator BRANDIS—Firstly, I recall that Senator Mason, when he proposed this amendment to the terms in a private meeting, did refer to Mr Kevin's allegations. I did not understand him to be limiting himself to that and indeed, I recall him saying that he was in general concerned that the repute of the Navy, in the manner in which it dealt with these incidents generically, had been put in issue. In fairness to the Navy, the Navy ought to have the opportunity to respond to the suggestion that it had handled itself less than fully professionally as it should have.

In any event, whatever may have been in Senator Mason's mind, when I supported the adoption of term of reference (c), I did so because what I wanted to explore were the operational procedures observed by the Navy and relevant Commonwealth agencies to ensure the safety of asylum seekers on vessels entering, or attempting to enter, Australian waters. I have indicated to you today that I will restrict myself to the 12 SIEV incidents. In order to explore that, obviously and consistently with your earlier and, with respect, correct rulings on relevancy, it is necessary to establish to a degree the factual substratum, or the factual context, in which these events occurred. To that extent I adopt what Senator Collins has had to say.

Finally, I initiated the request for information, including source documents, from the Minister for Defence. I have met with some success, as you know. As I read the minister's most recent communication to the committee, that would appear to me to exhaust that line of inquiry. In other words—although I don't know this for sure—I am not anticipating any further documents along that line of inquiry. If the concern is—to use an expression that has been used—the drip feeding of documents, I think all the documents that that line of inquiry was likely to produce have now been exhausted.

Senator FERGUSON—I would like to make a very brief comment. We have been here for 40 minutes with a witness sitting before us, essentially discussing what I think are private meeting matters. I believe we should get on with the questioning of the witness. If we are going to have any further debates about this, they should be held at another time other than when we have a witness sitting before us.

CHAIR—In response to the last question, which was more in the form of a point of order, our terms of reference are published, we are a public hearing and how we view our terms of reference is a matter of public importance. If this inquiry is thought to have deviated from its terms of reference then there ought to be some explanation as to why we think the way we do—if we do. I think it is an entirely inappropriate conversation to have in public but, I do think

having put our views down, we should proceed. This matter can be dealt with further in a private meeting.

Senator FERGUSON—I agree with that. Perhaps I should also say that the original terms of reference were drawn up without any consultation with government senators whatsoever. Amendments to those original terms of reference are only made by unanimous agreement between members of the committee, and I think we should proceed on that basis.

CHAIR—I do not know whether you want to go down that course but, if you do, I would be bound to observe that you voted against them completely, without any consultation with the movers either. We both know that the opportunity for consultation on matters of this nature exists and is routinely resorted to in the Senate. I think that means that we are at a position to consider the release of the documents that have been tabled. What is the wish of the committee?

Senator BRANDIS—I suggest that they be released, which is consistent with the view that the committee has adopted with bipartisan support in relation to earlier tranches of documents.

Senator JACINTA COLLINS—Sorry, which documents are we releasing at this point?

Senator BRANDIS—I assume that they are the documents that have been produced by Rear Admiral Smith.

Senator JACINTA COLLINS—The problem is that we have one document but we do not have the others yet to see.

CHAIR—I am only dealing with the first document at this stage.

Senator BARTLETT—The event summaries.

CHAIR—The event summaries 1 to 12.

Senator BRANDIS—Mr Chairman, I propose that event summaries 1 to 12 be released.

CHAIR—Is there any disagreement? There being none, it is so ordered. Is your second document the minutes to the Chief of Navy, Rear Admiral?

Rear Adm. Smith—Yes. The provision of that document satisfies the question on notice from Senator Collins.

CHAIR—Is it agreed that we release this document? There being no opposition, it is so agreed.

Senator JACINTA COLLINS—I am sorry; I am still trying to work out what additional information is in this document as opposed to the first one.

Rear Adm. Smith—The document that I provided is the document that I produced in response to a direction from the Chief of Navy. That document was provided and the Titheridge document was drawn directly from my work.

Senator JACINTA COLLINS—Fine, thank you.

Senator BRANDIS—It is similar to the Titheridge document.

Rear Adm. Smith—It is exactly the same.

Senator JACINTA COLLINS—Okay, that is my point: is it the same document?

Rear Adm. Smith—In terms of the explanation of the events it is the same that is produced here.

Senator JACINTA COLLINS—Can you explain to us the difference between the two? This was the issue that was originally discussed.

Rear Adm. Smith—I received a telephone call from the Chief of Navy prior to the production of this document. He had had a conversation with the Chief of the Defence Force. He directed me to seek information from all naval units that had been involved in Operation Relex, and asked me some particular questions which are contained at the front of that document in paragraph 2. I sent a defence message to all the ships involved in the operation asking them to report back, and they did so. In the enclosures of this document are the responses from the various ships that were involved in Operation Relex and who had information concerning the use of children who had been either threatened, actually harmed or thrown overboard.

Senator JACINTA COLLINS—I am sorry—I have not revisited the *Hansard* on this issue—but at the time there seemed to be some uncertainty over the formatting or some difference in the arrangement which was why I requested the original. Can you take us to what those differences are, if any?

Rear Adm. Smith—The sequence is a little confusing in the sense that I have reported these ship-by-ship rather than in a chronological order.

Senator JACINTA COLLINS—It was not quite chronological either, was it?

Rear Adm. Smith—I am not sure about that, Senator, but certainly the way I presented it was ship-by-ship reporting which does tend to confuse. That is why I thought my matrix may have given a bit more clarity to the sequence.

Senator JACINTA COLLINS—This document is essentially the same as the Titheridge document?

Rear Adm. Smith—It is the source document that formed the basis of the Titheridge submission to the minister.

Senator JACINTA COLLINS—There is no real difference in content or order?

Rear Adm. Smith—No, the staff have checked the words in my document with the words in the Titheridge document and they are the same.

Senator JACINTA COLLINS—I have no objection.

CHAIR—No objection.

Rear Adm. Smith—Mr Chairman, there is one point I need to clarify. There was an error in the document that we provided, which is enclosure 9 to this document, which is the report by HMAS *Bunbury*. Both *Bunbury*'s signal and my summary of that signal are here. They refer to SIEV6—in fact, that should be SIEV7.

Senator JACINTA COLLINS—Which the later document clarified as well.

Rear Adm. Smith—Yes.

CHAIR—Then you have got this matrix?

Rear Adm. Smith—That is correct.

CHAIR—We have now agreed to release that second document.

Senator FAULKNER—Just so that I am clear, Admiral Smith, this minute is one that you effectively developed as a result of a request from the Chief of Navy?

Rear Adm. Smith—That is correct, Senator.

Senator FAULKNER—Do you know the background to that request from the Chief of Navy?

Rear Adm. Smith—The only background that I am aware of was that Admiral Shackleton told me that he had had a discussion with the CDF and that out of that discussion this requirement was generated.

Senator FAULKNER—Do you know the date of that?

Rear Adm. Smith—If you look at the minute to the Chief of Navy, you will see reference A 'MCAUST message', and that is dated 20 February. If my memory is correct, that was the day I also received the direction from the Chief of Navy. We sent the signal on the same day.

Senator FAULKNER—Am I right in thinking that was the same date, 20 February, when the Senate estimates committees were dealing with Defence? So you do not know whether the request originated with Minister Hill or not? You just know that it came from CDF—from the Defence chain of command?

Rear Adm. Smith—That is correct, Senator.

Senator FAULKNER—We should be able to establish this fairly quickly, but would you mind taking on notice the question of whether CDF generated that request on 20 February—the day the Senate estimates were meeting—or whether it was as a result of a ministerial request?

Rear Adm. Smith—I will certainly do that, Senator.

Senator JACINTA COLLINS—Chair, there is one further point I want to clear up about the documentation. Rear Admiral, we also have references here to statements from the *Arunta*. We have a letter from the minister to Senator Brandis indicating some information relating to those incidents but we still do not have any statements. Do you have those statements with you?

Rear Adm. Smith—No, I do not, Senator. Those statements do not exist. The signal that came from *Arunta* in response to my request for this information contained advice that statements supporting the incidents which they describe were held on board. Subsequently, the Commanding Officer looked into that matter and came to the conclusion those statements did not exist. So that was an error in the provision of their information. That error was contained in my submission and also contained in the Titheridge report.

Senator JACINTA COLLINS—So the clarification is that the Titheridge report referred to ‘statements’, but they do not exist.

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—So the report was incorrect in that respect.

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—Instead of those statements, the only references we now have are from the *Arunta* ADA/LAB in a letter that has not yet been tabled, I think, by the minister. How would you describe these reports—*Arunta* ADA/LAB?

Rear Adm. Smith—That is an official signal from HMAS *Arunta* in response to my call for information.

Senator JACINTA COLLINS—From your signals; can you make available to us the full signals?

Rear Adm. Smith—Yes, I do have that signal here.

Senator JACINTA COLLINS—Was there just the one signal? There are three different references: *Arunta* 13M, *Arunta* something else—I cannot read it—and the next one is 13M as well.

Rear Adm. Smith—I misunderstood what you were saying. In that particular document there that has been provided, those signals are here and are available to present to the committee. They support those ones in italics.

Senator JACINTA COLLINS—Yes, that is what I am asking for, the full context of these references in italics, if you could provide those as well?

Rear Adm. Smith—Those italics references are here.

Senator JACINTA COLLINS—Thank you.

Senator BRANDIS—Rear Admiral Smith, just so I can get that clear beyond question: in relation to *Arunta* incidents 2, 3 and 5 referred to in the Titheridge memorandum, which I gather are the same as *Arunta* incidents 2, 3 and 5 referred to in your minute, the source documents proving those events are signals not witness statements?

Rear Adm. Smith—That is correct.

Senator BRANDIS—And you have those signals here?

Rear Adm. Smith—They are these here.

Senator BRANDIS—Thank you.

Senator FAULKNER—Pursuant to the questions I was asking you before, Rear Admiral, in the spreadsheet it kicks off with the SIEV event and says *Tampa* in pen script. Can you explain to me why that inclusion is there in pen?

Rear Adm. Smith—That is my own handwriting. It was to remind me of the dates of the *Tampa* activity prior to the commencement of Operation Relex, which followed *Tampa*.

Senator FAULKNER—I see. So what you have done is put *Tampa* and put the dates there and, chronologically, the other SIEV events?

Rear Adm. Smith—That is correct.

Senator FAULKNER—It is just a memory jogger, is it, basically?

Rear Adm. Smith—Exactly.

Senator JACINTA COLLINS—Chair, while we are still clarifying what documentation we have, the letter I referred to earlier—which was provided to members of the committee I think through Senator Brandis—includes witness statements relevant to this overall evidence as well and I think it should be released also.

CHAIR—Let me take these matters in order, and that will go on the list. We have now agreed to the release of the second document, which is the minute. The third document is this—

what did we call it?—matrix. I seek from the committee an indication if there is any objection to the release of this document?

Senator FAULKNER—I just note that this begins with the *Tampa* on 27 August. My suggestion before about the fact that there are no time limitations on the terms of reference was not a suggestion that we go back to His Majesty's barque *Endeavour*—some people might define that as a suspected illegal entry vessel.

CHAIR—You would have to go back to Indonesian and Malay fishing vessels entering Australia in the 12th century, if you wanted to go right back.

Senator FERGUSON—You would have trouble getting witnesses!

Senator FAULKNER—Oh, I do not know—we could dig away, Senator Ferguson. I just note that this document has that particular starting point. While the terms of reference might be silent on this, I think it would be sensible for us to interpret the terms of references as really relating to the role of Defence and government agencies in Operation Cranberry. I do not think it would be sensible for us to go beyond that.

Senator BRANDIS—Operation Relex.

Senator FAULKNER—No, Cranberry—I am saying that deliberately because I have heard what the rear admiral has said about the interface between Relex and Cranberry.

CHAIR—For the sake of clarity of the record, there is a document—I will come to yours in a minute, Senator Collins—we keep talking about as the Titheridge report or, in some other formulation, the Titheridge memorandum or memo.

Senator MASON—Or Titheridge minute.

Senator JACINTA COLLINS—I think we should amend that and call it the Smith report now.

CHAIR—We have released this document. It is the document headed 'Australian Defence Headquarters, Strategic Command: Minute'. It has a prominent heading 'Unauthorised arrivals information' and it has the reference: 'Telcon COS MINDEF/CN SEC 28 Feb 02'. That is the document we are referring to as the Titheridge report, memo or minute. For the sake of clarity, Rear Admiral Smith, can you tell us what the reference 'Telcon COS MINDEF/CN SEC 28 Feb' means?

Rear Adm. Smith—That would be a telephone conversation between the chief of staff to the Minister for Defence and the secretary to the Chief of Navy.

CHAIR—Do we assume, therefore, that the so-called Titheridge report, memo or minute, is a document requested by the minister's office, or by the office of the minister's chief of staff, from Air Vice Marshal Titheridge—that it is not something he has done himself?

Rear Adm. Smith—You could draw that conclusion, Senator, but to confirm it you would need to speak to Air Vice Marshal Titheridge himself.

Senator FAULKNER—I thought my question on notice dealt with that. Are you now drawing a distinction between your minute and the Titheridge report? Do you think it is reasonable to draw a distinction, given the background, between your minute and the Titheridge minute?

Rear Adm. Smith—I can only comment with certainty on what generated this report in the first instance, which was a telephone call I had from the Chief of Navy directing me to obtain this information.

Senator FAULKNER—There is no doubt in my mind what the situation is here, but I think it is important, Mr Chairman, that the question on notice that I asked about the Maritime Commander's minute might well also apply to Air Vice Marshal Titheridge's minute.

CHAIR—Yes.

Senator FAULKNER—I think we should be able to ask if Defence could respond quickly to that, so that we understand the background and the timing—the timing is the other crucial issue in relation to this. I think we know what we have here, but we may as well get it clear.

CHAIR—Rear Admiral Smith, my only other question is this: when you were directed to prepare your report, were you directed as to exactly what issues were to be reported on, or were you given open discretion to report on all matters?

Rear Adm. Smith—No; I was given specific questions. On my report, which you now have, the specific questions that I was given are at para 2.

Senator FAULKNER—Those questions came from the Chief of Navy?

Rear Adm. Smith—That is correct.

CHAIR—We have not formally dealt with the release of the matrix. Is there any objection now as to why it should not be released? There being no objection, it is so ordered.

Senator FAULKNER—So that I am clear, Rear Admiral, when was the matrix actually created?

Rear Adm. Smith—It was created as I prepared for this inquiry, drawing upon all the source documents—some 1,700 of them.

Senator FAULKNER—And I assume from what you said before—but one should not rely entirely on assumptions—that it was basically your own initiative to draw up the matrix.

Rear Adm. Smith—That is correct.

Senator BRANDIS—Further to that question, Rear Admiral Smith, do I take it that the matrix really serves two purposes: first, to display in tabular form different characteristics of each of the SIEV instances; and second, by reference to the various footnote references, to refer each of those incidents to the source document?

Rear Adm. Smith—That is correct.

CHAIR—We are all done on that issue. Senator Collins, as I understand it—correct me if this is wrong—you have requested, first of all, the document we have before us from the Minister for Defence, which has not been released.

Senator JACINTA COLLINS—Yes.

CHAIR—Subsequent to that, you have requested from Rear Admiral Smith the *Arunta* signal. We now have that document before us.

Senator JACINTA COLLINS—Yes, that is right. I have not had a chance to look at the signal yet.

CHAIR—With respect to the first document, the letter from the Minister for Defence, our concern has been to be careful to ensure that what is released does not contain any matters of security. I am a bit uncertain—and I need some advice on this—as to whether or not that document has been given a security clearance, because that would seem to me to be the only reason why it is being held up.

Senator BRANDIS—I think the document in fact refers to Rear Admiral Smith being, as it were, the custodian of the source documents referred to within it. I am not sure if this is so, but perhaps Admiral Smith can tell us the answer to that.

CHAIR—I have just been advised that we have received advice from the responsible figure in the Defence liaison team that this document is clear from the point of view of not inadvertently disclosing sensitive material. Consistent, then, with the usual practice, is there any objection to this document being released? There being no objection, that is so ordered. That includes the covering letter.

Senator JACINTA COLLINS—On the next one, Chair, I just need to clarify with the Rear Admiral exactly what this signal is. It appears to me, on looking at it, that this signal—the first of the two given to me—is the *Arunta*'s response to your request?

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—So, in one sense, it still remains secondary in nature—it is not the primary source of the claims?

Rear Adm. Smith—The incident that this signal is supporting is incident 2 of *Arunta*. There was no operation report submitted on that particular incident. We do not always capture every single activity in an operational report. In this particular case that was not captured in such a

source document, and this was drawn from their own records from the ship and that is why we put forward as the basis—

Senator JACINTA COLLINS—What I am asking for are the primary records.

Rear Adm. Smith—We would need to go to the ship, then, and draw that from the ship.

Senator JACINTA COLLINS—Okay. Is it possible to get a photocopy of the relevant excerpt from the log, or whatever it is that we are referring to? The first report told us that it was a witness statement; we have now been told it is not a witness statement. Instead, we are given simply the *Arunta*'s response to your request for information. We still have no primary material to sustain the claim. I would like to see what primary material exists, if any, to sustain the claim.

Rear Adm. Smith—I can provide that by going to the ship, Senator.

Senator JACINTA COLLINS—Can you tell me what it is? We now know it is not a statement. Is it the log? What is it?

Rear Adm. Smith—I will take that on notice.

Senator JACINTA COLLINS—Okay. So that is incident 2. What about incident 3, the strangulation: what primary material is there in that respect?

Rear Adm. Smith—On the incident that you refer to, the primary document is the one that I provided, which is the operational report from *Arunta* which was produced as the incident unfolded. That contains—

Senator JACINTA COLLINS—Okay. That is a live time one?

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—The fifth one, incident 5: what is the primary material for that?

Rear Adm. Smith—Again, that is the signal that I provided to you. It is the operational report as that incident was occurring and it contains the information in there.

Senator JACINTA COLLINS—I am sorry, that is another document that is there as well.

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—Thank you, that clarifies that.

CHAIR—Are we now resolved that the signal that has been tabled be released? There being no objection, that is so ordered. Are there any other matters before I hand the call back to Senator Bartlett? As there are no other matters, I call Senator Bartlett.

Senator BARTLETT—I will start the questioning then, and I will not be going to these documents for the moment but to the bit of clarification that you provided about international law. You may want to take this on notice because I do not expect you to be an interpreter of the law. You have outlined that it is incorporated in the Commonwealth Navigation Act and I was wondering if you could inform us whether the requirements of that act are overridden in any way by the border protection legislation passed last year which, as I recall, contained clauses to the effect that this act overrides every other act.

Rear Adm. Smith—From my perspective, I am not aware of the border protection legislation in any way overriding the duty of responsibility for mariners under the conventions that I have quoted to you.

Senator BARTLETT—Again, I am not in any way suggesting that Navy would ignore people at sea. I am just trying to verify the legal component of it under Australian law. We touched briefly yesterday on the offloading of people off the *Manoora* onto Nauru. You outlined a bit of the difficulty there and the role of the IOM in taking responsibility for the people. I am just wondering about the jurisdictional issues: at what stage do the people cease to be your responsibility and at what stage do they then become the responsibility of another organisation or another nation? Is that detail reflected in any way in the agreements that have been reached by the Australian government and the PNG and Nauru governments?

Rear Adm. Smith—I cannot comment on the government to government agreements that underpinned this operation as I had no visibility of them. From the operational perspective, which I can speak about, the responsibility for the wellbeing of the unauthorised arrivals was transferred to the IOM on discharge of those people from the ship's boats.

Senator BARTLETT—And what is your understanding of the legal status of the people whilst they are on the *Manoora* or various other ships when you have boarding parties on board and that sort of thing?

Rear Adm. Smith—Could you just clarify that question?

Senator BARTLETT—We will just leave boarding parties to one side for the moment. You say you have custody of people when you have taken them on board a navy vessel. What is their legal status in that sense? They are obviously not in Australian waters so they are not in a situation where they are unauthorised non-citizens. Do they have a particular status in terms of being people on board someone else's vessel?

Rear Adm. Smith—I am unable to comment on the legalities that underpin this operation and the status of these people on board. The way we approached it was that we had responsibility for their wellbeing whilst they were on board the ship and we discharged that responsibility. You would need to talk to others about the legal aspects that underpin this.

Senator BARTLETT—Just in terms of the range of your commands with Operation Relex, does that include all of the vessels patrolling the regions? Does that include the Orion aircraft as well as the Navy vessels?

Rear Adm. Smith—Yes, it does, Senator.

Senator BARTLETT—So you would be aware of what their movements are and what they see. They would be providing reports to you as well.

Rear Adm. Smith—Yes, that is correct. There were RAAF P3s and there were also Coastwatch aircraft which were working to us for this operation.

Senator BARTLETT—In terms of that and the evidence you gave last night on where you go to intercept a vessel, which is relevant to this vessel that sank and what reports came in and when, I noticed an article dated 3 September in the *Australian* last year by Megan Saunders—and it was contained in Mr Kevin's submission—which talked about the deployment of an extra five naval vessels and aircraft. It talked about the aim to patrol international waters as close as 30 nautical miles off Java. It quoted Minister Ruddock as saying that they had shifted closer to Indonesia. He said that until now patrols had operated closer to Australian territorial waters and went as close as 30 nautical miles. It sounds as though the new requirement is patrolling closer to Indonesia rather than hanging back to Christmas Island or Ashmore. I just want to jell that with what you were saying last night about how, if you knew there was a boat around, you would sit back and wait at Christmas Island rather than go towards it.

Rear Adm. Smith—I understand where you are coming from. You must look at this operation in all dimensions. The air surveillance was being conducted up near the Indonesian archipelago as close as 30-odd miles and south from there. The ships, however, were positioned where we felt them best positioned to maximise our chances of interception. So the whole layered surveillance operation was operating more deeply than previously, but the ships more often than not—and it varied from day to day—were closer to Australian territory.

Senator BARTLETT—So those surveillance aircraft that were closer to the Indonesian coast were not aware of that vessel that departed that sank?

Rear Adm. Smith—At no time under the auspices of Operation Relex were we aware of the sailing of that vessel until we were told that it had in fact foundered.

Senator BARTLETT—I go to the minute you provided this morning, that we have now released, titled, 'Request for information—SIEV/SUNC incidents'. I think that is consistent with what you said last night, but I would like to specifically mention it because the information was sought for all ships that have been participating in Operations Relex and Cranberry. Can you remind me what Operation Cranberry is?

Rear Adm. Smith—Operation Cranberry is the ongoing operation—it has been going for many years now and continues today—which is the ADF support for the national surveillance effort, which is coordinated by Coastwatch. Its function in the past has been primarily to deal with illegal fishing vessels—and that is also the operation that was dealing with the illegal entry people under the previous policy, which saw us intercepting reception and escorting to Australia for processing.

Senator BARTLETT—So it covers quite a long period of time?

Rear Adm. Smith—Yes, it does.

Senator BARTLETT—Can you tell me precisely how long?

Rear Adm. Smith—It would only be off the top of my head—and I could confirm it—but we are talking here five or six years, if not longer. I have just been told it started in 1989.

Senator BARTLETT—So that is why we have the report from the *Dubbo* in there from 1989?

Rear Adm. Smith—That is correct. *Dubbo* was involved in Relex and, when I asked the question of them, they answered with that information. It was not part of the period we were looking at, but they gave it to us anyway.

Senator BARTLETT—You are saying it is not part of the period you were looking at, but Cranberry goes back to 1989. You have said you were looking for Relex and Cranberry.

Rear Adm. Smith—No, the questions I was asked to get the information on specifically were to do with Operation Relex.

Senator BARTLETT—Would you clarify then the minute we got this morning? It says:

Following direction from the Office of CN—

Rear Adm. Smith—I stand corrected. It did include Cranberry.

Senator BARTLETT—We have one incident from the period of Operation Cranberry from 1989 to September 2001 and then a number of other incidents—10 or so—that all occurred in the couple of months following, which leads me to paragraph 4 of your minute. It reads:

It should be noted that the lack of incidents prior to OP RELEX could be attributed to the change in Government Policy coincident with the arrival of the TAMPA.

Paragraph 5 reads:

This change has proven to be confrontational and resulted in the numerous hostile threats and violent actions taken by the PIIIs during OP RELEX that had not previously taken place.

I take that as a pretty clear statement that the more confrontational government policy has resulted directly in the new appearance of hostile threats and violent actions.

Rear Adm. Smith—That is my assessment.

Senator BARTLETT—It is probably worth noting that a statement has been provided to us by Lieutenant Commander Lorrae Blunden from HMAS *Dubbo*, who is reasonably senior.

Rear Adm. Smith—That is correct. I believe she was the executive officer at the time and the boarding officer who conducted the boarding for that particular activity.

Senator BARTLETT—I will just read a bit from her statement in relation to a boarding party of a vessel at Ashmore Reef involving 352 unauthorised arrivals. The statement reads:

'...as we approached ... I was assailed by a wave of human voices ... calling out ... "Help us". "Please help us" ... two hundred or more people crowded on the upper decks.

... ..

At no stage did I believe they were threatening or likely to deliberately throw their children into the water.

... ..

In relation to the current situation—

that is, the current policy now—

I remember being surprised at reports that the parents had so callously risked the lives of their children. In my dealings with the SUNCS ... I have generally found them to be quite attentive and concerned parents. They are certainly excitable, and volatile and obviously extremely desperate (they make shocking use of emotional blackmail), which leads them to do unsafe and reckless things, however I can honestly say that I have never witnessed any act of deliberate harm perpetrated against one of their children.

Is that a correct reading of that statement?

Rear Adm. Smith—That is correct, Senator.

Senator BARTLETT—I recognise that it is not your place, and it should not be our place either, to make character judgments about the various boat people, so I will not ask you to do that. But, in essence, I think that would reinforce the view you have expressed: that the behaviour and the appearance of new types of behaviour—violent actions and hostile threats—is not anything to do with the level of people's care for their children or for others but is to do with the increased confrontational nature of the government's policy. Would that be correct?

Rear Adm. Smith—It is certainly fair to say that the change in the behaviour pattern of these people is directly linked to the change in the attitude of the Navy, generated by the policy that was implemented. As I said in my opening statement, prior to 3 September, it was a fairly benign environment because the Navy was intercepting and escorting these people to Australia. In other words, they were achieving their objective. After 3 September, the Navy was there to prevent them from achieving their objective.

CHAIR—Just to get this into context, Rear Admiral, you mentioned last night that some of these people were Afghans and Iraqis. You drew distinctions between the behaviour of both those ethnic groups, given where they were confined to in the vessel. What was that vessel?

Rear Adm. Smith—That was HMAS *Manoora*.

CHAIR—We were officially at war at that time, were we not, with the Taliban regime in Afghanistan?

Rear Adm. Smith—Certainly, it was at about the same sort of time, yes.

CHAIR—We were at war with the government of that country.

Rear Adm. Smith—I do not think we ever declared war, but we were certainly beginning to consider contributing to the coalition against terrorism.

CHAIR—I thought the Prime Minister had invoked the ANZUS Treaty, in support of the US President when he declared his global war on terrorism, and that we had identified the Taliban regime and the al-Qaeda movement—that was given sanctuary by the Taliban regime in Afghanistan—as a source of that war, and that we were conducting armed action against them in Afghanistan at the time.

Rear Adm. Smith—It is not my prerogative to discuss the interpretation of ANZUS. That would be best taken to the Prime Minister, I suspect. We had not committed forces to that operation at the time of SIEV4.

CHAIR—But whether we had committed forces or not, we were gearing up to do so. At that time we had publicly committed ourselves—and it was a bipartisan commitment—to take military action in this global coalition against terrorism. Had we not?

Rear Adm. Smith—Certainly that is on the public record.

CHAIR—So, leaving aside the question of whether their entry to Australia was legal, these people were refugees in flight from a regime that we had publicly identified as associated with international terrorism.

Senator FERGUSON—Some were refugees.

CHAIR—I take that interjection; some were refugees. Probably the correct answer is at this stage it is not certain who has been given refugee status.

Senator FERGUSON—They are not all refugees; some have been sent back.

CHAIR—Have any of them actually been returned?

Senator FERGUSON—Some people have been returned to their country of origin, yes.

CHAIR—Let us go to that point because that is a question of detail. My point is that, as far as we knew, these were people presenting themselves to our border in a manner that we regarded as improper and illegal and not through the proper channels. Nonetheless, they were from a country whose government we were gearing up to participate in a global coalition against. That is a matter of record, isn't it?

Rear Adm. Smith—Yes.

CHAIR—In the case of the Iraqis: Iraq is a country that has been identified by President Bush—and supported, in my view quite appropriately, by the Prime Minister—as a country that is a member of the axis of evil, as it was termed. It is also a country on which we were effectively conducting blockades, as part of a joint allied military presence in the Gulf. This is the country led by Saddam Hussein, against whom we have conducted military action in the

past. These people that were identified by you as Iraqis were in flight from that despotic and tyrannical regime, were they not?

Rear Adm. Smith—I cannot comment on what motivated these people. You are talking about policy things here, which are not my domain. I made the observation of the ethnic grouping because that was in fact the way they were gathered on board *Manoora*. The second group, from the *Aceng*, were from Iraq. What their background was, I have no idea. And I have no understanding of what subsequently happened to them in terms of their claim for refugee status. That is just beyond my remit.

CHAIR—At that stage, they were under the presumption—a presumption similar to the presumption of innocence—that they had claims for refugee status which we have later given serious attention to settling. Therefore we have not turned them back and said, ‘You have no account.’ The Navy was aware of that contextual arrangement. My question is: did that weigh in your considerations about how you should deal with these people, in any way?

Rear Adm. Smith—No, it did not, Senator. My mission was to intercept, and that is exactly what we did. The status of these people was irrelevant as far as I was concerned. They were unauthorised arrivals and we were dealing with them in that context.

CHAIR—So whether they had any justification for seeking international asylum from the tyrannical or despotic regimes in the countries in which they lived, that was not a matter of consideration for you?

Rear Adm. Smith—That was not my business, Senator.

Senator FERGUSON—Are you telling the committee that, as far as you were concerned, it did not matter whether these people were refugees or alleged refugees who were fleeing a despotic regime, as Senator Cook puts it, or in fact people who were trying to circumvent our immigration system by paying large sums of money to illegal smugglers to get them to Australia? Are you saying that those criteria made no difference to your decisions or your actions?

Rear Adm. Smith—My job was not to differentiate, my job was to intercept and to enforce the government policy, and that is what I have done.

Senator BRANDIS—The position, as I am sure you understand it, is that people claiming to be refugees are not people with refugee status. Refugee status under both international and domestic law is a status which is conferred by relevant municipal authorities. None of the people on the SIEVs had refugee status, though we apprehend that most, if not all, of them were claiming to be entitled to it. At the stage your crews had something to do with them, they were not people enjoying refugee status.

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—Senator Bartlett had actually paused for a moment and was allowing me to follow up a *Dubbo* incident—

CHAIR—Let me finish, because I have not concluded.

Senator FERGUSON—We all took advantage of the fact that you had interposed your question.

CHAIR—I know, but my interposing had not concluded.

Senator BARTLETT—I could interpose by saying that the whole purpose of their being intercepted is to prevent their refugee status been determined.

Senator BRANDIS—That would not be right, Senator Bartlett, because in the place they came from, Indonesia, they were under the jurisdiction of the United Nations High Commissioner for Refugees.

Senator BARTLETT—Not necessarily in each of those cases, but I think we have followed this far enough.

CHAIR—I want to go to your answer. Enforce and intercept was your mission, which is clear enough, understandable and quite appropriate. But in the conduct of that mission of enforce and intercept the Navy had regard to conducting itself in a manner that would not inflame the situation, that would not cause unnecessary injury or violence and matters of that sort. I guess my line of questioning goes to the understanding the Navy may have had about how desperate these people may have been. I am grateful to Senator Bartlett for giving me the opportunity, but it fits into his line of questioning about trying to get the actions of these people in some sort of context. I empathise with someone fleeing from Saddam Hussein or the Taliban and seeing Australia as a safe haven—quite in breach of our laws, which is accepted, but from their perspective. When the toughened rules came into play, what weight did you give to the fact that this may increase the desperation of these people?

Rear Adm. Smith—We placed considerable weight on that issue. In our military appreciation process in planning this operation we need to assess the likely courses of action of the people that we are dealing with, and we made the assessment that increasing levels of aggression and increasing levels of behaviour specifically designed to intimidate our sailors and specifically designed to place pressure on our moral and cultural values would be a manner in which some of these people would behave. That is what we anticipated and that is what we found.

CHAIR—So it does weigh with you not in what your mission is, because that is a stated fact and that is your goal—and that is something in which I fully support you—but in the conduct and management of your mission the fact that they were Afghans on the run from the Taliban or Iraqis on the run from Saddam Hussein, that they had cultural differences as well and that these were clearly desperate people. In terms of how you manage what would therefore be a volatile situation, those factors were considered.

Rear Adm. Smith—Yes, they were, Senator.

Senator FERGUSON—I want a further clarification on the chairman's question in relation to desperation. Isn't it also possible that the people you intercepted were desperate because in

fact they had paid people smugglers an enormous amount of money in many cases to get them to Australia and the very fact that the defence forces were intercepting them meant that they were going to actually get no value for their money because they were not going to get to Australia? Their desperation might not necessarily have been because they were fleeing from a despotic regime but because they were trying to circumvent our immigration program by paying people smugglers to get to Australia and they could see that, despite the money that they had outlaid, they were not going to get there because you were frustrating their attempts to get to Australia. So there is more than one type of person that you are intercepting on the boats that are attempting to come to Australia.

Rear Adm. Smith—You could form that view.

CHAIR—That is calling for an opinion, Senator Ferguson.

Senator FERGUSON—Yes.

CHAIR—Let us be very clear here: you give your life savings to get to Australia—

Senator FERGUSON—How do you know that they are their life savings?

CHAIR—to a criminal who is a people smuggler—

Senator FERGUSON—You say that they have put all their money up front.

CHAIR—because you are desperate to get away from Saddam Hussein or the Taliban.

Senator FERGUSON—Not necessarily ‘because’—they are desperate afterwards.

CHAIR—That was simply what I was saying.

Senator BRANDIS—In fairness to the witness, it is perhaps a little bit—

CHAIR—In fairness to the witness, we are conducting a debate which we should conduct between ourselves in another forum.

Senator FERGUSON—You started it.

CHAIR—No, my questions were about how the Navy evaluated their handling of the situation and—

Senator FERGUSON—You embellished it by talking about desperate people.

CHAIR—what weight they gave to the circumstances these people were in when they presented themselves to the Navy at our international border. Senator Collins, you had some questions.

Senator JACINTA COLLINS—Rear Admiral Smith, to go back to the HMAS *Dubbo* incident that Senator Bartlett mentioned and the witness statement he was referring to there, that witness statement does not seem to sustain what is in your reporting in enclosure 8 or what was in the Titheridge report. I have now worked out what the difference is between the two documents in enclosure 7. The order between the two documents is, it appears, a bit different, and I am not sure why yet. But if we go to your enclosure 8, because I think the content is essentially the same, it indicates:

Holding children over the vessels side as BP approached. Not clear to BP whether this was undertaken in a threatening manner or to merely indicate that children were on board SIEV.

The witness statement, I think, is quite clear—the witness does not believe it was in a threatening manner. So I would query how that statement is sustained from primary source material. I wanted to trace that incident through to your matrix and ask whether, on the last page of your matrix in relation to SIEV7—I am sorry, that is the *Bunbury*; where is the *Dubbo*?

Rear Adm. Smith—It is not on that matrix because the matrix only covers Operation Relex, SIEV1 to 12.

Senator JACINTA COLLINS—So this particular incident is not in it?

Rear Adm. Smith—No, it is not in the matrix.

Senator JACINTA COLLINS—If we go to another example then, which was the *Arunta* example—

Rear Adm. Smith—Would you like me to answer the question that you gave me about the difference—

Senator JACINTA COLLINS—Between the two? Yes, if you can.

Rear Adm. Smith—With *Dubbo*?

Senator JACINTA COLLINS—Yes.

Rear Adm. Smith—I must admit that I do not interpret that there is a difference there. The boarding party from this boat consisted of half a dozen people. The one statement that we have here is from one of those individuals. The ship in responding have tried to summarise all the information that they have and they have tried to make it clear, in paragraph (b) of enclosure 8, that it is not clear what the motive was.

Senator JACINTA COLLINS—I appreciate that, but what I am saying to you is that all of the primary source material that I have read—and I may be wrong, because I have read a lot of this stuff—in relation to that incident does not sustain a threat.

Rear Adm. Smith—I think it is fair to draw that assumption.

Senator JACINTA COLLINS—So where is the material that does sustain that threat, or that even suggests that threat, because it is not in the primary material that we have seen yet?

Rear Adm. Smith—I think the enclosure on the signal that came from the ship in fact supports your position there, because it does not say that there was a threat. They were answering the question that I originally asked about whether there were any instances of children being held over the side. They said:

Not clear to BP whether this was undertaken in a threatening manner or to merely indicate that children were on board SIEV.

Senator JACINTA COLLINS—I appreciate that, but I am suggesting that what you have included here, as enclosure 8 on the signal from the ship, says, 'It is not clear.' The primary material that we have—for instance, that witness statement—indicates that to her it was clear. I am asking where the primary source material is of someone who believes it was not clear.

Rear Adm. Smith—We would need to go back to the ship then. There is one statement here from Blunden which you have.

Senator JACINTA COLLINS—Yes.

Rear Adm. Smith—There was also another statement from the commanding officer of *Dubbo*. Was it *Dubbo*?

Senator JACINTA COLLINS—I do not think it was clear in Blunden either.

Rear Adm. Smith—No, it is not. I think what they were trying to say was that it is not clear.

Senator JACINTA COLLINS—But I am saying to you that I do not think Blunden even says that it is not clear.

Rear Adm. Smith—That is her opinion. That was the way she interpreted that behaviour.

Senator JACINTA COLLINS—Yes, but what I am saying to you is none of the primary source material says to us the statement in this report, which was: 'To us, it was not clear.' We have one who says it was clear there was no threat. We do not have anyone who says it was not clear.

Rear Adm. Smith—I can go back to the ship, but I suspect that we are not going to get any more than I have provided you here. That is their assessment now: that it was not clear.

Senator JACINTA COLLINS—Okay, but we need to ask them what was the basis for that, because what has been provided does not sustain that—

Rear Adm. Smith—That would take some time. We are talking three years ago and the ship's company has all changed over. None of these people are on board the ship anymore. We would need to go and interview them all.

Senator JACINTA COLLINS—Senator Bartlett kindly gave me one opportunity to trace one of the cases through to the matrix. The case that I will ask you to go to is the *Arunta*.

Rear Adm. Smith—Which SIEV is this? It would be easier if I went to that.

Senator JACINTA COLLINS—I am looking at *Arunta* incident 4—so you tell me. We can both look at the same time.

Rear Adm. Smith—Okay, that is SIEV6.

Senator JACINTA COLLINS—It is SIEV9 by the Titheridge version of the report.

Rear Adm. Smith—Okay, that is SIEV9.

Senator JACINTA COLLINS—Yes. We have been given one witness statement in relation to this incident. The witness statement says that a woman with a child went to the side of the ship. Those are not the exact words. I will not go straight to the exact words just at the moment. My own notation at the time says that that does not necessarily sustain the claim here that one female threatened to throw a young infant overboard. On the basis of the information that has been provided to us so far, has that example made your matrix and, if so, where?

Rear Adm. Smith—If the example of the threat to the child for SIEV9—in my matrix, a cross there refers to the threatened—

Senator JACINTA COLLINS—*Arunta*?

Rear Adm. Smith—Yes—strangulation issue—

Senator JACINTA COLLINS—No. You have a threat one here too—X54

Rear Adm. Smith—Yes.

Senator JACINTA COLLINS—Okay. Following this example, you have the threat of a child being thrown overboard with respect to either *Arunta*, *Bunbury* or *Gladstone* on your matrix, and you have referred to 54. If I go to 54, it says ‘SIEV 09A Folder—Serials 26, 48 and 77’. What does that mean?

Rear Adm. Smith—It means that they are source documents. They are operational reports forwarded by the ship as the events unfolded. In the case of 48, which is supporting that particular claim, we read:

PII women threatened to throw baby over side and was restrained by the tactical support element.

Senator JACINTA COLLINS—Is that one of the operational reports you gave us earlier today?

Rear Adm. Smith—No, it is not.

Senator JACINTA COLLINS—It is another report again?

Rear Adm. Smith—As I said, there are 1,700 of these operational reports and that is one of them.

Senator JACINTA COLLINS—What I am trying to do is trace back an incident where, at this point in time, it is not clear that that incident is sustained by primary material, and work out whether—for instance, from what you have indicated here—there is other material that sustains it. Because at this stage the witness statement does not.

Rear Adm. Smith—I understand that. There is other source material.

Senator JACINTA COLLINS—Is that referred to here in 26, 48 or 77?

Rear Adm. Smith—That is correct. They are the source material. They are the operational reports.

Senator JACINTA COLLINS—Which one of those pertains, or do they all pertain, to the incident 4 case?

Rear Adm. Smith—The SIEV9, the threat to throw the child over the side, is contained in 48. Twenty-six refers to the threat of strangulation. Seventy-seven refers to a male PII who threatened to throw his children overboard if he was not allowed to prepare his own meal.

Senator JACINTA COLLINS—These sound like the ones we were talking about earlier—where the statements do not exist, but you gave us those additional operational reports.

Rear Adm. Smith—That is correct. They are part of that material we provided—the italic references that were requested.

Senator JACINTA COLLINS—So we have got serials 26, 48 and 77, which are separate to these operational reports?

Rear Adm. Smith—No, a couple of those are the same. I would have to go through them. If you bear with me, I will just go through them now. Let us start again. No. 26—

Senator JACINTA COLLINS—Yes, and 48 and 77—

Rear Adm. Smith—No. 26 is, in fact, the second signal that I provided to you this morning. It is in response to the second italic reference, which is incident 3. No. 48 has not been provided to you.

Senator JACINTA COLLINS—Could I ask for that then?

Rear Adm. Smith—Yes, we can provide that. No. 77 was the third signal that I provided you with this morning. So the only one that you do not have is 48.

Senator JACINTA COLLINS—Can I ask for 48, please?

Rear Adm. Smith—Yes.

Senator JACINTA COLLINS—Also, going back to my earlier question in relation to these incidents, since these cases are more recent and since we do not have the statements that were originally claimed to exist, can we have access to whatever primary source material sustains these reports—whether it is references to the logs or any other written corroboration for these reports on board the ship?

Rear Adm. Smith—Can I clarify which report we are now talking about?

Senator JACINTA COLLINS—I am talking about all of the reports that we are discussing now—26, 48 and 77.

Rear Adm. Smith—Yes.

Senator JACINTA COLLINS—Thank you.

Senator BARTLETT—I would just like to clarify this as quickly as I can from the matrix. We have established that, in all of the time from 1989 to 2001 under Operation Cranberry, we have had one report from the *Dubbo* that talks about children being held up, but it specifically says, ‘I didn’t believe they were threatening.’ It makes the observation that they are obviously extremely desperate people. With the change in government policy and Operation Relex coming in, we have got a number of incidents and obviously a dramatic increase in aggressive behaviour.

I do not want to be held to this, but my quick maths shows that, through all of the 12 SIEVs—including the additional people from the *Tampa* who ended up on the *Manoora*—we have 2,223 people. This became 2,224 when a baby was born on one of the transports, and two people died. We have the 397 people on the vessel that foundered before it got here, and there were 353 deaths and 44 survivals. We cannot say anything about whether or not they were going to be aggressive. Out of all of those people, we have got one example where a child was dropped into the water, is that correct?

Rear Adm. Smith—That is correct.

Senator BARTLETT—Can I just go through and make sure that I have got the acronyms right, as much as anything?

Rear Adm. Smith—Sure.

Senator BARTLETT—I will do this very quickly but could you just confirm each one. SIEV1, as I understand it, is the *Aceng*. Is that right?

Rear Adm. Smith—Yes.

Senator BARTLETT—It had 228 people on board. It was intercepted ‘IVO’, which means ‘in vicinity of’?

Rear Adm. Smith—In vicinity of, that is correct.

Senator BARTLETT—And AI is Ashmore Island?

Rear Adm. Smith—Yes, Ashmore Island.

Senator BARTLETT—They were then transported to the *Manoora*. SIEV2 was ‘intercepted aground’ in the vicinity of Ashmore Island; ‘held in custody in 01’ means in the old SIEV1?

Rear Adm. Smith—That is correct.

Senator BARTLETT—And then transferred to *Tobruk*. SIEV3, intercepted in vicinity of Ashmore Island, held in custody there at the lagoon and then transferred to *Tobruk*.

Rear Adm. Smith—That is correct.

Senator BARTLETT—The *Tobruk* then transferred those people to Nauru. SIEV4, which is the famous one we have looked at so much, foundered under tow. Boat people rescued and disembarked at Christmas Island.

Rear Adm. Smith—That is correct.

Senator BARTLETT—SIEV5, 238 people, including 29 children, was intercepted in vicinity of Ashmore Island, escorted to Ashmore Island lagoon to remain in custody before being removed to the IDTS. What is IDTS?

Rear Adm. Smith—It is the Indonesian Territorial Sea.

Senator BARTLETT—So they remained in custody on the SIEV5?

Rear Adm. Smith—That is correct.

Senator BARTLETT—In the vicinity of Ashmore Island or in the lagoon, is that territorial waters or contiguous zone? What is the status of that?

Rear Adm. Smith—At this stage, the migration legislation had been passed and Ashmore Island was no longer within the migration zone. It was still, however, Australian territory and inside the lagoon meant you were inside territorial waters.

Senator BARTLETT—So in all of these cases people would have been in Australian territory but not in the migration zone.

Rear Adm. Smith—That is correct.

Senator BARTLETT—SIEV6 intercepted in vicinity of Christmas Island and held in custody by Federal Police and AQIS. Attempt made to escort them to the Indonesian Territorial Sea, but vessel foundered, so they were returned to Christmas Island.

Rear Adm. Smith—That is correct.

Senator BARTLETT—SIEV7 intercepted in vicinity of Ashmore Island and taken to lagoon to be held in custody. Escorted to the Indonesian Territorial Sea in vicinity of Pepella. Where is Pepella?

Rear Adm. Smith—That is the name of a town. We took these vessels back to where there was a population base.

Senator BARTLETT—SIEV8, 31 people, including four children, was intercepted north-west of Bathurst Island and escorted to Ashmore Island, held in custody and transferred to *Tobruk*. SIEV9 was intercepted in vicinity of Ashmore Island, 152 people, including 45 children, transferred to *Tobruk*. SIEV10, 164 people, including 33 children, was intercepted in vicinity of Ashmore Island. That was the vessel that caught fire and sank. The survivors were transported on to the *Tobruk*. All of those people then transported to Christmas Island.

Rear Adm. Smith—That is correct.

Senator BARTLETT—SIEV11, 14 people, was intercepted in the vicinity of Ashmore Island, escorted to Indonesian Territorial Sea in the vicinity of Roti. Is that another town?

Rear Adm. Smith—That is an island.

Senator BARTLETT—SIEV12, 162 people. It does not specify how many children, if any. It was intercepted near Ashmore Island and escorted to near Roti Island.

Rear Adm. Smith—Correct.

Senator BARTLETT—We have SIEV5, 238 people, including 29 children. It says they remained in custody before being removed to Indonesian Territorial Sea. Did that occur?

Rear Adm. Smith—Yes, it did.

Senator BARTLETT—That one does not actually say that it was transported in the vicinity of somewhere. Did you just make sure that it did not come back?

Rear Adm. Smith—No, it was not quite that simple. I am just trying to recall where we took that back. I know that SIEV5 ended up in Kupang in West Timor. I think we in fact returned this vessel near Roti, but I will confirm that.

Senator BARTLETT—SIEV7, which was quite an eventful one by the look of it, actually ended up back in Indonesia?

Rear Adm. Smith—Yes, that is correct, as did SIEV11 and SIEV12.

Senator BARTLETT—Regarding the ones that do not specify the number of children—SIEV6 and SIEV12—is that because there were none or because that breakdown was not done?

Rear Adm. Smith—My memory tells me that we just did not have the breakdown. I think that on every occasion there were children in these vessels. I can confirm that breakdown—if it is available.

Senator BARTLETT—If we went through every incident one by one, it would have us here all year. You have been asked to prepare a report that looks specifically at any incidents involving children, which obviously gives a focus on particular aspects of the engagement. I want to get the fuller picture of how the engagement proceeds when you actually move to intercept a boat; some of the statements outline this. The vessel is usually intercepted by a boarding party boat and there are a number of warnings read to them. I presume that is a precise written statement?

Rear Adm. Smith—We had a standard operating procedure, which we developed for this operation. That involved ships intercepting an illegal vessel, either primarily by the ship itself or after having been detected by the aircraft that were in surveillance. There were a series of warnings. We had no authority to board in international waters. As I have already briefed the committee, we were concerned that a safety of life at sea incident would be generated. The catalyst for the safety of life at sea situation would be the sight of a large vessel capable of taking those people on board. We deliberately kept the frigate over the horizon and sent forward the fast RHIBs—what we call a long range insertion. Those RHIBs in international waters had a series of warnings which were to be handed to the masters of the vessel telling them that they were suspected of having illegal people on board and that they should not take the people to Australia because they were not welcome. Almost without exception those warnings were ignored. We had this series of activities that we were doing whilst in international waters.

CHAIR—Obviously, if you out in the deep blue sea and there is not a boat on the horizon and suddenly up pops a rubber duck with Navy personnel, it has come from somewhere. When they apprehend the RHIB they know that nearby, although out of sight, is the mother ship. That is a logical conclusion. The idea was not to confront them with the mother ship for fear that that would create a man overboard situation?

Rear Adm. Smith—That is exactly right.

CHAIR—Secondly, the warning given by the crew of the RHIB—I would call it a rubber duck—was to the master of the vessel?

Rear Adm. Smith—Or at least to the crew. That was the direction given to the RHIB crews.

CHAIR—If the master could not be identified?

Rear Adm. Smith—Correct. In all cases with the exception of one, which has been the subject of your discussion, a master was identified.

CHAIR—The master would be the people smuggler. Were they advised that they would be breaching Australian law and subject to severe penalties if they were in Australian territory?

Rear Adm. Smith—Yes, they were. There was a warning that was provided to the Navy by the interdepartmental committee. You should ask them as to how that was generated. It was a warning that was provided to the ships. It was translated into Bahasa Indonesia and was provided in both English and Bahasa. I have that warning here. Would you like me to read that into the record?

CHAIR—I would indeed.

Rear Adm. Smith—It states:

Notice to master and crew

The Australian government considers people trafficking to be a very serious issue. The government of Australia is determined to stop illegal migration to its territory. It is an offence under the Australian Migration Act to bring to Australia non-citizens who do not have authority to come to Australia.

People who bring these people to Australia may spend longer in gaol for their crimes than ever before. There are new penalties for bringing to Australia people who do not have the authority to come to Australia. These are:

1. For each person brought to Australia without authorisation the penalty is up to 10 years gaol and a fine of up to \$110 000 Australian dollars.
2. For organising the illegal entry of groups of five or more people the penalty is up to 20 years gaol and a fine of up to \$220 000.

If you are sent to gaol you will be there for at least 3 years. If you have been convicted of an offence of this type before, you will be in gaol for at least 5 years. You should be aware that these are both minimum periods in gaol and the courts may sentence you for up to 20 years.

You are advised that Australia will enforce its laws and sovereignty. You are warned that if you do bring to Australia people without authority you will be liable to prosecution under these laws and will face a prison sentence of up to 20 years plus a fine of up to \$ 220, 000. You should not enter Australian territory illegally.

You should now consider immediately returning to Indonesia with your passengers and not enter Australian territory.

CHAIR—That was communicated to the master and the crew in which languages?

Rear Adm. Smith—In English and in Bahasa Indonesia.

CHAIR—It was not shouted into the wind; it was directed at the master and the crew so that they comprehended the gravity of what was being told to them?

Rear Adm. Smith—It was not spoken, Senator. It was a written statement which was handed from the boat to the master or the crew.

CHAIR—Was there any effort to ensure comprehension—that these people were able to read Bahasa in a hard script?

Rear Adm. Smith—That was fairly impossible as we were unable to board in this particular situation, at this point. It was handing it from the rubber boat to the vessel.

CHAIR—I think it is a very important message, and I think it is an appropriate message to deliver. How can you be confident that it was received and understood?

Rear Adm. Smith—I cannot comment on that. We delivered the message as instructed, and the assumption was that it was read and understood.

CHAIR—It was regarded that that is a reasonable assumption?

Rear Adm. Smith—Yes, I believe it is.

Senator BARTLETT—What are the next steps in the process?

Rear Adm. Smith—We provided this warning to the vessel. I think in almost every case, they just continued on regardless. Given that, in the early stages of this operation, each step was controlled by government, from Canberra through the IDC process, as they approached our contiguous zone, we then sought and were given permission to board as they entered the contiguous zone. Our policy then was to reinforce the warning and turn the vessel around and either steam it out of our contiguous zone ourselves under its own power or—as had happened on a number of occasions—if the engine had been sabotaged in our process of boarding, we would then tow the vessel outside our contiguous zone into international waters. At that point, our boarding party withdrew as we had no jurisdiction in international waters. Our initial policy was to do that up to three times and, after having done it the third time, to seek further advice from government with the view to those vessels then being taken to Ashmore Island or to Christmas Island. But that was a government decision through the IDC process.

CHAIR—I want to consult with the committee over the suspension of the proceedings about the time we expect to take with the witness because I am aware that Air Vice Marshal Titheridge is scheduled for today. At some personal cost to himself, he has made the trip to Canberra. I would like to get an idea of what we can advise the air vice marshal about timing for his evidence, so I would be grateful if the committee could give some thought to letting me know how long they expect to take in the examination of Rear Admiral Smith.

Proceedings suspended from 11.00 a.m. to 11.10 a.m.

ACTING CHAIR (Senator Brandis)—Senator Bartlett, you have the call. I understand you indicated to Senator Cook that you expect to be another half an hour.

Senator BARTLETT—That is correct, Mr Acting Chair. In some of these event summaries, which are a helpful brief indication of what has occurred with each vessel, there seems to be a lot of focus on the particular behaviour of the asylum seekers in terms of violent incidents. We heard earlier today that some of these allegations that have been made were not actually produced as part of operational statements made at the time—that sometimes they were reported and sometimes they were not. If they were not reported at the time, would that be an indication of their lack of significance?

Rear Adm. Smith—It depends on your perspective. If you were there, I think they are fairly significant. But what it was really reflecting, I guess, was a pattern of behaviour which we believed was developing and that this incident may just be a part of that pattern and not seen to be of significance in its own right.

Senator BARTLETT—How long would it have taken to get together all the information that has now been produced in relation to these incidents?

Rear Adm. Smith—The best part of a couple of weeks.

Senator BARTLETT—So it was put together on request from either the CDF or the minister specifically to get information on those types of incidents?

Rear Adm. Smith—It depends on what you are talking about. The information I provided you—the matrix and the summary statements for each of the SIEV incidents—was my own initiative. I was not directed by anybody to do that. It was in preparation for my participation in this process and my ability to be able to give you the facts.

Senator BARTLETT—No, I am talking about the other document that you tabled this morning.

Rear Adm. Smith—The other document was a direction to me from the Chief of Navy.

Senator BARTLETT—So they could just as easily have directed you to get together all the information about the health of asylum seekers on board or other aspects to do with the various engagements you had?

Rear Adm. Smith—Yes, if that was required.

Senator BARTLETT—I am mindful of the time. There are a couple of particular aspects that I want to ascertain. It seems to me, as a generalised statement—and I am making only generalised statements because I am wanting to save time—with most of these incidents, there were periods of calm and then perhaps a period of excitability and aggression and then it would calm down again.

Rear Adm. Smith—Yes.

Senator BARTLETT—So a lot of these boats are out there for very long periods of time. I presume the dates here, like the date for SIEV2, for example, of the 10th to the 22nd, is the date when you were engaged with them?

Rear Adm. Smith—That is correct.

Senator BARTLETT—So it does not include the time from when they left Indonesia?

Rear Adm. Smith—No.

Senator BARTLETT—SIEV2, for example, had 12 children amongst 132 people and the boat was assessed to be in very poor condition, with food contaminated by vermin and only a small quantity of water. That vessel was then scuttled and they were transferred to the empty SIEV1, which is the *Aceng*, and they were there, in Ashmore Lagoon, until 22 September. Is that correct?

Rear Adm. Smith—That is correct.

Senator BARTLETT—So in that 12-day period they were living in the SIEV1. Was that aground at the time or was that moored in the lagoon?

Rear Adm. Smith—SIEV2 was located aground on 10 September.

Senator BARTLETT—But, when they were transferred to SIEV1, that was a floating vessel; you had the 132 people living on the empty SIEV1 for 12 days?

Rear Adm. Smith—That is correct.

Senator BARTLETT—I actually find it surprising that, according to this, they only got agitated a couple of times if they were out there for 12 days. That would be sufficient shelter. I presume that provisions and all that were provided by the Navy vessel the *Gawler* at the time?

Rear Adm. Smith—That is correct. We provided humanitarian assistance to the UAs throughout.

Senator BARTLETT—And after that they were put on the *Tobruk*. On 15 October, they disembarked at Nauru. The initial engagement was from 10 September and probably a couple of days earlier they left Indonesia. Was it normally a day or two to get from there?

Rear Adm. Smith—A couple of days would be the average, yes.

Senator BARTLETT—So on about 8 September they left Indonesia and eventually on 15 October they got to Nauru. That is over one month and for virtually all of the time, except for the first couple of days, they were under Navy supervision at least.

Rear Adm. Smith—That is correct.

Senator BARTLETT—It was a fairly substantial commitment of resources in that case compared with what they used to be. Previously, they would have been taken on board a vessel and transferred straight to the mainland?

Rear Adm. Smith—Under the previous policy, that would have been the process, yes.

Senator BARTLETT—The SIEV3 was the one with the nine-month pregnant woman on board who then gave birth subsequently when they were on the troop transport, the *Tobruk*. That vessel was intercepted on 12 September near Ashmore Islands and obviously fairly much

straightaway the boarding party would have been aware that there was a heavily pregnant woman on board.

Rear Adm. Smith—Not necessarily straightaway. There were a large number of people on board there. On SIEV3, for example, there were 129 people. It took us some time to actually get the numbers right and to see what the composition of the people was.

Senator BARTLETT—There were 54 children on that vessel out of 129.

Rear Adm. Smith—Yes.

Senator BARTLETT—It does not give much indication that I can see in the summary about whether that is very crowded or not.

Rear Adm. Smith—Could you take it as a given that these were always very crowded?

Senator BARTLETT—Right. So it was a very crowded boat with 54 children out of 129, with a nine-month pregnant woman. They were intercepted on the 12th and detained at Ashmore Lagoon until 22 September.

Rear Adm. Smith—That is correct.

Senator BARTLETT—Obviously, every medical assistance would have been given at the time. I am not imply anything to the contrary. But do those sorts of issues—to leave them out on a vessel in Ashmore Lagoon for 10 days—when you have 54 children and a woman on the verge of giving birth, come into how your operation has to be conducted and your orders?

Rear Adm. Smith—That was a constraint under which we operated: that there was a requirement for them to remain in location there for that period of time. We were very conscious of our responsibilities to these people in providing them with humanitarian assistance and we did everything within our power to be able to make life as comfortable for them as was possible.

Senator BARTLETT—That birth occurred on the *Tobruk*. It was probably not your responsibility once they had disengaged at Nauru, but did that baby survive, as far as you know?

Rear Adm. Smith—The baby certainly survived its trip on board *Tobruk*. I am unable to comment about the time after we discharged them.

Senator BARTLETT—SIEV5 was intercepted on Ashmore Island on 12 October with a two-day-old child on board. Treatment provided obviously. At some stage, a day or so later, the mother experienced uterine bleeding. The mother's condition improved just after that. You refer below to the removal to Indonesia. You have recorded that the government of Australia directed that SIEV5 be returned to Indonesia, signalling a major change in policy. So that was a specific change at that stage that kicked in. Prior to that you were not required to return them?

Rear Adm. Smith—From the commencement of Operation Relex on 3 September, the initial policy that we were given to implement was to intercept, board and hold the UAs for shipment in sea transport—or air transport, but primarily sea transport—to a country to be designated. With SIEV5, we received new instructions which were to, where possible, intercept, board and return the vessel to Indonesia.

Senator BARTLETT—So this was the first attempt to exercise that new requirement?

Rear Adm. Smith—That is correct.

Senator BARTLETT—You have got under that that the vessel was intercepted on the 12th and taken to Ashmore Island. On the 17th the *Warramunga* returned to Ashmore Island. You took control of the SIEV and started to escort it back to Roti. That is correct? ‘Family groups were removed to the *Warramunga* due to the overcrowded conditions’—so it basically was so overcrowded that you had to take some people off and put them onto the Navy vessel. That is correct? Whether it was for safety or—

Rear Adm. Smith—It was part of our trying to look after these people. They were in very difficult circumstances and that was our judgment at the time.

Senator BARTLETT—So you basically kept those family groups on the *Warramunga* alongside the SIEV as you were travelling back to Indonesia?

Rear Adm. Smith—That is correct.

Senator BARTLETT—And then, at the end, you have that the boat people had to be forcibly removed from the *Warramunga* back to the SIEV and that you left it drifting just outside the Indonesian TS—I have forgotten what TS is again—

Rear Adm. Smith—Territorial sea.

Senator BARTLETT—I imagine that forcibly removing people off the vessel back onto the very overcrowded boat would tend to stress people out a bit.

Rear Adm. Smith—Yes.

Senator BARTLETT—On both sides, I imagine.

Rear Adm. Smith—Very much so.

Senator BARTLETT—Do you know what happened to the boat after that? This is a boat that has got a five-, six- or eight-month-old—a very young baby, anyway—on board.

Rear Adm. Smith—We obviously had concern for the subsequent safety of the people after we had extracted our boarding party. We suspected, with this particular case, that something had been done to the engine, because we were unable to repair it. When *Warramunga* withdrew her boarding party she withdrew over the horizon, but that enabled her to maintain, however,

surveillance of this vessel by radar, and no sooner had *Warramunga* disappeared over the horizon than the vessel got under way and proceeded into port. That passage was monitored by *Warramunga* for some time.

Senator BARTLETT—SIEV7, which seems to have been one of the most eventful ones in terms of aggressive incidents, also seems to have involved a lot of different ships at various stages. You have the *Whyalla*, the *Bunbury*, the *Roebuck Bay* and the *Bendigo*. Can I just clarify with SIEV7 first: you have said at the start that there were in excess of 200 boat people on board, and yet in your matrix you only have 88 listed.

Rear Adm. Smith—Yes, I would have to check those numbers, Senator. I think ‘in excess of 200’ is more the figure, but I would have to confirm that in our matrix.

Senator BARTLETT—We probably have it in some of the statements; we have a number of statements about SIEV7. That one as well struck me in reading the statements, that there were a number of children on board, including at least one small baby. It appears there that again you transferred some families to the *Arunta*, for example, because the boat was so overcrowded. Would that be the case?

Rear Adm. Smith—Yes, there were some of these people on *Arunta*.

Senator BARTLETT—I will quote from a statement by Able Seaman Newham in relation to this incident. It is quite a long statement. It says:

At 12.51 the families that were transported to HMAS *Arunta* would have turned to the SIEV and, upon arrival, were shuffled to the wheelhouse roof. After about 40 or 50 SUNCS had been returned, the wheelhouse roof supports began to lean.

They were worried, with the supports on a five to 10 degree lean and getting worse. That indicates that, when you put people back on again, it was so crowded or in such poor condition that the wheelhouse roof basically was at risk of collapsing.

Rear Adm. Smith—That is the report. I do not think it said ‘at risk of collapsing’. There were indications of the lean. These boats were very crowded; there were people everywhere.

Senator BARTLETT—This is an event summary that goes over a period of time, from 22 October to 29 October. If we have an immensely overcrowded boat, at least one very small baby and a number of children engaged with a number of naval vessels of various sizes, it would almost be astonishing if there were not some unrest in that period of time, which must make the management issues very complex for Navy personnel.

Rear Adm. Smith—I think it is a reflection of the professionalism of the people involved in the operation that they were able to maintain as much calm and order as they were able to do, given the circumstances of these people being denied what it is they had set out to achieve. I would make one comment about your observation of this vessel, if you put people back on board, becoming crowded. It was no more crowded than it was when it left Indonesia.

Senator BARTLETT—Exactly. Was it that one where, to enable the boarding party to effectively board, some people had to be removed so there was enough space for them?

Rear Adm. Smith—It was a balance between humanitarian issues and the practicalities of being able to maintain control on board the vessel. This is a pretty common thing across most of these boats. The decision to extract the family groups was deliberate, because they were the better behaved, frankly. The young men, in particular, were much more vocal and aggressive, and it was easier to keep them separate.

Senator BARTLETT—In respect of the boat with the single incident of a child being dropped in the water—we will touch on that briefly to confirm it—without going through all the statements, some of which refer to it and some of which do not, at that time were there RHIBs in the vicinity?

Rear Adm. Smith—Yes, there were.

Senator BARTLETT—I note that both of the statements that refer to this incident specifically talk about dropping the child rather than throwing the child.

Rear Adm. Smith—The child was suspended and dropped. There does not appear to be any evidence to suggest that there was a physical throw.

Senator BARTLETT—Is it the case that that child was rescued from the water by another boat person who was in the water, with the assistance of other boat people on board the vessel?

Rear Adm. Smith—This was all in the context of a bit of a kerfuffle on board the boat at this time, when I think 15 of the people on board the boat jumped in the water. They were being rounded up by the RHIB and escorted back to the SIEV, and it was in that context that the incident with the small child occurred where it was dropped in the water and was recovered almost immediately by one of the unauthorised arrivals who was already in the water. The baby was supported on that unauthorised arrival's stomach as he swam back to the boat, and both were returned to the SIEV.

Senator BARTLETT—So in the one incident we have of a child being dropped in the water they were actually rescued by another boat person. When people jump into the water when the RHIB is—rubber ducky is a bit—

Rear Adm. Smith—I understand rubber duckies; it is all right.

Senator BARTLETT—I prefer RHIB, I think. Do people initially do that expecting that, if they can get into the RHIBs, they will be taken away from the SIEV?

Rear Adm. Smith—I think you would have to ask them what their motives are for jumping over the side, Senator.

Senator BARTLETT—I think it is the common practice that, unless the vessel is sinking, when they get into the RHIB they are taken back to the vessel. When they are taken back, are they usually annoyed about being taken back?

Rear Adm. Smith—‘Usually’ is difficult to say. Certainly in some of the video evidence that we have to support some of these incidents it is clear—and indeed for this particular SIEV incident there is a video of an individual leaping into the water, being picked up by the RHIB and very reluctantly being removed from the RHIB back on board the SIEV.

Senator BARTLETT—For the *Arunta* and incidents 2, 3 and 5, you have just derived information in one case from a signal and in two others from operation reports. From the amount of detail there is I think it is hard to be 100 per cent certain, but was the threat to strangle or throw children overboard—this is incident 3—a verbal threat or was there actually someone with their hands around a child’s neck saying, ‘I am going to strangle it’?

Rear Adm. Smith—I do not have any further amplification of what that threat physically contained. Suffice it to say that the professional seamen on the spot at the time assessed this to be the case, and they reported it as such.

ACTING CHAIR—And restrained the asylum seeker.

Rear Adm. Smith—That is correct.

Senator BARTLETT—But there is no way of verifying from the reports you have whether that was an aggressive verbal threat or whether there was any degree of physicality.

Rear Adm. Smith—If I could just walk back, a signal derives from a ship—in this particular case, HMAS *Arunta*. Implicit in that signal address is that this has come from the commanding officer of that ship. That is the way we operate. I have no doubt at all that our commanding officers are not in the business of sensationalising or exaggerating, that they report the facts as they see them. I have no reason to doubt that what is reported here was what was seen at the time.

Senator BARTLETT—I am not doubting that at all; I am just trying to interpret the words there. How I would read, literally, someone ‘following threats to strangle’ is someone making verbal threats. I am just wondering if it means more than that.

Rear Adm. Smith—I would have to go back to the ship and seek further information on that.

Senator JACINTA COLLINS—That was the one the *Australian* reported as killing, wasn’t it?

Senator BARTLETT—The other is the threat ‘to throw his children overboard if he was not allowed to prepare own meal’—incident 5. I think all of this, again, is in the context of individual incidents that took place over an eight-day period which, as you say, tended to be characterised by bursts of high stress, high aggression and then calm periods. I must say this gives a good indication of the skill of the Navy personnel in being able to calm down volatile

situations. Is there further information to expand on whether that was a verbal threat—again I am not doubting that it took place—or whether anything physical was involved in it?

Rear Adm. Smith—We know for a fact that no child was thrown in the water so my assumption would be that it was a verbal threat.

Senator BARTLETT—It seems almost Pythonesque to have that in there. Have you any idea of the context of it? I think you mentioned yesterday—and I found this very admirable as well—that you actually go to efforts to try and cook halal meals and the like and do the troop transports. What do people do in this situation, when you have basically got a vessel detained for a week or more in overcrowded conditions and you have only got boarding parties on board, so they are not guests on your vessel or anything? How do you deal with those sorts of issues?

Rear Adm. Smith—From a feeding perspective, what we were doing in these circumstances was preparing the food on board one of the warships and taking it across to support the people on board.

Senator BARTLETT—It is an amazing logistical exercise—you have got a vessel with a couple of hundred people on it and you are transporting the evening meals for 200 people—on RHIBs, I presume?

Rear Adm. Smith—Yes, that is what we did, ferrying food. I might qualify the number there. The error, in fact, is in my own notes. The true number is in fact on the matrix; there were 88 people onboard SIEV7.

Senator BARTLETT—That might do me, in the interests of time constraints.

Senator BRANDIS—I think the arrangement was that it would be the government senators go next and I indicate that Senator Mason and I will share the call. We wish to take you, Admiral Smith, through a number of incidents by reference to the source documents and we will do that in turn, as it were. Before we get to that, we have all listened carefully to the line of questioning being put to you by Senator Bartlett with interventions from Senator Collins. Are you in any doubt that there was a repeated pattern of instances by asylum seekers to threaten to throw their children overboard when intercepted by ships of the Royal Australian Navy?

Rear Adm. Smith—I have no doubt about that at all.

Senator BRANDIS—You have no doubt that it was a pattern?

Rear Adm. Smith—Correct.

Senator BRANDIS—Do you have any doubt that that behaviour was part of a range of other forms of behaviour by the asylum seekers designed to intimidate officers and crew of Royal Australian Navy vessels?

Rear Adm. Smith—I have no doubt that that was the pattern of behaviour and that was the purpose of it.

Senator BRANDIS—And that is your professional judgment, Admiral Smith?

Rear Adm. Smith—That is correct.

Senator BRANDIS—In arriving at that professional judgment I think you have told us that you have had regard to some 1,500 or 1,700 signals or other pieces of primary source data concerning each of the 12 SIEV incidents between 7 September 2001 and 16 December 2001. Is that so?

Rear Adm. Smith—The figure of 1,500 to 1,700 is a summary of all 12—that is the source data.

Senator BRANDIS—And you have familiarised yourself with all of that material?

Rear Adm. Smith—I read them as they came in; that is part of my job.

Senator BRANDIS—On the basis of that assessment and the professional judgment that you have made on the basis of that material, you have prepared a number of documents. You have prepared what has been called the matrix, which you have produced essentially as an aide memoir for yourself and also an indexing and cross-referencing document.

Rear Adm. Smith—That is correct.

Senator BRANDIS—You have prepared, at the request of the Chief of Navy, the minute dated 21 February 2002 which was produced by you this morning.

Rear Adm. Smith—That is correct.

Senator BRANDIS—That minute, I think we have established, forms the basis of the document which was forwarded by Air Vice Marshal Titheridge to the Minister for Defence on 1 March 2002.

Rear Adm. Smith—That is correct.

Senator BRANDIS—And what for convenience has been called the Titheridge minute is, in effect, your document.

Rear Adm. Smith—That is correct.

Senator BRANDIS—In preparing your minute, you had regard to—and, indeed, have incorporated within the body of it—source documents from each of the vessels which support the various incidents reported therein.

Rear Adm. Smith—That is correct.

Senator BRANDIS—We spoke of a pattern of behaviour. Let me read to you some evidence that Vice Admiral Shackleton gave this committee on Monday, 25 March. Just listen to it, and

then I will ask you whether you agree with it or would like to add anything to it by way of your own observation. I put this proposition to Admiral Shackleton. I said to him:

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?

And Admiral Shackleton replied:

That is what we found.

I then said:

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.

Admiral Shackleton replied:

Correct.

Admiral Smith, do you agree with Admiral Shackleton's assessment?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—Do you wish to elaborate in your own words upon that assessment?

Rear Adm. Smith—Our experience throughout the course of Operation Relex was that all 12 of these SIEVs indicated a range of behaviour designed to intimidate the sailors, designed to appeal to our Australian cultural and moral values. It was all designed, in my view, to place pressure on those people who were trying to do their job, in order that the UAs would achieve their objective of getting us to back off.

Senator BRANDIS—Do you regard the term 'moral blackmail' as too strong in describing that behaviour?

Rear Adm. Smith—I do not think that is too strong at all.

Senator BRANDIS—The various techniques that are reported in your aide-memoire, which has been called the matrix document, include, as we have heard, threats to harm children, including—though not limited to—threats to throw them into the water. Is that right?

Rear Adm. Smith—That is correct.

Senator BRANDIS—The causing of actual harm to children on occasions?

Rear Adm. Smith—I would have to consult my notes to see. I do not recall actual harm—but certainly threats of harm.

Senator BRANDIS—I will take you through it: threats of harm, other than to throw them into the water?

Rear Adm. Smith—Yes.

Senator BRANDIS—Like the threat to strangle?

Rear Adm. Smith—Yes.

Senator BRANDIS—The sabotage of vessels?

Rear Adm. Smith—That occurred.

Senator BRANDIS—By sabotaging engines?

Rear Adm. Smith—Correct.

Senator BRANDIS—By setting vessels alight?

Rear Adm. Smith—On occasions.

Senator BRANDIS—By the physical destruction of vessels, or parts of the superstructure of vessels?

Rear Adm. Smith—Regularly.

Senator BRANDIS—By disabling bilge pumps and other devices or equipment, including navigational equipment on the vessels?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Threats of suicide?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Including jumping into the water?

Rear Adm. Smith—There were instances of people jumping into the water and whether that was connected to suicide is a moot point.

Senator BRANDIS—Hunger strikes?

Rear Adm. Smith—Correct.

Senator BRANDIS—Also included threats on occasions of violence by the use of weapons or fists to naval personnel?

Rear Adm. Smith—That is correct.

Senator BRANDIS—And, in some instances, when the vessels had been brought into custody and towed to Ashmore Island, threats to run the vessels aground at Ashmore Island and thereby to disable them there?

Rear Adm. Smith—That is correct.

Senator BRANDIS—All of which, may I suggest to you, were designed to do two overlapping things: firstly, to make the vessels unseaworthy, thereby to create a SOLAS situation—

Rear Adm. Smith—That is our belief.

Senator BRANDIS—and secondly, in furtherance of that ultimate objective, to expose Australian crew and officers to moral blackmail?

Rear Adm. Smith—Correct.

Senator BRANDIS—Senator Mason and I will take you through these events sequentially because it is important, I think, that, rather than making global claims, the specific details of each incident should be exposed and elaborated upon. I think the most convenient document is the summary document you tabled this morning.

Rear Adm. Smith—Yes.

Senator BRANDIS—May we go to the first page of that—SIEV1 Event Summary. That refers to an incident that occurred on 7 September 2001?

Rear Adm. Smith—That is correct.

Senator BRANDIS—As I read it, it does not appear, in this case, to involve threats to harm children?

Rear Adm. Smith—That is correct.

Senator BRANDIS—However, if I may take you to the third principal dot point below the sub-heading, ‘Boarding’, which is three-quarters of the way down the page, you will see that there is a report there of ‘water bombs thrown at boarding party’ and ‘threat of, “Someone may be killed in future”.’ Are you familiar with the primary documents on the basis of which this synopsis was prepared?

Rear Adm. Smith—Yes, I am.

Senator BRANDIS—Are you satisfied this synopsis is an accurate synopsis of those reports?

Rear Adm. Smith—Yes, that is correct. They were drawn directly from operational reports made by the ship as the events unfolded.

Senator BRANDIS—Do you understand the reference to the words, ‘Someone may be killed in the future’, as a reference to a threat made by persons on the SIEV to officers of the Royal Australian Navy?

Rear Adm. Smith—That is correct.

Senator BRANDIS—It goes on to say:

Boarding party members also report that they were hit on the head with a 2LT water bottle, wheelhouse windows were smashed and two members were told ‘they would be killed by the end of the night’.

Pausing there, do you understand the reference to the words in the second quotation marks that ‘they would be killed by the end of the night’ being uttered to two members as a reference to a threat made to two members of the boarding party?

Rear Adm. Smith—If you will bear with me, Senator, I would like to check the source document before I answer that question.

Senator BRANDIS—Yes, take your time.

Rear Adm. Smith—The source document does not specifically say that that comment was directed at the boarding party. If I may read from the source document, it says that water bombs were thrown at boarding party and there was talk of ‘someone may be killed in future’ by SUNCs. It is not clear as to whether they were talking about some of their own or—

Senator BRANDIS—So they could be apprehending violence to themselves, or they could have been threatening violence to naval personnel?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Is that ambiguous?

Rear Adm. Smith—Yes.

Senator BRANDIS—Thank you. That I see in the context a little above of the SUNCs appearing to become aggressive toward the boarding party. Do you see that halfway down the page?

Rear Adm. Smith—That is correct.

Senator BRANDIS—That 7 September event concerning SIEV1 was resolved, or the situation was quelled, by naval personnel in a fashion that was ultimately satisfactory, Admiral Smith?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Can we go to SIEV2, please? Again, this is a synopsis prepared by you on the basis of primary source documents ultimately derived from the crew of, in this case, the *Arnhem Bay*. Is that right?

Rear Adm. Smith—The *Arnhem Bay* was the Customs vessel that originally located SIEV2, that is correct.

Senator BRANDIS—I need to know, in relation to each of these synopsis documents, that it is derived from primary source documents supplied by the—

Rear Adm. Smith—Yes, indeed.

Senator JACINTA COLLINS—Could we be provided with the document?

Senator BRANDIS—Senator Collins, the government senators have been extremely patient and we have waited for more than three hours to examine Admiral Smith. Time is pressing and I will get through this faster without any interruptions. Admiral Smith, can I take you halfway down the document, please, under the first dot point under the heading ‘Temporary custody’. In the first dot point there is reference to safety concerns and then it is recorded that approximately 30 knives/sharps—presumably that means sharp instruments—were recovered from potential illegal immigrants.

Rear Adm. Smith—That is correct.

Senator BRANDIS—Are you able to say—perhaps you are not—whether the knives and sharp instruments in this case or indeed as part of the pattern of conduct exhibited in relation to other SIEV vessels were in the nature of weapons?

Rear Adm. Smith—Certainly there was a consistent pattern across the various SIEVs of these people having things like knives. I could not make the judgment that they were being carried as weapons. These people were undergoing a long sea voyage; it could well have just been for their own protection and their own survival largely, so I would not make the connection that these were weapons per se.

Senator BRANDIS—Admiral, we have seen in the witness statements, to which I will take you, that in relation to a number of the vessels where there were members of different ethnic groups on board there were tensions between those groups.

Rear Adm. Smith—Yes, we experienced that.

Senator BRANDIS—It may be that these weapons were used for self-defence.

Rear Adm. Smith—We did not see any evidence of that, but that is possible.

Senator BRANDIS—The next dot point down records:

By mid afternoon on 11 September, the potential illegal immigrants became agitated and threatened to jump overboard if forced to return to ...

I take it that ID is a reference to Indonesia?

Rear Adm. Smith—That is correct.

Senator BRANDIS—It goes on:

As well as several potential illegal immigrants demanding access to the media and an interpreter.

I can understand why they would naturally want access to an interpreter, but why were they seeking access to the media?

Rear Adm. Smith—Again, I guess you would have to ask them, Senator. Across the 12 SIEVs we certainly saw some indications that when media were around it tended to generate a more aggressive and sensational action on behalf of these people. It was most evident in the transportation task of the *Manoora* that I was talking to Senator Bartlett about earlier on. When we were taking these people ashore they were fairly benign until the media were sighted and then it became quite explosive.

Senator BRANDIS—The next dot point records that by the afternoon of 12 September, the potential illegal immigrants were refusing all assistance except medical, with some threatening suicide and hunger strikes if they were taken anywhere other than Australia. Are you familiar with that as part of the pattern of conduct as evidenced in this instance on SIEV2?

Rear Adm. Smith—That is correct.

Senator BRANDIS—The naval personnel, whenever it was sought or whenever they in their professional judgment considered it necessary, did provide medical assistance to the occupants of the SIEV vessels, didn't they?

Rear Adm. Smith—On every occasion.

Senator BRANDIS—You are not aware of any occasion when medical assistance that was sought or appeared to be necessary was ever withheld or denied?

Rear Adm. Smith—Never withheld or denied, and the only case where it would not have been provided in the initial stages was in fact in SIEV10, which sank as our boarding party was boarding it.

Senator BRANDIS—All right. There is just one point that I wanted to go back to arising in the last dot point, that the potential illegal immigrants threatened to jump overboard if forced to return to Indonesia. It is a point that I suspect may have been lost in the public discussion of the issue of asylum seekers generally. The ethnic origin of most, if not all, of the asylum seekers concerned with incidents SIEV1 through to SIEV12 was Middle Eastern or West Asian, was it not?

Rear Adm. Smith—Largely. There was one SIEV of Vietnamese people.

Senator BRANDIS—However, in no case had these vessels embarked from ports in the Middle East or West Asia, had they?

Rear Adm. Smith—That is correct.

Senator BRANDIS—In all cases they had embarked from ports in Indonesia, on the southern shore of the Indonesian archipelago.

Rear Adm. Smith—In fact the northern shore.

Senator BRANDIS—And the ports from which they had embarked in Indonesia were ports where the asylum seekers were under the jurisdiction of the government of Indonesia or in some cases at least under the jurisdiction of the United Nations High Commissioner for Refugees.

Rear Adm. Smith—That is a fact.

Senator BRANDIS—I understand you are not here to give evidence about the law, but was it your understanding that at the places within Indonesia from which the asylum seekers embarked they were in a position, through the United Nations High Commissioner for Refugees, to seek refugee status there?

Rear Adm. Smith—I believe that to be the case.

Senator BRANDIS—So we speak of asylum seekers, but in fact these people were not fleeing a country, Indonesia, in which they were being persecuted, were they? They did not claim to be persecuted by the Indonesian authorities, did they?

Rear Adm. Smith—Not that I am aware of.

CHAIR—I think that is a contestable point of view. They were fleeing their country of origin, weren't they?

Senator BRANDIS—That is what I am putting—I think, Senator Cook, you came in in the middle of the bracket of questions. I am merely trying to expose the point that these people were seeking to come to Australia from an intermediate third country, Indonesia. Their journey obviously began in their country of origin but their point of embarkation to Australia was in every case an Indonesian port.

Rear Adm. Smith—That is correct.

Senator BRANDIS—I do not think that is controversial.

CHAIR—No, that is not controversial.

Senator BRANDIS—As Senator Ferguson reminds me, a country of safe haven.

Rear Adm. Smith—Indonesia—

Senator BARTLETT—From my point of view it is not a country of safe haven and it is not a country where they could get asylum.

Senator BRANDIS—There was never any complaint about persecution by Indonesian authorities, was there?

Rear Adm. Smith—I have certainly not been made aware of that.

CHAIR—Are you in a position to know, Admiral Smith?

Rear Adm. Smith—No, I am not.

Senator JACINTA COLLINS—We had that ship that sank that people were herded onto.

Senator FAULKNER—This is a point of order, Mr Chairman: these might be perfectly good questions but they are probably better directed to someone from the department of immigration. I think it is very unfair to the admiral to be asked to comment on something which is absolutely a mile outside his responsibilities. As the admiral says, he is not in a position necessarily to know that, and I think all the senators around the table would understand that. We probably should just focus in on his responsibilities and be fair to the witnesses before us. I think we have had a pretty good record so far of trying to ensure that the questioning that has been directed to witnesses has been, in broad parameters, within their areas of responsibility, and you cannot expect the admiral to be an absolute expert on all these issues, which are better directed to immigration officials. I hope the government senators would understand that.

CHAIR—So it is outside your territorial waters, apparently.

Rear Adm. Smith—I think very much so, Senator.

Senator BRANDIS—Senator Mason will direct some questions to you about the SIEV3 event.

Senator MASON—Rear Admiral, with respect to SIEV3, and again turning to the summary document, is that a synopsis prepared by you on the basis of contemporary witness statements?

Rear Adm. Smith—Yes, that is correct.

Senator MASON—What I will do this time is take you briefly through the synopsis and then look at the witness statement of Lieutenant Commander Simon Gregg.

Senator BRANDIS—Is it SIEV4? Who is doing SIEV4? Is that the *Arunta*?

CHAIR—SIEV4 is the *Adelaide*'s—the purpose of this inquiry.

Senator BRANDIS—Of course it is. I am sorry, I am getting lost with all these numbers.

Senator MASON—I will commence, Chair. The context, Rear Admiral, is that the *Warramunga* intercepted SIEV3 10 nautical miles north of the contiguous zone off Ashmore Island on 12 September?

Rear Adm. Smith—That is correct.

Senator MASON—If we go about two-thirds of the way down the page, your summary document says:

- By the evening on 12 Sep the SIEV had reversed course and was inside the AS TS—the Australian territorial sea?

Rear Adm. Smith—Territorial sea.

Senator MASON—It goes on:

and standing into danger due to the possibility of grounding.

Is that on the Ashmore Reef?

Rear Adm. Smith—That is correct.

Senator MASON—And it goes on:

A boarding occurred at approx 1900 but the BP—

the boarding party—

was withdrawn less than an hour later due to tensions, aggression, and hostility by the PIIs—

potential illegal immigrants. The three synopsis points are:

- One female **threatened to throw child over the side.**

Correct?

Rear Adm. Smith—That is correct.

Senator MASON—Secondly:

- Women **refused access to wheelhouse**, one person was found hiding in forward void and removed by force.

Rear Adm. Smith—That is correct.

Senator MASON—And, thirdly:

- During the BP withdrawal batons were drawn with no effect and male PIIs were heard to say, **“Come on Kill me”**.

Rear Adm. Smith—That is also correct.

Senator MASON—I might take you now directly to the witness statement of Lieutenant Commander Simon Gregg, who was the Executive Officer on HMAS *Warramunga* at the time of the SIEV3 event. You are familiar with that document?

Rear Adm. Smith—Yes, I am.

Senator MASON—It is a long document and I do not want to take up the committee's time. You have in front of you the statement of Lieutenant Commander Simon Gregg, Executive Officer, HMAS *Warramunga*?

Rear Adm. Smith—Yes, I do.

Senator MASON—On page 3 it says warnings were issued from HMAS *Warramunga* and they were rejected by SIEV3.

Rear Adm. Smith—That is correct.

Senator MASON—If we can then go to page 7 and the last paragraph on that page. I do not know how your copy is, but it is very small writing.

Rear Adm. Smith—Very small.

Senator MASON—If we go about half way into that paragraph, it says:

While Dollisson—

Dollisson refers to Able Seaman Dollisson, and I understand from page 2 of this document that Dollisson was the interpreter because he could speak Bahasa. Is that correct?

Rear Adm. Smith—Yes, he could; that is correct.

Senator MASON—It says:

While Dollisson was explaining to the Master—

of the SIEV—

the courses he had to steer the Master gestured with his hand his throat being cut indicating he was not safe.

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—It goes on to say, about the potential illegal immigrants:

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.

Why would the master be indicating that he was not safe?

Rear Adm. Smith—I guess, again, this would be a question for the master to really answer. Our interpretation of that behaviour, which was not uncommon across these SIEVs, was that the master and crew, who numbered somewhere between three to five Indonesian people, were grossly outnumbered by the unauthorised arrivals on board and that in almost all circumstances there was an indication that the master really did not have control over the situation.

Senator MASON—How many people would typically be carried by a crew of three to five?

Rear Adm. Smith—From my matrix, if you look at the numbers, they varied—somewhere between 100 and 250. In this case, clearly the inference is that the master felt that his life was in danger from the unauthorised arrivals—his passengers—and that he did not have the control over the vessel that we were assuming, given the directions that we were giving him.

Senator BRANDIS—Admiral Smith, you probably heard Admiral Ritchie's evidence yesterday on this point. Do you remember Admiral Ritchie saying words to the effect that uniformly with each of these SIEV vessels, it was the Navy's experience that the dominant figures on the vessels were large, male asylum seekers, whom the crew of the SIEV vessels were in fear of and under the direction and control of. Do you remember that evidence or evidence to that effect?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—That is consistent with your analysis and assessment of what was happening?

Rear Adm. Smith—Yes, it is.

Senator MASON—I now turn to the second paragraph of page 8 of Lieutenant Commander Gregg's statement. The discussion there is about the boarding party inserting into SIEV3.

Rear Adm. Smith—Yes.

Senator MASON—The fourth sentence reads:

The majority complied with the request and embarkation of BP commenced at 1831. One female PII was seen holding a child over the side and threatening to throw the child over the side.

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—I ask you to turn to page 9 of Lieutenant Commander Gregg's statement. In the second sentence of the top paragraph on that page, the commander states:

On noticing the change of course the PIIs became very aggressive towards the BP and I. I ordered one member of the BP to search the kitchen for the previously identified three knives but only one of the three knives was found. I ordered the

knife to be held as evidence and any other potential weapons to be collected. I found two broken spanners and a small crowbar which I confiscated.

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—I draw your attention to the second sentence of the final paragraph on that page. It says:

The situation continued to worsen with all male PIIs starting to riot and threaten the BP as a mass. I assessed that the situation could not be controlled without the use of high force and possibly lethal force.

Rear Adm. Smith—That is correct.

Senator MASON—I am not a military person. What do ‘high force’ and ‘possibly lethal force’ mean in terms of having to take control?

Rear Adm. Smith—He is referring to an escalation of the environment beyond the level of force which he was authorised to apply in the circumstances. Under our rules of engagement—which were discussed yesterday—we were very clear about how far we could go, and that was short of lethal force except in self-defence.

Senator BRANDIS—I take it that a decision of that kind to escalate the level of force that the naval personnel might be required to use was a response to and a reflection of the extent of the threat to which they felt themselves exposed?

Rear Adm. Smith—That is correct.

CHAIR—Were any of the asylum seekers armed? Did they have guns?

Rear Adm. Smith—There were no guns.

CHAIR—Did they have offensive weapons, like knives or swords?

Rear Adm. Smith—There were knives missing, as has just come out in the statement. There was no way to guarantee what they actually had concealed on their person.

CHAIR—Were they knives that were cutlery or were they hunting knives or military weapons? Do you know?

Rear Adm. Smith—As I said, there was no evidence provided of knives being brandished at this point.

CHAIR—Were any of the seamen threatened with weapons as such?

Rear Adm. Smith—In this particular case, not that I am aware of.

CHAIR—The boarding parties had a holstered pistol and baton, did they not?

Rear Adm. Smith—Yes, they did.

CHAIR—So they were armed in the classic sense?

Rear Adm. Smith—That is correct.

CHAIR—The asylum seekers did not know the rules of engagement, did they?

Rear Adm. Smith—No, they did not.

CHAIR—So they did not know that those weapons that were holstered and those batons had limitations imposed on them in terms of being used? They were visual, they could see them, but they did not know that they were not going to be used against them?

Rear Adm. Smith—That is correct.

Senator MASON—Admiral, can I turn your attention to page 10 of Commander Gregg's statement. To give a context to this, and it is only fair to do this, can I go to the paragraph commencing, 'Over the next 120 minutes'. Sir, do you have that?

Rear Adm. Smith—Yes, I do.

Senator MASON—That gives the context of what was happening. I think I must make that apparent. The paragraph reads:

Over the next 120 minutes my Commanding Officer negotiated with the [illegal immigrants] through me from the RHIB and at 21.30 was directed to inform them that they only had 40 minutes until they ran aground on the reef.

That is the Ashmore Reef?

Rear Adm. Smith—That is correct.

Senator MASON—It is night-time?

Rear Adm. Smith—That is right.

Senator MASON—The paragraph continues:

Heated discussions were occurring in the SIEV and agreement to stop and wait until morning were given and then countermanded numerous times. There appeared to be no one leader within the group and every time I thought I had them agreeing to a proposal they would insist that the RHIB went away. Each time I positioned the RHIB approximately 50-100 yards astern until I was called up for a negative response. The male [illegal immigrants] were willing to sacrifice their women and children rather than stop in the water or remain in their current position until first light. At 21.51 a SOLAS situation was imminent, it was a dark night, no moon with the reef 2.5—

Is that right—2½ metres?

Rear Adm. Smith—Two-and-a-half nautical miles.

Senator MASON—I am sorry, I could not read it. The paragraph continues:

... 2.5nm ahead and approximately 50 children believed to be onboard, the only possible solution was to embark all the [illegal immigrants on to the] Warramunga.

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—Wouldn't you say that was a remarkable act of brinkmanship?

Rear Adm. Smith—This was an incident of great concern to us because of its potential as a safety of life at sea situation.

CHAIR—This SIEV, was it crewed?

Rear Adm. Smith—There was a crew, yes.

CHAIR—So the asylum seekers were not driving the boat, there was a crew that was doing that?

Rear Adm. Smith—No, this was a case where the asylum seekers were very firmly in control of this vessel.

CHAIR—How do we know that?

Rear Adm. Smith—Because they were giving the orders, they were making the decisions and they were providing the advice and guidance to the boarding party as to what they were prepared to do and not do.

CHAIR—Was an asylum seeker at the helm?

Rear Adm. Smith—I would have to check that information, Senator. They were in control of the vessel.

CHAIR—Why? Had there been a mutiny and they had displaced the crew? Is that what had happened?

Rear Adm. Smith—Mutiny has great connotations, but there is no doubt—

CHAIR—Perhaps it is the wrong word. Had the passengers—

Rear Adm. Smith—The passengers had taken control of this vessel and in all respects were deciding what was going to happen to it. I have now been advised that they also had control of the wheelhouse.

Senator MASON—You gave evidence just before—

Rear Adm. Smith—The UAs had control of the wheelhouse.

Senator MASON—that there was a riot and the boarding party had to leave. You gave that in evidence before.

Rear Adm. Smith—That is correct.

CHAIR—Where were the crew at this time?

Rear Adm. Smith—Amongst the other people there. I am not sure exactly where they were located in the boat, but they certainly were not in control of the vessel.

CHAIR—I think it was established that if they were so close to the reef they would have been in Australian territorial waters.

Rear Adm. Smith—Yes, they were.

CHAIR—So the crew, who are the people smugglers, were in breach of Australian law at that point and they had been subject to warnings from you earlier that they could face long periods of incarceration?

Rear Adm. Smith—That is correct.

CHAIR—Was any effort made to apprehend them and bring them into custody?

Rear Adm. Smith—At this particular time we were more interested in, and focused on, trying to prevent loss of life at sea rather than identifying the crew and serving them summonses and so forth. What was very clear to the boarding party, though—and it is verified in the source documents—was that at this stage the unauthorised arrivals had taken control of this vessel. The master and crew had no control of the situation and were just being taken along for the ride.

Senator FAULKNER—There were no threats to throw the crew overboard?

Rear Adm. Smith—Not that I am aware of.

Senator MASON—Just one last question while we are on the subject of SIEV3—Senator Brandis has just drawn this to my attention. On page 2 of the event summary, there is a heading, ‘Incident Summary—Threat to Throw Child Overboard’. I took you through Lieutenant Commander Gregg’s statement earlier concerning the threat to throw the child overboard.

Rear Adm. Smith—Yes.

Senator MASON—Do you agree that in that first dot point under that heading the age of the child is given as approximately two to three years?

Rear Adm. Smith—That is correct.

Senator MASON—Thank you.

Senator BRANDIS—Indeed, of this sequence of incidents commencing with SIEV1, what we have just been concerned with was the first of them, so far as the evidence goes, that involves threats to children?

Rear Adm. Smith—That is correct.

Senator BRANDIS—I think that it was Admiral Shackleton, in fact, who gave some evidence a little while ago about how a pattern of behaviour evolved over the sequence of incidents—indeed, Commander Banks did, as I recall. I guess it is not a pattern when it happens the first time, but it starts to get into a pattern when it happens the second time, and it becomes more and more of a pattern with each subsequent repetition. So this is the first instance of threats to children?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Each time a new outrage—or a new species of threatening behaviour—was evidenced, was that behaviour assessed by naval intelligence, and were professional judgments made by the appropriate people in the Navy as to how naval personnel should be best placed to meet it, if and when that type of conduct occurred again?

Rear Adm. Smith—Certainly, as each of these incidents occurred—each SIEV incident—we analysed the conduct of the people concerned and adjusted a guidance that we provided, through the JTF commander, to the tactical forces so that they might expect such behaviour, and to give them some guidance as to how they might be able to deal with that.

Senator BRANDIS—Do you know Lieutenant Commander Gregg?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—Is he an officer given to sensationalism?

Rear Adm. Smith—Not at all. He is an officer who worked for me personally before he joined the ship. He is an officer of high reputation in whose judgment I have total confidence.

Senator BRANDIS—I take it that one of the professional skills in which any military officer, including any naval officer, is trained is the assessment and accurate and dispassionate reporting of events that they see in situations like this?

Rear Adm. Smith—That is what we try to train them to do.

Senator BRANDIS—So these men and women are not what one might call ‘lay witnesses’—they are people who are actually trained in the skill of providing dispassionate, professional reporting of what they see?

Rear Adm. Smith—Lieutenant Commander Gregg is a warfare officer. He is trained that way.

Senator BRANDIS—The only reason I ask that is that I am rather struck by that part of his statement in which Lieutenant Commander Gregg says:

The male PII—

potential illegal immigrants—

were willing to sacrifice their women and children rather than stop in the water or remain in their current position until first light.

Lieutenant Commander Gregg would not have included that in a professional situation report if that were not an exercise of his professional judgment—in other words, it is not just purple prose. Would you agree?

Rear Adm. Smith—I would agree with that. It was his judgment that, in the circumstances, on a very dark night, a couple of miles off a fringing reef of Ashmore Island, with a stated intention to run the ship aground, there was a real prospect of loss of life. That would have driven his assessment in that circumstance.

CHAIR—You have given us an assessment of the professionalism of Commander Gregg, which I acknowledge and respect. The same is true of Commander Banks, is it not?

Rear Adm. Smith—That is correct.

Senator BRANDIS—It is correct indeed of all of your officers, Admiral Smith, is it not?

Rear Adm. Smith—That is correct. I think I know where Senator Cook is going.

Senator BRANDIS—Admittedly, in the way of things, some people are better than others, but there is generally a very high standard of professionalism, including the exercise of a skill to assess and report on a situation dispassionately, expected of all of your senior officers.

Rear Adm. Smith—We are extremely proud of the quality of people that we have within the Navy. They are trained to operate to the best of their ability in the way that you have described, and they do that.

CHAIR—Would you say that in the case of Commander Banks, he was someone extremely capable of dispassionately and objectively assessing the circumstances of a situation such as this?

Rear Adm. Smith—Yes, I do.

CHAIR—I ask that question because there were questions earlier about Commander Banks with regard to that capability.

Senator BRANDIS—There were certainly no questions from any senator I recall, Senator Cook, that called into question Commander Banks's professional competence.

Senator FAULKNER—I heard a former vice admiral say that you should be taken out and shot for your line of questioning.

Senator BRANDIS—Check the *Hansard*, Senator Faulkner. Note the *Hansard*.

Senator FAULKNER—This was not in the *Hansard*; I just read a media report.

Senator BRANDIS—There were no questions from any senator, including the government senators and including me, that questioned Commander Banks's professional competence.

Senator FAULKNER—The vice admiral may have been misreported.

Senator BRANDIS—That is not to say that when two highly trained, competent officers—Brigadier Silverstone and Commander Banks—have a different recollection of an occasion, one may not be right and one may not be wrong.

Senator FAULKNER—I have heard from so many admirals over the past few days, I decided I would not be watching any more admirals on any media outlet. I am sure that even Admiral Smith would understand that and I am sure he would accept it. He has probably had an overload of politicians too, and I would not blame him if he said so.

Senator MASON—You are probably right, Senator Faulkner. Admiral—

CHAIR—I have one other question, which relates to something that Senator Mason put to you a moment ago.

Senator FAULKNER—Just for the record, I do not think that Senator Brandis should be taken out and shot. That was not my suggestion at all. I hope he did not misunderstand me; I was merely quoting the admiral.

CHAIR—I think Senator Brandis is an asset to this committee in more ways than he imagines.

Senator FAULKNER—I hope he stays in here and asks more and more questions.

CHAIR—Enough of the flattering self-indulgence at this end of the table. Let us get on with the inquiry. The question I have relates to something that Senator Mason put to you. I forget which dot point he said, but he asked you to confirm whether, at that dot point, it said the child was two to three years old. Do you recall that?

Rear Adm. Smith—Yes, I do.

CHAIR—In answer to that question, were you saying that that was what was written on the paper in front of you or that that is what you know for a fact?

Rear Adm. Smith—That is what has been reported to me in the operational report messages.

CHAIR—So that is an operational report; it is not something that you know personally to be true?

Rear Adm. Smith—Only through reading that report.

CHAIR—What is the evidentiary basis? Is there a sworn statement that backs this report?

Rear Adm. Smith—The only sworn statement in this context, I believe, is Lieutenant Commander Gregg's. I would have to go through it again to see if he mentions this two- to three-year-old. If it is not in his report, it would be taken directly from the operational report that was being drafted as this incident unfolded.

Senator BRANDIS—Admiral Smith, I thought we established this at the start, but lest there be any doubt in anyone's mind, you do not say that you were an eyewitness to any of these events. As I understand it, you say that, having assessed a very large volume of primary material—which you estimated to be between 1,500 and 1,700 documents—in the exercise of your professional judgment you prepared these synopses of what that assessment told you.

Rear Adm. Smith—That is correct.

Senator MASON—In a previous question to you I used the word 'brinkmanship'. This followed Senator Brandis's questions about that evening and the fact that the SIEV was going towards Ashmore Reef. I think, according to your matrix document, there were 129 people on board. Do you think that is an act of brinkmanship: to force a safety of life at sea situation and to force the Navy to pick up those people on that boat?

Rear Adm. Smith—I would not call it brinkmanship; I would call it dangerous.

Senator BRANDIS—SIEV4, as I am reminded—I did not really need to be reminded, but thank you, Senator Faulkner—was the HMAS *Adelaide*. We have heard ad nauseam the debate about what was said or not said by Commander Banks to Brigadier Silverstone in the telephone conversation from the bridge, and I do not want to rehearse that with you. You are not in a position to say, I take it, whether or not a child was thrown overboard from the HMAS *Adelaide*, and so I will not go into that.

CHAIR—I do not think anyone has contended that was the SIEV4.

Senator BRANDIS—You are not in a position to give evidence on that, I take it?

Rear Adm. Smith—On the exchange between Silverstone and—

Senator BRANDIS—Yes.

Rear Adm. Smith—No, I am not.

Senator FAULKNER—But you are entitled to give a view. As Senator Brandis properly raises this issue and it is crucial to our terms of reference, you can tell us—because you are Maritime Commander and obviously a crucial and very senior link in the chain of command—whether you believe that a child was thrown overboard. That is a reasonable question to ask you, given your role in the chain of command.

Rear Adm. Smith—At this point, I do not believe that a child was thrown overboard. I did believe such an incident had occurred from the period 7 October through to 10 October.

Senator FAULKNER—Which is, I think, evidence that has been provided to us before, and not only by you but also by others, including Admiral Ritchie in the chain of command.

Rear Adm. Smith—That is correct.

Senator FAULKNER—I merely interpolate there, because I think it is reasonable to ask you that question directly.

Senator JACINTA COLLINS—And you believed it was ‘children’ rather than ‘child’, did you not?

Rear Adm. Smith—I realise you have been pursuing that point of singular or plural. Certainly I had it in my mind that I had heard the word ‘children’ mentioned.

Senator MASON—You believed that because of the operational reports and also because it was consistent with a course of conduct to create the safety of life at sea situation?

Rear Adm. Smith—I do not recall that in the context of the operational reports—because I think that is, in fact, the real issue in the context of SIEV4.

Senator FAULKNER—It was not in the operational reports, was it?

Rear Adm. Smith—That is exactly what I was about to say.

Senator FAULKNER—Exactly right: it was not in the operational reports. So I think it is a very unfair question that Senator Mason asked.

Senator MASON—Let me follow this up. When you heard that, you were not surprised?

Rear Adm. Smith—I was not surprised at all when I was apprised of that on the Sunday morning.

Senator MASON—Why is that?

Rear Adm. Smith—As I said, in our planning for these operations, we had assumed levels of pressure being applied to the boarding party, and that could have translated into behaviour such as this. We were conscious that, in other countries facing similar circumstances, we had done considerable research. The United States Coastguard had had quite extensive experience in

things such as this, and this pattern of behaviour was not uncommon there. Operations in the Mediterranean that we researched similarly had behaviour patterns such as this.

CHAIR—That is with the Italian Navy?

Rear Adm. Smith—And others. So we drew all that information in. That shaped our operational planning, which was, in a ‘worst case’—which is what we always plan for—that we expected to experience such behaviour.

Senator FAULKNER—This has been asked of all witnesses—and I think it is a fair question, because you have indicated that you are satisfied, and on what day you became satisfied, that children were not thrown overboard: are you able to be precise in terms of the time?

Rear Adm. Smith—The time I was told?

Senator FAULKNER—Yes.

Rear Adm. Smith—Yes, I am. I was told, as near as damn it, at eight o’clock on Sunday morning. I rang Admiral Ritchie, according to my mobile telephone record, at 8.02 that morning to advise him of this information.

Senator JACINTA COLLINS—Canberra time?

Rear Adm. Smith—This is Sydney time, which is the same as Canberra’s.

Senator FAULKNER—For the purposes of the record, are you able to say whether you are satisfied that the photographs purporting to represent that children were thrown overboard did not represent children being thrown overboard?

Rear Adm. Smith—I am totally satisfied that they did not represent the incident which they were being allowed to portray.

Senator FAULKNER—For the purposes of the record, given we are talking about this time frame, when did you become satisfied that that was the case?

Rear Adm. Smith—I received those photographs on Tuesday, 9 November. I was very satisfied about the context in which those photographs had been transmitted. I was annoyed with Commander Banks for transmitting them in the way that he did, but he was merely a proud Commanding Officer who was trying to demonstrate the bravery of his ship’s company. I, like Admiral Ritchie witnessed the *7.30 Report* on the Wednesday evening and I rang Admiral Ritchie and the Chief of Navy and voiced my serious concern that the photographs were being misrepresented. They, in turn, both contacted the CDF and they both then returned to me and informed me that they had advised the CDF of that fact.

Senator FAULKNER—I appreciate that. To be frank, Admiral, as you would understand, the information that you have just provided then was perhaps known to the committee from

previous evidence—including from other witnesses—but I think given the nature of the questioning and the significance of the incident it is worth having it spelled out. That is helpful and I thank you for it.

Proceedings suspended from 12.32 p.m. to 1.32 p.m.

CHAIR—We will resume. The floor is yours, Senator Brandis.

Rear Adm. Smith—I want to correct what I said before the lunch break in answer to a question Senator Faulkner asked me about SIEV4 incidents. I am told I used the dates of 7 November instead of 7 October for the SIEV4 circumstance. It should, of course, be October.

Senator BRANDIS—Rear Admiral Smith, I will finish off SIEV4 because I do not have very much more to ask you about it. I then want to come back to something you said immediately before the luncheon adjournment. Leaving to one side the question of whether or not a child was thrown overboard from SIEV4—and most people seem to say there was not—it is not in controversy that a child, described in one of the statements as a little four- or five-year-old girl in a pink jumper was held overboard and threatened to be thrown overboard. You are familiar with that evidence?

Rear Adm. Smith—I am.

Senator BRANDIS—I assume you would have heard Commander Banks when he, in response to some questions from me last week, expressed the view that it was only as a result of the intervention of RHIB personnel from *Adelaide*, at his command, that the little girl was not thrown into the water.

CHAIR—I do not think that is a fair representation.

Senator BRANDIS—It is a fair representation, Senator Cook. If there is controversy, I will take you to the *Hansard*. He was very explicit about that.

CHAIR—We may go back to it. I will just mark this spot for my reference.

Senator BRANDIS—When I am finished, I will take you to the passage.

CHAIR—It is more than just a passage. Establishing the fact is more than just a passage. Do whatever you want, Senator Brandis. For my reference, I have just marked the spot in the *Hansard*. I will find that spot and come back and check the facts.

Senator BRANDIS—All I wanted to ask you to do is, as it were, complete the continuing sequence of these events. Was that conduct—the threat to throw the little girl in the pink jumper overboard from SIEV4—part of the same pattern of conduct that you have already described to us?

Rear Adm. Smith—Yes, it is. We were not surprised by that activity.

Senator BRANDIS—Being now the second occasion that a threat to throw a child overboard is in evidence—the first having been SIEV3—this is probably, I dare say, the point at which it does start to assume the character of a pattern of conduct, rather than being a single incident.

Rear Adm. Smith—That is true.

Senator BRANDIS—In relation to SIEV4, as far as you know, was evidence of asylum seekers throwing themselves into the water standard procedure?

Rear Adm. Smith—Yes, it was standard procedure.

Senator BRANDIS—I think it was the SIEV in which there was also evidence of a fire having been lit and the engine becoming inoperative.

Rear Adm. Smith—That is correct.

Senator BRANDIS—The sabotaging of the motor is—I think you have already told us—part of the pattern of conduct to generate SOLAS situations, which you had identified.

Rear Adm. Smith—Yes, that is correct.

Senator BRANDIS—I want to take you back to some evidence you gave, just before the luncheon adjournment, about intelligence the Navy had received of similar patterns of conduct—that is, conduct, among other things including threats to the life or wellbeing of children—being engaged in elsewhere in the world by asylum seekers. You were beginning to speak to that and I think you gave us some examples from Italy and the United States.

CHAIR—I think it was—

Senator BRANDIS—Senator Cook, like a good Whitlamite, is an Italophile. It was indeed Senator Cook's introduction of Italy.

CHAIR—I am married to an Italian; I could not get it wrong.

Senator BRANDIS—I invite you to elaborate, as fully as you wish, upon what that intelligence from those two places—and, indeed, elsewhere in the world, if there were other instances—told you about similar patterns of conduct.

Rear Adm. Smith—In the development of our concept of operations and the detailed plan, we conducted some research into circumstances similar to the one that we assumed we would be confronting. The information we gained from that research of the US Coastguard and some European navies operating in the Mediterranean is that this pattern of behaviour of applying pressure to the crews of the boarding parties is not an uncommon method of operating. Threats of harm to people and to children was a feature that was common there. Without overplaying that research, it just gave us some background into what we might expect. As is our normal way, we plan for the worst eventuality and we assumed that that would occur to us here.

Senator BRANDIS—I have been shown a report from a British newspaper of 28 February 2002. I will read you an extract from it:

A gang of Romanian asylum seekers threatened to throw their babies off a cross-channel ferry, unless they were allowed to enter Britain. During the incident, three women, all believed to be Romanian gypsies, swung three children, all under four years old, over the car ramp at Newhaven ferry port in East Sussex. A lifeboat crew was put on alert and a boat dispatched to the ferry in case any of the children fell into the six feet of water.

I do not know if you are familiar with that particular incident, but is that the kind of conduct that naval intelligence had become aware of elsewhere in the world?

Rear Adm. Smith—I am not familiar with that particular incident, but that is the type of thing that we had encountered in our research.

CHAIR—Did we have any Romanian refugees or asylum seekers?

Rear Adm. Smith—No, we did not, Senator.

CHAIR—Did we have any gypsies?

Rear Adm. Smith—No, we did not.

Senator BRANDIS—Does it strike you as unusual or surprising that similar patterns of conduct among asylum seekers—albeit, as Senator Cook quite rightly points out, from different backgrounds—seem to be being engaged in around the world at about the same time? What do you make of that? Is there any naval intelligence, for instance, to suggest communication among people smugglers around the world as to techniques?

Rear Adm. Smith—I have no intelligence that pulls together that information.

Senator BRANDIS—It is striking, isn't it, that similar conduct is reported in different parts of the globe, evidently to produce similar results?

Rear Adm. Smith—The similarity is significant.

CHAIR—Was it reported from the United States? The example just quoted is notorious, but was it reported from the United States?

Rear Adm. Smith—We had some open source material that we researched from the US Coastguard which indicated that they had had some experiences similar to that in their dealing with illegal immigration in the Gulf of Mexico.

CHAIR—Can we have access to that?

Rear Adm. Smith—We just got it from their open source information off the Internet.

CHAIR—We can look it up on the Internet?

Rear Adm. Smith—Yes, at the Coastguard site.

Senator BRANDIS—Rear Admiral Smith, this is not a case of threats to harm the life or wellbeing of children, but even in relation to the *Tampa* incident—and I am reading from a report in the *Sydney Morning Herald* of 28 August 2001—Captain Arne Rinnan of the *Tampa* is quoted as saying:

“We were planning to take them to Indonesia—

that is the asylum seekers—

and then we had a meeting here on the bridge [with five asylum-seekers] and they were acting in an aggressive and highly excited manner, you see, and threatening to jump overboard.

“They wanted to go back to the sinking ferry if we were proceeding to Indonesian waters, so we felt the situation was starting to get out of control.

A report of the same day in the *Melbourne Age* has Captain Rinnan as saying:

Once safely on board, the boat people, reported to be from Afghanistan, Pakistan, Sri Lanka and Indonesia, demanded to be taken to Christmas Island. Five men went to the ship’s bridge and threatened to jump overboard if the *Tampa* set course for Indonesia.

“They had aggressive and highly excited attitude and so we felt it was not safe to take them up to Indonesia for the crew on board the ship,” Capt Rinnan told the *Age* yesterday.

Are you familiar with that conduct in relation to the *Tampa*?

Rear Adm. Smith—I am familiar with it only in the context of the media reports that you talk about.

Senator BRANDIS—Let me come back then to the sequence of the nominated SIEV incidents. We are up to SIEV5. That was not an occasion on which there was reported to be any threat to the life or livelihood of children?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Can you turn up the events summary document? That was an incident involving the HMAS *Warramunga* on 12 October 2001.

Rear Adm. Smith—Yes, I have that.

Senator BRANDIS—What were the significant features, Rear Admiral Smith, of the SIEV5 event, please?

Rear Adm. Smith—This was a vessel that was returned to Indonesian waters. As you say correctly, Senator, the *Warramunga* boarding team did so on 12 October. They took control of the vessel. Their warnings were given. The SIEV turned north, then turned back south again and came back towards Ashmore Island. Eventually a boarding took place, the vessel was taken into

custody and taken to the Ashmore Island lagoon, where it was subsequently taken from there to Indonesia.

Senator BRANDIS—Rear Admiral Smith, I will direct you to a couple of relevant portions. This was an exercise that involved, in fact, three naval vessels: the *Warramunga*, the *Whyalla* and the *Townsville*.

Rear Adm. Smith—That is correct.

Senator BRANDIS—If you go to the second-last dot point on the first page of your summary, you will see that it is reported:

WARRAMUNGA commenced escort towards Roti—

Is that a location in Indonesia?

Rear Adm. Smith—That is correct.

Senator BRANDIS—It continues:

... after dark with the SIEV in tow by TOWNSVILLE due to a U/S—

What is 'U/S'?

Rear Adm. Smith—An unserviceable engine.

Senator BRANDIS—It continues:

... engine cooling pump suspected of being sabotaged whilst the SIEV was in custody at AI—

that is, Ashmore Island.

Rear Adm. Smith—That is correct.

Senator BRANDIS—The suspicion that the cooling pump had been sabotaged so as to render the engine unserviceable was a suspicion reported by an officer of the Navy?

Rear Adm. Smith—That is correct. There was an operational report.

Senator BRANDIS—And presumably it reflects a dispassionate professional judgment made by that officer that that indeed is what had happened?

Rear Adm. Smith—That is correct. The engine was serviceable on entering the lagoon but, when an attempt was made to restart it, it was not serviceable anymore.

Senator BRANDIS—At the next dot point we read:

Upon arrival 13 Nm from ID ivo Roti—

that is, 13 nautical miles from Indonesia. What does 'ivo' mean?

Rear Adm. Smith—In vicinity of.

Senator BRANDIS—It continues:

... at approximately sunrise 19 Oct, and after advising PIIs of intention, a riot ensued with one group storming the engine room of the SIEV and disabled the engine.

Rear Adm. Smith—That is correct.

Senator BRANDIS—That happened, did it? Your synopsis is based on situation reports?

Rear Adm. Smith—That is correct.

Senator BRANDIS—It continues:

Another PII lit a fire up forward and another slashed himself 3 times with a razor blade. Most aggressive PII told the Boarding Officer that most would kill themselves if they were returned to ID—

that is, Indonesia.

Rear Adm. Smith—That is correct.

Senator BRANDIS—Do we know if there were children—I am not suggesting that there was an express instance of a threat to harm a child on this occasion—on board SIEV5?

Rear Adm. Smith—There were 29 children on board SIEV5. The children and the family groups had been removed to *Warramunga* for the transit to Indonesia, to ease the congestion and also to make it easier for the boarding party to maintain control. The children and the family groups were returned to the vessel prior to its being left in Indonesia.

Senator BRANDIS—So we have, in relation to SIEV5, instances of threatening behaviour to our forces, threats of suicide or self-harm—I am reading from your matrix document—and an instance of sabotage of the engine?

Rear Adm. Smith—That is correct.

Senator BRANDIS—In each case by people on the SIEV?

Rear Adm. Smith—That is correct.

CHAIR—Do we know which people?

Rear Adm. Smith—We cannot say with certainty who sabotaged the engine—they were people on the SIEV.

CHAIR—It could have been the crew; it may have been the asylum seekers, as far as you know.

Rear Adm. Smith—It could have been either, yes.

Senator BRANDIS—Isn't it the case, though, that, given the evidence we heard from both you and Rear Admiral Ritchie, the large male asylum seekers in each case dominated and were essentially in control of the fate of the crew on these vessels? It seems a lot more likely, doesn't it, that these were actions engaged in by asylum seekers rather than crew?

Rear Adm. Smith—That would be my assessment. On the sabotage in the first instance in the lagoon, to take the Chair's point, it is less clear as to who would be responsible there, but there is no doubt in my mind that the disabling of the vessel—see the last dot point on that first page—as it was approaching Indonesian territorial waters, was done by the UAs who had stormed the engine room.

Senator MASON—I think there are often only three to five crew, and dozens and dozens—sometimes hundreds—of passengers?

Rear Adm. Smith—That is correct.

Senator BRANDIS—So in your professional judgment you think that conclusion, although you cannot be completely sure, is the most likely scenario?

Rear Adm. Smith—In the second case I am quite certain that it was the UAs that disabled that engine.

CHAIR—Were the crew interviewed to obtain from them their version of the events?

Rear Adm. Smith—No, they were not. They took the vessel back to Indonesia.

Senator BRANDIS—We now turn to SIEV6. Although you have already said this, for the purposes of this narrative in the *Hansard* I think we should say it again: there is a mistake in your minute to Admiral Shackleton and in Air Vice Marshal Titheridge's minute to Minister Hill, which is based upon your minute—that is, an incident described as involving SIEV6, which is enclosure 8 to the minute, in fact was a SIEV7 episode. That is the case, isn't it?

Rear Adm. Smith—That was—in clarification there, the error was with *Bunbury*.

Senator BRANDIS—Yes. Is that 22 October?

Rear Adm. Smith—*Bunbury*'s report indicated that she was dealing with SIEV6. In fact it was SIEV7 that *Bunbury* was dealing with.

Senator BRANDIS—That mistake, may I take it, is not repeated in your events summary synopsis, so that where we come to the two-page document entitled 'SIEV 06 events summary',

that is in fact a reference to the real SIEV6 which was apprehended by *Arunta* and *Warramunga*, not to the mistakenly described SIEV7, with which the *Bunbury* was concerned.

Rear Adm. Smith—That is correct.

Senator BRANDIS—All right. Dealing, then, with the real SIEV6 once again, this is not an occasion—at least so far as we are aware—on which there were threats to the life or wellbeing of children aboard.

Rear Adm. Smith—That is correct.

Senator BRANDIS—It was an incident that occurred on 19 October 2001.

Rear Adm. Smith—That is correct.

Senator BRANDIS—As I have said, the relevant naval ships were the HMAS *Arunta* and the HMAS *Warramunga*.

Rear Adm. Smith—That is correct.

Senator BRANDIS—May I take you, please, to the second dot point beneath the subheading ‘Attempted Removal to ID’—that is, Indonesia:

Inspection of the engine discovered damage (**sabotage**) preventing it—

presumably meaning the engine—

from being started - repair action initiated.

I take it that that entry in the synopsis, including the parenthesised word ‘sabotage’, reflects a conclusion, in the dispassionate professional judgment of the Australian naval personnel, that the cause of the damage to the engine was indeed sabotage.

Rear Adm. Smith—That is correct, Senator, and in fact the operation report that underpins that assessment goes into a little bit more detail as to the damage that was—

Senator BRANDIS—Please feel free, in response to any of these questions—I am just trying to highlight as it were the pattern of conduct for you—to elaborate upon the items in your synopsis, if you wish, Admiral.

Rear Adm. Smith—The operation report, the first one that I have here, refers to the damage to the engine: gearbox lever snapped off, one injector line cut. So that amplifies the sabotage.

Senator BRANDIS—Thank you. Then we read, a couple of dot points down, that—and I quote:

A fire was lit, followed by another, and PII commenced destroying bilge decking.

We then read:

Reinforcements from WARR brought the situation under control. A 3rd fire was lit when further attempts were made to start the engine.

Just pausing there, do I take that to mean that a third fire was lit while Australian naval personnel were in the course of attempting to restart the engine?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Presumably for the purpose of making it more difficult for them to do that or, indeed, deterring them from their work?

Rear Adm. Smith—That is correct.

Senator BRANDIS—It continues:

... however, the situation calmed down with further reference to the video evidence taken which could adversely affect any claims for refugee status.

What does that mean, Admiral?

Rear Adm. Smith—In an attempt to regain some calm among the people on board this vessel—there was video footage being taken of the events as they unfolded—the boarding officer advised the UAs that this footage, if they continued the behaviour that they were engaged in, could be used against them in subsequent considerations of their claim for refugee status and so forth. It was all designed to calm things down.

Senator BRANDIS—Am I right in thinking that at the time these events occurred the vessel was in fact at Ashmore Island, not on the high seas?

Rear Adm. Smith—No, they were on the high seas at this stage.

Senator BRANDIS—Were they?

Rear Adm. Smith—Yes, they were.

Senator BRANDIS—The next dot point—

Rear Adm. Smith—Sorry, Senator, this particular incident was not at Ashmore Island. This was in fact at Christmas Island.

Senator BRANDIS—The next dot point reads:

Between 22 and 28 Oct WARRAMUNGA attempted to make SIEV 06 seaworthy. Acts of sabotage that had to be repaired included sugar in the fuel pump, water in the fuel, tampering with the fuel pump and engine timing, damage to throttle controls and damage to the exhaust system.

Is it your evidence or is it the evidence on the basis of which this synopsis was prepared that that damage was deliberately inflicted by persons on the SIEV, not by Royal Australian Navy personnel?

Rear Adm. Smith—That is our assessment. Each of those claims is supported by an operational report that was a result of the engineering staff of the ship trying to effect repairs and these were the things they found.

Senator BRANDIS—And having regard to what you told us before about the situational dynamics between the crew and the asylum seekers, although I accept that you cannot be 100 per cent sure, is it your professional judgment that it is more likely than not that those events were caused by some among the asylum seekers?

Rear Adm. Smith—That was our assessment.

CHAIR—Do you know that for a fact, Admiral?

Rear Adm. Smith—I said that was our assessment.

CHAIR—You made that judgment.

Rear Adm. Smith—That is correct.

CHAIR—Did you interview—

Senator BRANDIS—Senator Cook, that is why I am being careful to repeat this expression that it is an exercise in professional judgment. It is not fair to the admiral to suggest that he is saying he knows this for a fact. He is not an eyewitness, and all of these reports, as he has told us, are exercises of his professional judgment on the basis of extensive source data.

CHAIR—That is entirely my point, and I am not pretending in any way, nor is the admiral, that he is an eyewitness to those events. His evidence is that he has collated these events from reports he has received from, if you like, the coalface, where the action is. I note that the admiral nods in the affirmative on that.

Rear Adm. Smith—That is correct.

CHAIR—Therefore what actually happened is really something that the eyewitnesses to the events can testify to, unless they have sworn evidence before us, and I do not know that we have. We have some sworn evidence. We have situation reports. We have to exercise a degree of precision in terms of our judgments, and I think the evidence stands—I do not challenge it—that essentially a judgment was made in the opinion of the officers but no-one is quite sure who did this damage.

Senator BRANDIS—You accept that, don't you, Admiral Smith, that nobody can be certain of these things?

Rear Adm. Smith—That is absolutely true. If I may add to that, Senator Cook, our experience with all of these SIEVs was that once we were in control of them the crew stuck to their own little area. They remained with one another. They were very benign. They did not involve themselves in any of the activities about which we have been talking here today. They very much became resigned to the circumstances. It was on the basis of that that we made the assessment that this was not damage done by crew, it was damage done by the people who were acting in the way that we have described.

CHAIR—But the crew had been warned, and you read that warning into the record of this hearing, that they faced jail terms. If they continued to offend and did not turn the boat around and sail back to Indonesia, they faced significant penalties of imprisonment, I think the highest being possibly up to 20 years but the most common being about five years. They were warned of that. Therefore they knew when they were taken under your care—that is, on the Navy's vessels—that potentially they were to face criminal charges in Australia. They knew that.

Rear Adm. Smith—That is correct, and indeed that is the very reason why we thought that this was very much the UAs doing this rather than the crew, because this activity was all designed to prevent the ship returning to Indonesia and if that actually occurred the crew would not be imprisoned or fined at all; we would be taking them home. This action was to stop that activity occurring.

CHAIR—We would return the people smugglers to their home port without inflicting on them any sort of penalty?

Rear Adm. Smith—That is exactly the situation.

CHAIR—Why would we do that?

Rear Adm. Smith—Because that was the policy that was provided to us, to turn these vessels around and to return them to Indonesia. So on the way back, which is what this was all about, if the crew had concerns about fines and imprisonment, sabotaging the engine would actually be contrary to their best interests because in fact what we were trying to do was to get the vessel back to Indonesia, with them on board.

CHAIR—I do not want to interfere with Senator Brandis, because he has the call and he can rightfully expect not to be interfered with by me, but it is a point that I may take up later. If I can just make this point: I do not have the document before me that Senator Bartlett quoted from this morning. The quotation that remains in my head is of a woman lieutenant that led a boarding party onto a SIEV. My memory of that document is that the master of this vessel was asked to turn around and go back to Indonesia, and he somewhat forthrightly and fairly directly in 'blunt' language said he was not going to and continued sailing to Australia. There can be no refugees coming into this country illegally unless the crew of a vessel sails them into our territorial waters and lands them on an Australian shore. Our policy was to simply to return those people to their homes without any penalty on them?

Rear Adm. Smith—I clearly cannot comment on the policy. The direction I was given was to intercept, board and return these vessels to Indonesia, and that is what we did.

CHAIR—But don't you think it puts the Navy in a weak position that you threaten these people by telling them that they face jail penalties and then, when you have them in your custody, you return them safely to home without any penalty being exacted at all?

Rear Adm. Smith—We did not consider that to be an issue.

CHAIR—Wouldn't you consider any future warnings you gave, if the conspiracy theory that Senator Brandis has that—

Senator BRANDIS—I am not proposing a conspiracy theory; I am merely asking him to describe conduct that he has analysed and upon which he has passed a professional judgment.

CHAIR—You were seeking to establish—if 'conspiracy' is wrong, there must be some other word that I cannot bring to mind—

Senator BRANDIS—I will accept 'pattern of conduct'.

CHAIR—Pattern of conduct—all right. A global pattern of conduct had been established which may be the smugglers, which may be the refugees. That is an open question. In some cases it would be the refugees. In the case of the Romanian gypsies who were referred to, it was directly identified as the refugees. But if that type of intelligence were exchanged between the people smugglers, they would know in future SIEVs that if you had issued this warning and they kept going and if you then later took them into custody they would be safely returned home and the warning would amount to nothing. Where is the deterrence in that?

Rear Adm. Smith—Again, I am not prepared to comment on the policy. The policy was that we were to return these vessels, and that is what we did.

CHAIR—Thank you. I am sorry, Senator Brandis.

Senator BRANDIS—That is fine, Chair. If I feel that my indulgence is being exhausted, I will complain.

CHAIR—I am sure you will, in your judgment, exercise indulgence when I am questioning as well.

Senator BRANDIS—The questions did seem to me to be relevant and clarifying, if I may say so. Admiral Smith, in any event, the conclusion in your professional judgment on the basis of the source material you assessed is that it is likely that this conduct was engaged in by the asylum seekers, not the crew?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Admiral Smith, there is no SEIV7 and there are several different incidents in relation to SEIV7. Senator Mason will take the first.

Senator MASON—Admiral, I might first take you through the event summary and then take you to incident 1, and then I will refer to particular witness statements from incident 1, and then Senator Brandis will take up incident 2 and so forth. If we could just quickly do the event summary, according to your matrix, SEIV7 is an incident where children were actually and/or threatened to be thrown or dropped overboard; is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—Just briefly referring to your event summary, under the second heading ‘Custody at AI’—Ashmore Island—it states:

After arrival on the afternoon of 22 October ... irate male PIIs caused a disturbance demanding to know the details of their destination. PIIs were apparently aware of the fate of SEIV 05 (1st to be returned to ID) and stated intention to not be returned.

Admiral, it says that SEIV5 was the first to be returned to Indonesia. What do you mean by that?

Rear Adm. Smith—That was the first SIEV after the policy adjustment that we received from Canberra, directing us to return the vessels to Indonesia rather than bring them into Ashmore or Christmas Island for transportation to some other place.

Senator MASON—The illegal immigrants were apparently aware of the failure of SIEV5?

Rear Adm. Smith—That is correct.

Senator MASON—The second dot point reads:

Situation remained under control until forenoon 24 October, when approximately 15 PII (majority wearing life jackets) jumped overboard and a small child (approximately three years old) was also dropped into the water by one of the PII on board the SIEV.

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—The next heading is ‘removal to Indonesia’. This involves HMAS *Arunta*. The third dot point is about the conduct of the illegal immigrants that we have been discussing now for quite some time. It reads:

Threats of self-harm and deliberate damage to the SIEV were made and attempted. Incidents including threats to jump overboard, threats to throw a child overboard, PII actually jumping into the water, dousing themselves with fuel, damage to guy wires of the SIEV mast, damage to railings, starting a fire in the hold, and splashing of fuel on deck. PII broke through the SIEV’s engineering space bulkhead but were repelled by the TSE using Pepper Spray.

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—Again, that is a course of conduct that has been identified on several occasions so far?

Rear Adm. Smith—Yes.

Senator MASON—On the next page of your event summary document—

CHAIR—I am sorry to be a pest, but I want to follow up on a point here. With respect to the second dot point under ‘custody at Ashmore Island’, is this occurring in the lagoon at Ashmore Island?

Rear Adm. Smith—That is correct.

CHAIR—As I recall the lagoon, it is a fairly charming, tropical piece of Australia. The second dot point says, as has been correctly read to you by Senator Mason:

The situation remained under control until forenoon 24 October, when approximately 15 PIIs (majority wearing life jackets) jumped overboard ...

It goes on, as he correctly read:

... and a small child (approximately three years old) was also dropped into the water.

What actually happened? Was the child passed to someone in a life jacket?

Rear Adm. Smith—No, that is not the case. This spontaneous reaction of the UAs to jump into the water was not triggered by any particular incident. They just began to take this action. The child in question—and there are statements that I believe you have which describe the circumstances of this—was held over the side by an arm. The child appeared to be dropped, or slipped, from the mother who was holding her over the side.

CHAIR—To the arms of someone below?

Rear Adm. Smith—No, into the water. Then one of the UAs, who was already in the water, swam across to the baby, rescued the baby and took it back to the ship’s side.

Senator JACINTA COLLINS—Was the child—

Rear Adm. Smith—I do not believe so, but I would have to check that.

CHAIR—Were they within swimming distance of the beach?

Rear Adm. Smith—They were in the middle of the lagoon. There is some distance—

CHAIR—It is a big lagoon.

Rear Adm. Smith—Yes.

Senator BRANDIS—Do you know if they could swim?

Rear Adm. Smith—In fact—

CHAIR—I am not talking about the kid.

Senator BRANDIS—I am sorry.

CHAIR—I do not think a three-year old Afghani or Iraqi is likely to be trying out for the Olympic side.

Rear Adm. Smith—That is my understanding as well. Many of them cannot swim.

Senator JACINTA COLLINS—The advice is to not even try to teach them until they are older than about three.

CHAIR—That is the Taliban: particularly if they are a girl, don't teach them anything.

Senator MASON—On the next page of your event summary with respect to SIEV7, you mention incident 1. The first dot point says that statements from members of the boarding party were taken. I am going to refer to those now. Do you have them?

Rear Adm. Smith—Yes, I do.

Senator MASON—Commencing with executive officer Lieutenant Commander Mead. I think, Rear Admiral, you will agree that even though your event summary is an adequate description of some of the highlight events, this chronology provided by members of the crew gives a better minute by minute analysis of what it actually felt like to be there at the time.

Rear Adm. Smith—Yes.

Senator MASON—Rather than sitting in Parliament House six months later analysing it under a microscope.

Rear Adm. Smith—I would agree with that.

Senator MASON—I turn then first to Lieutenant Commander Mead's statement. I will not go through it all. I am sure the Chairman would not enjoy that. I will go as quickly as I can. Can we go to 12 o'clock?

Rear Adm. Smith—Yes.

Senator MASON—It says:

Verbal confrontation between SP/TSE ...

What are SP and TSE?

Rear Adm. Smith—I assume he is talking about his boarding party there. SP means standing party.

Senator MASON—Okay, between them and the PIIs. He goes on that the illegal immigrants:
... threatened to commit suicide and ‘we will kill everyone [referring to themselves]’.

Five minutes later at 1205, he says:

PIIs destroyed a starboard guardrail and support super structure. PIIs dousing themselves with diesel. PIIs covered with AFFF.

What does that mean?

Rear Adm. Smith—That is a fire retardant. It comes out of a fire extinguisher.

Senator MASON—Okay. He continues with:

Threats to set SIEV on fire.

Then at 1215, which is 10 minutes on, he notes:

PIIs puncture fwd port fuel tank on FX (approx 1000 litres diesel). Fuel running on deck over personnel.

Does that include personnel of the boarding party?

Rear Adm. Smith—That does indeed include the boarding party—the standing party and the TSE.

Senator MASON—Thank you. He continues

BPO orders STBD 30 and max revs to initiate heel to port and let fuel run off SIEV side.

I understand it turned the boat so the fuel came off the deck.

Rear Adm. Smith—That is correct.

Senator MASON—He adds:

Rags with fuel thrown overside. 1 x PII standing on fwd mast with cloth alight. Cloth thrown overboard by TSE. Several personnel fainting.

Senator BRANDIS—Just before Senator Mason goes on, Rear Admiral Smith, come back to 12 o’clock where he says that ‘PIIs threaten we will kill everyone’, referring to themselves. That is not to be read as a threat to kill naval personnel, is it?

Rear Adm. Smith—No, that is referring to themselves and suicide.

Senator MASON—Were there children on that ship?

Rear Adm. Smith—Yes, there were.

Senator MASON—Thank you.

CHAIR—What nationals were these? Were they Afghanis or Iraqis?

Rear Adm. Smith—I am not sure, quite frankly. We did not tend to differentiate too much. But I can find out if there was a predominant nationality. I might also add that all of these events that you have just described are on a video.

CHAIR—Would you agree with my following hypothesis? They have fled Saddam Hussein—or they have got away from the Taliban—and they have made their way at the cost of their life savings to Indonesia. They have spent their money hiring people smugglers to get them to Ashmore and the Cartier Islands. They are in the lagoon within sight of their destination, and they are being frustrated. In those circumstances, those sorts of threats are made out of frustration rather than out of intent. Is that a reasonable hypothesis?

Rear Adm. Smith—One could assume that. That is one way of explaining the behaviour.

Senator BRANDIS—When Senator Cook says ‘made out of intent’, one of the intents is apparent from your earlier evidence. It is to bring pressure to bear or to use moral blackmail on naval personnel so as to secure the result they were demanding—that is of forcible entry into Australian territory.

Rear Adm. Smith—That is another way of viewing these actions. That is the view that we hold as their reason for doing what they did.

Senator BRANDIS—And that is your professional judgment on the basis of your assessment of this primary data?

Rear Adm. Smith—That is correct.

CHAIR—Your professional judgment is that it was to blackmail and not to express on their behalf the frustration that, within sight of their destination, they were being denied access to their goal. Your judgment is not to accept that as an explanation but to think that this was a continuance of an orchestrated effort, to quote Senator Brandis, ‘to engage in moral blackmail’?

Rear Adm. Smith—That was our assessment, Senator. The only people between them and their goal was the Royal Australian Navy, and they were doing everything in their power to influence us to back off from what we were doing.

CHAIR—But would you agree that both options are open, both possibilities are true?

Rear Adm. Smith—There are certainly a number of possibilities.

Senator MASON—Admiral, 12.35 is an entry under Lieutenant Commander Mead’s statement:

Fwd fuel tank thrown overboard. Starboard tank (contaminated water) punctured.

What does that mean?

Rear Adm. Smith—That would have been a water tank that obviously had contaminated water in it and they have done some damage to that tank.

Senator MASON—Before I go on, can I just refer you back to the previous page, 11.50 in the morning. It says:

Requested PII's Mohammed and Hussein for 'round table' discussion with Farsi interpreter.'

And, in that paragraph, Mohammed and Hussein are mentioned a couple of times. Do you know who they are?

Rear Adm. Smith—They were two of the unauthorised arrivals that were on board that were perceived to be the leaders of this particular group. The Farsi interpreter was a soldier that was embarked for the purpose—an Australian soldier that is.

Senator MASON—In a sense, they were thought to be leaders of the illegal immigrants.

Rear Adm. Smith—That is correct. That was the assessment of the boarding officer, that these two individuals were the leaders of that particular group of illegal people.

Senator MASON—I am with you, thank you.

Rear Adm. Smith—And, again, that is captured on the video.

Senator MASON—At 12.45 the entry is:

Reports of fire in hold.

Rear Adm. Smith—I am sorry, what time was that?

Senator MASON—Can you go to 12.45?

Rear Adm. Smith—I do not have a 12.45.

Senator MASON—It is just after 12.35.

Rear Adm. Smith—I am sorry, I cannot read either. Yes, I have got 12.45. I am happy.

Senator MASON—At 12.45:

Reports of fire in hold. BPO investigates with AFFF extinguisher ... Hussein—

and this is someone you have just identified as one of the leaders—

threatens Jihad—

against the boarding party and asks, ‘Do you know Saddam Hussein?’—

you are like him.

Is that right?

Rear Adm. Smith—That is what it says.

Senator MASON—Then at 12.50:

Situation extremely tense with illegal immigrants attempting to destroy the forward mast and a boarding party intervenes.

Rear Adm. Smith—That is correct.

Senator MASON—We might just go to Sublieutenant Harrower’s statement, which is the next witness statement from SIEV7, incident 1. It gives a chronology from 11.40 through to 13.40-13.45. Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—Just quickly then, 12.30:

2 men overboard. PIs attempting to start fires, diesel being thrown everywhere up forward.

Is that right?

Rear Adm. Smith—That is correct.

Senator MASON—And at 12.50:

Wires are snapped on the fwd mast and the TSE attempting to remove the trouble makers.

Rear Adm. Smith—That is correct.

Senator MASON—Under the heading ‘Other key points’—it is in very small writing—about six dot points down—have you got that?

Rear Adm. Smith—Yes, I do.

Senator MASON—There is a line:

One baby was being held over the side and pulled in about four different directions by PIs.

Rear Adm. Smith—That is correct.

Senator MASON—Is that right?

CHAIR—That is correct that it is written there.

Rear Adm. Smith—It is also correct in that I have seen it on the video personally.

Senator MASON—We will get to that in a second. We will get to that.

Senator JACINTA COLLINS—This document has been released, hasn't it? So we do not actually need to be asking the witness, 'Is this correct?' I assume he stands by his whole report.

CHAIR—This is his document.

Senator JACINTA COLLINS—If there are questions on something, it makes sense to ask them, but not just to read segments and say, 'Is this correct?'

Senator MASON—It goes to highlight the pattern of conduct, I submit.

Senator JACINTA COLLINS—You can do that any time you like; you do not have to involve the committee in this process.

Senator BRANDIS—This morning Senator Collins was taking us to task about the absence in certain cases of source documents.

Senator JACINTA COLLINS—Yes.

Senator BRANDIS—This witness's evidence is—

Senator JACINTA COLLINS—This is not one such case.

Senator BRANDIS—May I finish, please. This witness's evidence is that the Titheridge memorandum was based on a document he prepared at the request of Admiral Shackleton and Admiral Barrie.

Senator JACINTA COLLINS—Yes, we know all that.

Senator BRANDIS—May I finish, please.

Senator JACINTA COLLINS—This is tedious repetition, Senator Brandis.

CHAIR—Order!

Senator BRANDIS—We have been taken to task for not identifying the source documents which produced the conclusions in the Titheridge memorandum, which was based on Admiral Smith's work.

Senator JACINTA COLLINS—That is not contentious.

Senator BRANDIS—That is precisely what we are now doing.

Senator JACINTA COLLINS—This one is not contentious. It is here. It is released to the public. It is available.

Senator BRANDIS—The problem is, Senator, that there are so many episodes of this kind of conduct. We assert a pattern of conduct, you dispute it; so we demonstrate it.

Senator JACINTA COLLINS—But you are not demonstrating it. You are covering the uncontentious areas. This one is not contentious. Get to the next incident, which is very soon. There are no witness statements.

CHAIR—Order! Have you finished making your objections, Senator Collins?

Senator JACINTA COLLINS—I am just suggesting that the witness is able to verify his whole report, and we do not need to ask him, line by line, ‘Is this correct?’ With all due respect, it is a waste of the committee’s time and the witness’s time.

CHAIR—Do you have any further comment to make on that?

Senator MASON—Only that we are going through this to establish a pattern of conduct. This is primary material; I am not reading out from a report. These are witness statements, as you are aware. I think it is more than appropriate that we do that.

CHAIR—I understand what you are saying, Senator Collins. I said this morning that the process we are embarking on will take a lot of time and may take more time than we imagined or intended. All that is true, but I have also pursued a policy of allowing members of this committee to ask their questions relatively unhindered and allowing interjections from the point of view of clarifying certain details. While it is painstaking and time taking, I think it is appropriate for me to continue to allow that practice.

Senator MASON—Admiral, I take you to the next statement, relating to SIEV7, incident 1, by Able Seaman Guille Newham. He is a linguist, among other things, on the *Arunta*.

Rear Adm. Smith—Yes, that is correct.

Senator MASON—Can you go to the second page of Able Seaman Newham’s statement. About the middle of the page, it says:

At 0524 I spoke to the crew—

and of course he could speak to the crew because he was a linguist—

in Indonesian and received the following information:

They, were from Baubau, Central Sulawesi

The SIEV was from Sulawesi

They sailed on 18 October 2001

They received Rp2,000,000 for the trip from the SUNC's

Is that correct?

Rear Adm. Smith—That is what it says, yes.

Senator MASON—Do you have any intelligence or any other information about the sort of money people were paying for this trip?

Rear Adm. Smith—No, I do not.

Senator JACINTA COLLINS—It states here that—

CHAIR—Senator Mason has the call.

Senator MASON—I have been politely indulgent, as have you been to me, Chair, so I will allow that.

CHAIR—Proceed, Senator Collins.

Senator JACINTA COLLINS—Thank you. It says in this statement here that Jackson is the master.

Rear Adm. Smith—Where are you, Senator?

Senator JACINTA COLLINS—I am in the same statement that Senator Mason just took you to. Slightly above that, it indicates a number of names, including 'Jackson—Master'. As a name, 'Jackson' sticks out in comparison to the other names there: Arasat, Mansu, Hanas. Do we know the ethnic origin of the master?

Rear Adm. Smith—These were Indonesian crew. I can only speculate that he may have been of a Christian family in Indonesia. It is not uncommon to have those sorts of names.

Senator JACINTA COLLINS—'Jackson' as an Indonesian name. Thank you. That was all.

Senator MASON—I am sorry, it is difficult and I hope you can find this—can we go to three pages after that, or at the top of the page that says, '8 of 25'? I do not know whether that is of any help.

Rear Adm. Smith—Yes, I do have that.

Senator MASON—It is about the third paragraph. There is another incident:

At 1211 I observed a male SUNC with a beard on the port side, just in front of the group of women and children, hold up a child of approximately 3-5 years of age, and indicate that he was going to throw the child overboard. I then observed TSE personnel rush forward to prevent this.

Rear Adm. Smith—Yes, I see that.

Senator MASON—Again, the threat to throw the child overboard is part of a pattern of conduct that you have been discussing throughout the morning?

Rear Adm. Smith—That is correct.

Senator MASON—Can I take you then to the next statement. It is that of K. Pedersen—and I am not sure what this is an acronym for—‘ABCIS’.

Rear Adm. Smith—He is an able seaman communications and information systems specialist.

Senator MASON—Thank you. Can I refer you to 0510 in the morning. There, it says:

AB Newman and myself are instructed to go to engine room for sitrep from CPO Bills and LS Ridgewell. A small amount of sugar was found in the rocker cover of the engine.

In the final sentence of that paragraph it says:

A battle lantern style light was requested ASAP, to assist in cleaning the sugar out of the rocker cover.

I do not quite understand what is going on. What does that relate to?

Rear Adm. Smith—This would have been in connection with the alleged sabotage to the engine.

Senator MASON—With the sugar?

Rear Adm. Smith—That is one of the things that had been reported, and it was contained in my summary of actions taken to sabotage the engine.

Senator MASON—So, again, it is part of that pattern of conduct?

Rear Adm. Smith—Yes.

Senator MASON—If you go over to the next page, in the second paragraph, ‘at approximately 1210’, it says:

Fire reported on focsle of SIEV, fire extinguished with AFFF. Situation hostile. SUNCs making threats to throw child over the side of vessel.

Is that correct?

Rear Adm. Smith—Yes, I see that. That is correct.

Senator MASON—So, again, we have the lighting of a fire; and again, there are threats to throw children over the side of the vessel.

Rear Adm. Smith—That is correct.

Senator MASON—That is part of that pattern of conduct?

Rear Adm. Smith—Yes.

Senator MASON—Then, a minute later, it says, ‘Multiple fires reported on focsle.’

Rear Adm. Smith—Yes.

Senator MASON—Then two minutes after that, it says, ‘Man overboard.’ Two of your officers ‘recovered SUNC and placed back onboard.’ Two minutes after that—all of these incidents are happening very quickly—it says, ‘SUNCs started breaking guard rails on starboard side of focsle.’ Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—So all of these things are happening one after another, very quickly. At approximately 1300, then, this statement, it says:

The SUNCs punctured bladder of fuel on the focsle, fuel reported to be spilling out onto the focsle and into the hold. Reports of SUNCs attempting to light fires on focsle.

So there is another attempt to light a fire?

Rear Adm. Smith—Yes. Many of these comments are mirrored by these other statements. We are talking about the same incidents.

Senator MASON—Sure.

Rear Adm. Smith—And again, all of this is captured on video.

Senator JACINTA COLLINS—Tedious repetition, I think, is the standing comment, Senator Mason.

Senator MASON—I do not think so. It is getting the same course of events from several witnesses.

Senator JACINTA COLLINS—But this is undisputed.

Senator MASON—It is a matter of ensuring that a course of conduct is spelt out.

Senator JACINTA COLLINS—There is one incident that is undisputed.

Senator MASON—Can I go to the next statement, Admiral. That is the statement by Leading Seaman William Ashley Taylor.

Rear Adm. Smith—Yes, I have that.

Senator MASON—He provides security in the steaming party that you referred to earlier?

Rear Adm. Smith—Yes, he is a clearance diver and he is part of the steaming party.

Senator MASON—Can we go to the second page of this statement. Again, he was part of the boarding party, providing security. In the bottom paragraph, in the third sentence, it says:

The PIIs then pierced the drum of fuel with the anchor, causing fuel to run down the port side of the vessel, and drenching myself and SGT Johnson with diesel. I yelled toward the wheelhouse roof, where the BO and TSE Commander were standing for more AFFF extinguishers, but had trouble getting their attention. More PIIs were lighting rags and threatening to ignite the drum and burn the boat.

Is that right?

Rear Adm. Smith—That is correct.

Senator MASON—And then Leading Seaman Taylor says:

At this stage I feared for the life of SGT Johnson and myself and we attempted to remove the drum of Diesel overboard.

Is that right?

Rear Adm. Smith—That is correct. And again, all of this is captured on this video and you can see these two individuals up in the bow of the vessel.

Senator MASON—You have mentioned that video on a couple of occasions. Do you have that with you?

Rear Adm. Smith—I do not have it with me, no.

Senator MASON—Just a couple more questions on that statement and then we will finish the statements.

Rear Adm. Smith—I made a mistake; I do have the video here. I was not aware we had brought it with us.

Senator MASON—Can you produce that, please.

Rear Adm. Smith—Certainly.

Senator MASON—You mention in your summary document, Rear Admiral, a video of this incident is held by you. Do you have it there?

Rear Adm. Smith—That is what we are pursuing now.

Senator FAULKNER—Senator Mason, you have it. We have already got the damn video.

Senator MASON—I just wanted to make sure we are talking about the same thing, Senator Faulkner.

Senator FAULKNER—You can tell that by looking at a videocassette, can you?

Senator MASON—I want to make sure. That is why I referred to his statement, Senator Faulkner.

Senator BRANDIS—I think it is to protect ourselves against unhelpful remarks like that, Senator Faulkner, that we want the video that ultimately produces the item of evidence to come from Rear Admiral Smith.

Senator FAULKNER—Well, it would be the only interesting thing in the last two or three hours. Why don't you just go to a speed reading course and read all this. All this material, frankly, is now in evidence.

Senator MASON—Senator Faulkner, by the end of this inquiry you would have spent a lot more time questioning than any of us.

Senator FAULKNER—That is not right. That is not right.

Senator MASON—You have waffled on for days and we have not. You do not like to hear about a pattern of conduct that has been established. You have done everything to cover up a pattern of conduct by these people, that you do not like hearing about. Why don't you just take leave?

CHAIR—Order! The meeting will come to order.

Senator FAULKNER—Point of order, Mr Chairman.

CHAIR—Your point of order, Senator Faulkner.

Senator FAULKNER—Not one opposition senator has been given the call today for the capacity to ask a series of questions. It is now 2.30 p.m. This line of questioning is a matter of just reading into *Hansard* material, which is fair enough. I have got no objection to that. Anyone can read this material into *Hansard*—well, anyone who can read.

Senator JACINTA COLLINS—It has been released.

Senator FAULKNER—It is available to everybody. It is in the possession of the committee.

Senator JACINTA COLLINS—And the public.

Senator FAULKNER—It seems to me to be a very intellectually lazy exercise in that circumstance. But I do make the point that it is now after 2.30 p.m. There has been virtually no opportunity for any opposition senator to ask any questions of Rear Admiral Smith. I hope we do not intend to ask Rear Admiral Smith to come back yet again before the committee. It would not be unreasonable to allow some questions from some opposition senators. I am indicating to you that I am seeking the call.

Senator BRANDIS—May I speak to the point of order, Mr Chairman. Firstly, the sequence was a matter of arrangement and agreement between all senators and, as we all know, we have refrained from limiting questioning periods. Secondly, as Senator Mason strove to point out when he was being interrupted by Senator Faulkner, the government senators have in fact, proportionately to our representation on this committee, taken less time than—relatively speaking—our representation would suggest. We represent three-eighths of the committee. We have taken less than three-eighths of the time.

Senator FAULKNER—That is not true.

Senator BRANDIS—Yes, it is, Senator Faulkner. With Commander Banks for instance, who was in evidence for nine hours, government senators' questions occupied not more than $2\frac{3}{4}$ hours.

Senator JACINTA COLLINS—I would like to see the total breakdown you are applying.

Senator BRANDIS—Please, Senator Collins. You have no manners.

CHAIR—Order! Address the chair.

Senator BRANDIS—Rear Admiral Smith was in evidence for almost four hours before any government senators were called. I asked a little over 40 minutes of questions of Rear Admiral Smith before the luncheon adjournment. We have now had a little over an hour since the luncheon adjournment, so this questioning period has gone for less than an hour and three-quarters. We are more than halfway through it, and that represents considerably less time than Senator Bartlett was given to question Rear Admiral Smith.

Senator FAULKNER—Further to my point of order: that has nothing to do with the matter. I am indicating that no opposition Senator—which I assume Senator Brandis now agrees with—will have an opportunity to question the Admiral. What are we going to do? Do we expect the Admiral to come back again, or will we continue with the pattern that has been adopted by opposition senators after there have been lengthy periods of questioning? Everyone accepts that lengthy periods of questioning will occur at this committee; I have always accepted that. I have also always ceded the call, if I have been involved in such lengthy questioning myself. As every member of this committee knows, I have tried to ensure that we get a reasonable balance in the questioning on each and every occasion. I do not want to delay the Admiral too long. It is not an unreasonable suggestion to make now, well into the Admiral's evidence, that at some point soon an opposition senator be called to ask some questions, because none have done so since, as Senator Brandis points out, yesterday evening. That is an awfully long time to wait to ask one's first question.

Senator BRANDIS—We have sat patiently too, Senator Faulkner. Through you, Mr Chairman—

CHAIR—Will this add to the argument, or will it repeat the argument?

Senator BRANDIS—No, it is not. It will offer a solution openly that I offered privately a few moments ago.

CHAIR—How does that come up under the point of order?

Senator BRANDIS—That is, let us get to the end of SIEV7, which will not take at the outside more than another 20 or 30 minutes. Then we will vacate our rights, under the informal agreement among senators, and let Senator Faulkner have the rest of the day.

CHAIR—This inquiry has worked thus far on the basis of senators being deferential to one another and rotating the call so that everyone can ask questions and because we have decided to pursue issues to their conclusion rather than limit ourselves by imposing time limits. That has meant that the time of this inquiry thus far has taken longer than we anticipated—and I think longer than we conscientiously believed would have been the case. Nonetheless, I think we all understand that. It is true that the opposition have not had the call at all today, and Admiral Smith, if he goes beyond today, will at least conclude his evidence for today at four o'clock. At this current hour, that means an hour and 20 minutes of questioning if it were to cease now.

I think it is also true that the call has been rotated so that there are no great slabs of time being taken up by one party as opposed to other parties. It is also true that an agreement was reached that Senator Bartlett go first, followed by the government, followed by the opposition. The position I am put in is that that has broken down to some extent. If we can be relatively sure that the matter can be covered by the government senators in a relatively short time, then I will allow the matter to go forward. Otherwise, you leave me with this prospect: we will pursue our position with open-ended questioning, but I will impose on each party a limited time by which they then have to concede it to another party. And we will keep rotating that between all of us, until such time as we conclude with the witness. That is a higher level of authority than the chair up until now has had, and it is not one that I particularly want to become a policeman about. But I do warn you that that is the only option I have—and I will go to that option, if we cannot get some discipline into the questioning.

Senator JACINTA COLLINS—Chair, perhaps I could raise one small point. I think the informal arrangements that we have had previously have worked. When one particular senator has had the call, if there has been an issue of direct relevance to a matter being raised with a witness, there has been an element of flexibility in ensuring that, if anyone else has had an issue on the same point, they could explore it. I think we need to be mindful of that. It also saves us time, if we are able to do it that way. Earlier today I took objection to Senator Brandis—when you, Chair, were absent—refusing to allow me to seek a primary document, which the Rear Admiral had referred to and had quoted into the record. Senator Brandis did that simply because he did not want to be interrupted.

Senator BRANDIS—Because I wanted to get through these questions as fast as possible.

CHAIR—That is another matter. I will impose time limits and we will then rotate. We will not alter the basic policy on that—I am not in a position to do that. But I understand that you will reasonably promptly bring this matter to a conclusion and that there will be some time for the opposition to question this witness. I do say on the dismal side of reality that it is unlikely that we will finish with Rear Admiral Smith today and it may well be that we will have to ask him to come back again—partly because of the time needed for questioning and partly because of the amount of documentation that has been given to us at very short notice, which is one reason the questioning is taking so long.

Senator FAULKNER—It is so intellectually lazy and unnecessary; it is all on the public record.

Senator BRANDIS—Mr Chairman, can I indicate to you that the government senators expect to finish incidents concerning SIEV7 not long after three o'clock and we will pause there and indulge Senator Faulkner's request to interrupt the agreed sequence to give him an opportunity.

Senator FAULKNER—My suggestion is that the call be given to opposition senators now and we can come back to the government senators at a later stage.

CHAIR—People are making suggestions. My decision is that you complete your questioning on this incident, Senator Mason. I will give consideration to what happens then. I understand that your questioning is nearing conclusion.

Senator MASON—Yes, it is.

Senator BRANDIS—Can I indicate to you, Mr Chairman, that my questions in relation to the other SIEV7 incidents, at least so far as concern the *Arunta*, will take only about 10 minutes or so. And it is important that they be asked.

Senator FAULKNER—If you are going to tighten them up, that is excellent. Are you going to read all the tabled documents into *Hansard*?

Senator BRANDIS—No, it is important that they be asked today because Senator Collins has suggested that some source documents are missing and I wish to cover that today before—

Senator JACINTA COLLINS—The witness has said that source documents are not here.

Senator BRANDIS—I wish to deal with that today.

CHAIR—The clock is ticking away. Unless there is some other point of order, I propose to give Senator Mason the call now, on the understanding that he will complete shortly and when he does I will announce what I propose to do from that point on.

Senator FAULKNER—Do not ask silly questions about videos, please.

Senator MASON—Thank you, Senator Faulkner. The video is now in evidence and your understanding, Rear Admiral, is that this is of SIEV7, incident No. 1?

Rear Adm. Smith—That is correct.

Senator MASON—Have you seen the video?

Rear Adm. Smith—I have seen my video.

CHAIR—The video was in evidence from the moment it was released.

Senator MASON—I have nearly finished, Chair. Do you have this document, which is the chronological sequence of events relating to the SIEV7 video?

Rear Adm. Smith—Yes, I do.

Senator MASON—I draw your attention to one of those events, and that is serial 14, which is on the second page. Do you agree that on this video, serial 14, the event is described as ‘a male potential illegal immigrant holds up child and threatens to throw child overboard. ADF members and other PIs prevent the incident’?

Rear Adm. Smith—Yes, that is correct.

Senator BRANDIS—You have seen the video, of course. Is that a fair description in your view of what the video depicts at that point?

Rear Adm. Smith—Yes, it is.

Senator BRANDIS—We table that.

CHAIR—Hang on. We have released this video.

Senator JACINTA COLLINS—It has been released.

CHAIR—But I am just informed by the secretary that this is not exactly the same video as the video we have.

Senator BRANDIS—That is why we wanted to get the one from Rear Admiral Smith.

Senator MASON—Senator Faulkner did not understand that. He was trying to be too smart and got it wrong.

Senator BRANDIS—Senator Faulkner either did not or pretended not to understand.

CHAIR—Order! You are beginning to try the Chair. Would everyone please be quiet and allow me to make a ruling.

Senator JACINTA COLLINS—I think we need a video player to establish—

CHAIR—I was not aware that the video that you were talking about with Rear Admiral Smith was different, albeit an edited version of the video that we have had before.

Senator MASON—Thank you, Chair.

CHAIR—I am therefore not prepared to rule that this video be released until such time as the committee has satisfied itself of the differences between the videos that we have been given—

Senator FAULKNER—If there are any.

CHAIR—and the edited video that is now being sought to be entered into evidence.

Senator BRANDIS—We agree with that.

Senator MASON—Thank you, Chair.

CHAIR—Do I understand that at this point you have—

Senator MASON—I have finished on incident 1, SIEV7.

Senator BRANDIS—In view of what has just come yet again from Senator Collins, I would like to tidy up the other incidents.

CHAIR—You have a request before you from Senator Faulkner to enable him to—

Senator BRANDIS—I will yield to Senator Faulkner the moment I am finished, and I will finish as quickly as I can. It will not take me long.

Senator FAULKNER—You are not going to take long?

Senator BRANDIS—No.

Senator FAULKNER—That is fine; good. I am pleased my intervention has provided that discipline.

CHAIR—We seem to have joy and happiness. Please proceed, Senator Brandis.

Senator BRANDIS—Senator Faulkner, you do not do yourself any credit. What I informally offered you did not require a theatrical performance to make a point.

CHAIR—Order! Senator Brandis, please be quiet.

Senator FAULKNER—I was worried about your tipstaff getting carried away!

CHAIR—Order! Please ask questions rather than debate the issue among the committee. The committee will have plenty of time to have private meetings to debate these matters, but we are here wasting Admiral Smith's time. Please ask questions of the witness.

Senator BRANDIS—Admiral Smith, I ask you to take up your minute—that is, the minute prepared for the Chief of Navy—and the Titheridge minute. Do you have both of those documents?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—Please go to enclosure 2 to the Titheridge minute and enclosure 3 to your minute.

Rear Adm. Smith—Yes, I have those.

Senator BRANDIS—Would you confirm for me that—save for the enclosure number, some identifying code information beneath enclosure 3 in your minute and formatting differences—the text of those two documents—that is, enclosure 2 to the Titheridge memorandum and enclosure 3 to your minute—is identical?

Rear Adm. Smith—That is correct.

Senator BRANDIS—I take you to incident 2 and, for ease of explication, let us concentrate on your memorandum. That is an intended reference to an incident which occurred involving SIEV9 on 31 October 2001 and the *Arunta*.

Rear Adm. Smith—That is correct.

Senator BRANDIS—I also show you some documents produced to the committee last night by the Minister for Defence: firstly, a two-page signal dated 20 February 2002 to the Maritime Commander of Australia from HMAS *Arunta*; secondly, a one-page signal dated 21 February 2002; and, thirdly, a one-page signal dated 27 February 2002.

Rear Adm. Smith—I have lost the dates there.

Senator BRANDIS—The dates are to be found at the top.

Rear Adm. Smith—I know where they are, but the references do not make sense. Can you go through them again for me?

Senator BRANDIS—Yes. It is a four-page, stapled document. The first two pages are a signal from HMAS *Arunta* to MCAUST, which I take it is Maritime Commander Australia—

Rear Adm. Smith—That is me, yes.

Senator BRANDIS—The date I have picked up—it is on the next line, on the right-hand side of the line—20, then the zulu time entry, 'FEB 02'.

Rear Adm. Smith—Yes, that is correct. I have that.

Senator BRANDIS—That is a two-page signal.

Rear Adm. Smith—That is correct.

Senator BRANDIS—The second document in the bundle is a one-page signal, and at the very top of the document we see the date '21 FEB 02'.

Rear Adm. Smith—I see; that is where we were confused. The date-time group for this signal was in fact 1029/02 zulu November.

Senator BRANDIS—I am sorry. Where do I find that?

Rear Adm. Smith—Just above ‘HMAS ARUNTA’.

Senator BRANDIS—I see. For the third one, can you identify the date reference?

Rear Adm. Smith—That is another *Arunta* signal with the date-time group of 31 October 2001, 1236 zulu.

Senator BRANDIS—I want to deal firstly with incident 2 and then with incident 3. As I understand the position, the two-page signal dated 20 February 2002 is a signal sent to you at your request by the captain of the *Arunta* for the purpose of enabling you to prepare your minute—that is, the minute that had been requested of you by Admiral Shackleton.

Rear Adm. Smith—That is correct.

Senator BRANDIS—And the various questions that were posed to you for the purpose of, in summary form, presenting this material—that is, date, whether or not there were threats to children, the number of the SIEV, what happened, whether statements were taken and whether there was digital or video imagery—those six questions that are identified in your minute in alphanumeric notation, are identified in the signal from the captain of the *Arunta* to you in the same alphanumeric notation?

Rear Adm. Smith—That is correct.

Senator BRANDIS—In relation to incident 2, which is what I want to concentrate on for the moment, you were given some information on an incident concerning the *Arunta* on 30 to 31 October 2001. You were told that a male SUNC threatened to throw a young infant overboard and then various further information is provided. Do you see that?

Rear Adm. Smith—Yes, that is correct.

Senator BRANDIS—And it was on the basis of that material that you prepared that section of your minute that concerns *Arunta* incident 2?

Rear Adm. Smith—That is correct.

Senator BRANDIS—In response to question E, whether or not statements were available, you have, it is conveyed to you by the captain:

Statements from members of the boarding party and boarding officer taken and held onboard ARUNTA.

Do you see that?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Have further inquiries with which you are familiar since been made in relation to the proposition that there are statements?

Rear Adm. Smith—Yes, I have. I made further inquiries of the commanding officer of *Arunta*. He has advised me that those statements do not exist.

Senator BRANDIS—Instead of statements, have you been provided instead with a different form of original source document—that is, the original signal from *Arunta*?

Rear Adm. Smith—It is not an original signal, Senator. It is a summary of the event as they understood it from the information that they have on board.

Senator BRANDIS—And that takes the form of the signal, which is the second document in the four-page bundle that I was taking you to a moment ago?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Where do we find in these signals the signal which is the source document for incident 2?

Rear Adm. Smith—This is the point that I think Senator Collins was making this morning. There is no source document by way of an operational report quoting this particular incident.

Senator BRANDIS—I understand that.

Rear Adm. Smith—Not every incident is contained in an operational report. The data that supports this summary by *Arunta* is drawn from other documents that they have on board the ship, which I have requested from the ship, and I believe they are here now; we are just reviewing them. That is how they have compiled this.

Senator BRANDIS—In the letter to me and to the committee from the minister yesterday, the minister quotes from a signal reference, ‘ARUNTA ADA/LAB 200457Z Feb 02’, where it is reported—and this is quoting from the signal from the ship:

1 x male SUNC threatened to throw young infant overboard. Restrained by Army TSE [Transit Security Element]

Rear Adm. Smith—Yes, Senator.

Senator BRANDIS—Where is that, please?

Rear Adm. Smith—That is in that signal that you were just talking about; it is 200457Z February 2002, paragraph 5.

Senator BRANDIS—Yes. So in relation to incident 2, that is the ultimate source document, or are there—

Rear Adm. Smith—That is the only source document so far presented to the committee. What I am saying is that there was no underlying operational report reporting that incident. It was not included in a report but there are other documents on board the ship which support that particular event.

Senator BRANDIS—They are still being looked for?

Rear Adm. Smith—They have been forwarded to me already. I believe they are out the back being reviewed at the moment.

Senator BRANDIS—You are currently reviewing them, and as soon as that process of reviewing the documents obtained from the *Arunta* is complete, and subject to security issues, they can be produced?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Would you go to incident 3, please—

CHAIR—Can I just ask: how many more documents are out the back that need to be reviewed to be dropped on this inquiry? I am beginning to get a bit worried about the amount of documentation that comes to us with little or no notice and we are then expected to continue our examination of you, Rear Admiral Smith.

Rear Adm. Smith—The documents out the back were at the request of Senator Collins.

CHAIR—Is there any other material that you are aware of that can be—

Rear Adm. Smith—No, I have provided everything other than the 1700 ones that are out in that room as well.

Senator BRANDIS—So we will go to incident 3, please. Again, the source of the information that you have recorded in your minute, which is then repeated in the Titheridge minute, is the signal ‘200457Z Feb 02’ under the subheading ‘Incident Three’, on the second page.

Rear Adm. Smith—All this paper here, Senator; please forgive me if I can’t find the signal.

Senator BRANDIS—It is in that bundle I handed to you a moment ago.

Rear Adm. Smith—The second signal?

Senator BRANDIS—No, the first signal, that is, the two-page signal.

Rear Adm. Smith—Yes.

Senator BRANDIS—If you go to the top of the second page of the two-page signal.

Rear Adm. Smith—Yes.

Senator BRANDIS—You will see there under ‘Incident Three’ 31 October 2001 at 1217Z.

Rear Adm. Smith—Yes.

Senator BRANDIS—The captain of the *Arunta* informed you in relation to request B—that is, a request for advice—whether, and here I interline, ‘children’ were dropped, thrown or threatened and you are told:

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

Do you see that?

Rear Adm. Smith—Yes.

Senator BRANDIS—It is on the basis of that piece of information that you have repeated those words in your minute?

Rear Adm. Smith—It is more than just that, Senator. That is the summary that was provided by the ship.

Senator BRANDIS—I just want to trace it back to source.

Rear Adm. Smith—That certainly moved forward into my report but was also substantiated by an operational report.

Senator BRANDIS—I will come to that in a tick. I just want to take this in a very careful way because you will see that under ‘Incident Three’ at paragraph (e) you are informed by the captain of the *Arunta* that statements—that is, the substantiating document for that proposition—

Rear Adm. Smith—Yes.

Senator BRANDIS—are statements from members of the boarding party and boarding officer taken and held on board the *Arunta*; do you see that?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—Can you tell us, please, what substantiation, by reference to source documents for the proposition in subparagraph (b) there in fact is.

Rear Adm. Smith—There are no statements, as I have already advised the committee.

Senator BRANDIS—So that is a mistake?

Rear Adm. Smith—Correct. What I do have is an operational report produced by the ship at the time of this incident which contains that information.

Senator BRANDIS—Is that the signal which appears at the fourth page of the four-page bundle of documents that I gave you a moment ago?

Rear Adm. Smith—Assuming that my four are the same as your four, that is the signal ‘311236Z OCT’.

Senator BRANDIS—Yes, it is. I take you about a third of the way down, after the word ‘GENTEXT’, which I understand means general text—

Rear Adm. Smith—That is correct.

Senator BRANDIS—It reads:

INCIDENT DETAILS/1/FOLLOWING DISTURBANCE REPORTED IN OPREP 18—

that is, operations report No.18—

Rear Adm. Smith—That is correct.

Senator BRANDIS—It goes on:

2 X PIIS HAVE BEEN RESTRAINED FOLLOWING THREATS TO STRANGLE OR THROW CHILDREN OVERBOARD

Rear Adm. Smith—That is correct.

Senator BRANDIS—In what circumstances would this signal have been prepared? Take us through, please, the process whereby a message like that is transmitted to you.

Rear Adm. Smith—I have a letter from the commanding officer explaining to me how he did that very business onboard *Arunta*.

Senator BRANDIS—I did not know about that. Can you read that into the record, please?

Rear Adm. Smith—It reads:

The process onboard was that the Boarding Party Comms Number, Boarding party Officer or Army TSE Commander would report incidents to the command. In incidents which were assessed as significant or sensitive, a report via one comms channel—

that is, the radio—

... was usually cross-checked by checking with the BP Officer. This was not always possible due to the dynamic nature of the incident and the multiple events that were generally occurring when threats were made to throw children overboard. I was not interested at the time in recording who made the reports, I was only interested in fusing the multiple data streams into a valid tactical picture (as I would do in the Operations room).

His chief petty officer, who runs the operations room, would draft the OPREPs, having examined the narratives, and would then present them to the commanding officer for release. The commanding officer was taking information that was coming to him from the SIEV via radio and other means, and that was being fused within the ship. A message was being drafted as all this was happening, and the commanding officer then released that message for distribution to the JTF commander and me.

Senator BRANDIS—Of their nature—and I suppose this appears obviously enough on the face of it—these signals are in highly abbreviated or shorthand, not narrative, form.

Rear Adm. Smith—That is correct.

Senator BRANDIS—There is a difference between the language used in the signal on the basis of which you immediately prepared your minute about Incident 3 and the language in the source signal. Incident 3 in the signal on the basis of which you immediately prepared your report says:

ONE PII ATTEMPTED TO THROW A CHILD OVERBOARD, AS ANOTHER PII ATTEMPTED TO STRANGLE A CHILD. PIIS RESTRAINED, CHILDREN SAFE

The other signal merely says:

2 X PIIS HAVE BEEN RESTRAINED FOLLOWING THREATS TO STRANGLE OR THROW CHILDREN OVERBOARD

There seem to be two differences there, as I read it. In the first signal, or what I call the source signal, they are put in the alternative—that is, the threats are ‘to strangle or throw’ children overboard. In the second, which you might call the synopsis signal, they seem to be events that are happening concurrently. Do you agree with that?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—It is just not clear which of those two versions of the event is the operative version. If it matters—perhaps it does—the word that is used in the first signal is ‘threats’ and the word that is used in the second signal is ‘attempts’. Do you read any significance into that?

Rear Adm. Smith—Clearly there are two different meanings in the two signals. Indeed, the more recent signal, which was literally in February this year—some months after the incident—would indicate that there could have been two situations there. My reading would be that the source one—the original message—would be the one that I would subscribe to.

CHAIR—Senator Brandis, 25 minutes ago you said you would be a few minutes. We had quite a firm discussion about that. I just wonder how much longer you will be.

Senator BRANDIS—I have about two more questions on this incident, and then I will be very brief with incident 5. I will skip over incident 4.

CHAIR—I might make a decision when you conclude to give the call to Senator Faulkner.

Senator BRANDIS—That is a matter for you, Mr Chairman.

CHAIR—Yes, it is.

Senator BRANDIS—Can we finish with incident 3, Admiral? What the source signal and the more recent signal, which was the immediate basis of your minute, have in common is a report that, in order to apprehend this conduct—whether it be an attempt or a threat—the PIIs had to be restrained.

Rear Adm. Smith—That is correct.

Senator BRANDIS—What does that suggest to you?

Rear Adm. Smith—In both the source signal and the subsequent signal there is a reference to multiple PIIs to people following threats to strangle or throw, and they were restrained. That would lead me to believe that the boarding party/TSE had a fear that they were going to do what they were threatening to do.

CHAIR—Do you know that for a fact, Admiral?

Rear Adm. Smith—No, I do not know that for a fact.

Senator BRANDIS—Is it your professional judgment that, on the basis of your—

CHAIR—You are being asked to speculate.

Senator BRANDIS—Excuse me, Mr Chairman.

CHAIR—No, I am the chairman of this meeting, Senator Brandis.

Senator BRANDIS—I have the call, Mr Chairman.

CHAIR—You have the call because I give it to you, Senator Brandis.

Senator BRANDIS—Unless you withdraw it while I am completing what is plainly a sensitive piece of evidence—and one would have to wonder why you would do that—I intend to ask my question. I have one more question.

CHAIR—I will reserve the right to give you the call or remove the call as I see fit, Senator Brandis, and you will be obliged to observe that ruling.

Senator BRANDIS—I have one more question in relation to SIEV3.

Rear Adm. Smith—Senator Cook, may I answer your question? I use my judgment. That is what I am here to do. I am an operational commander. I analyse and I assess information that is presented to me. I see no reason, other than a fear by the boarding party on the spot that these things were going to be done, for them to restrain anybody. They advised me that they

restrained; I therefore assume from that that there was a real fear that these people were going to do what they were threatening to do. Otherwise they would not have restrained them.

CHAIR—Thank you. I hark back to a discussion about the so-called ‘fog of war’, which apparently, according to some members of this inquiry, applies only in the case of SIEV4 and not in all cases. It is the ‘fog of war’ issue that I was going to and the certainty and absoluteness with which these things can be asserted. What we have been treated to this afternoon is a performance which I think skews this inquiry from its main purpose, but it is permissible and I therefore give the call to Senator Brandis.

Senator BRANDIS—The question I was going to ask was merely this: is the answer you just offered in your last piece of evidence your best professional judgment on the basis of your assessment of this signal traffic?

Rear Adm. Smith—Yes, it was.

Senator BRANDIS—Thank you. Mr Chairman, I would like to go to incident 5. You foreshadowed that you were going to stop me. Are you going to stop me?

CHAIR—Yes, I am, on the basis of the undertakings you gave earlier.

Senator FAULKNER—Do we know how long Senator Brandis is going to take? This time, can we have an accurate assessment?

Senator BRANDIS—The best I can do is to say not more than 10 minutes.

CHAIR—Half an hour ago you said 10 minutes.

Senator BRANDIS—And I was interrupted.

CHAIR—Yes, but only for a short time.

Senator JACINTA COLLINS—It seems to be a lot of evidence that we have covered this morning.

CHAIR—We do have this problem of reading from the evidence that is already before us—that we have already received and have under consideration—and simply having it repeated.

Senator BRANDIS—The problem is that, if I do not ask these questions, I know the political spin that certain other senators will try to put on my failure to ask the questions. That is why I have to ask the questions—to ensure that all of these documents are carefully and methodically traced back to source.

CHAIR—If you are concerned about political spin, Senator Brandis, so am I. I am concerned as well about this exhibition that you are putting the Australian Navy through, where you are turning it into a political cat’s paw for the government and not as a service to the community.

Senator BRANDIS—That is neither a question nor a ruling.

CHAIR—No, it is a comment by me and it is something that goes to the evidence before us. It is—

Senator BRANDIS—Mr Chairman, I would like to proceed with—

CHAIR—No, you will be quiet while I am speaking, if you do not mind. The document that you have been examining the admiral on is a document that he has been asked to prepare, and that document goes to only some questions and not all questions about this incident. Those questions that it goes to are only those questions which are beneficial to the government; they do not go to issues that are not beneficial to the government. If the Navy has been brought here to simply answer those questions that the government is delighted to have on the public record and not on all the facts, then the Navy is being used politically. That is my view and that is the cause of the concern that I have about this.

Senator FAULKNER—Mr Chairman, if it helps—

Senator BRANDIS—Mr Chairman, not a single question that has come from a government senator has been ruled out of order by you—not one.

CHAIR—Well, if you want me to start—

Senator BRANDIS—We want you to ask like a nonpartisan chairman, Mr Chairman.

CHAIR—I am offended by that remark and you will withdraw it, Senator Brandis.

Senator BRANDIS—I will not withdraw it.

CHAIR—You will not withdraw?

Senator BRANDIS—No.

CHAIR—I call upon you to withdraw that remark, Senator Brandis.

Senator BRANDIS—I call for a private meeting.

CHAIR—I call upon you to withdraw that remark unreservedly now.

Senator BRANDIS—I call for a private meeting.

CHAIR—I name you, Senator Brandis.

Senator BRANDIS—I want a private meeting.

CHAIR—I have named you. Please step down from the committee. Senator Faulkner.

Senator FAULKNER—If Senator Brandis did not speak over the top of me, he would have heard me say that I am happy to commence my questioning in 10 minutes. But he was speaking over the top of both of us and did not hear.

Senator BRANDIS—I think you were interrupting me, Senator Faulkner.

CHAIR—I am not hearing you; you do not exist, Senator Brandis.

Senator FAULKNER—My only comment on that is: no such luck.

Senator MASON—Chair, I would like to call for a private meeting, if that is all right.

Senator FAULKNER—My suggestion, Mr Chairman—

Senator MASON—Chair?

CHAIR—I am listening to Senator Faulkner.

Senator FAULKNER—My suggestion, as you would recall, Mr Chairman, is that if Senator Brandis believes he can conclude his questioning in 10 minutes, then let us deal with it. I am keen for us not to have to ask Admiral Smith back again. I do not think it is fair to ask him to come back for another day.

CHAIR—I do not think it is either.

Senator FAULKNER—Hopefully we can deal with these matters quickly. The only alternative I have, and to see how effective it is in the circumstances, is to try and place a range of questions on notice and ask Defence to deal, as Defence have traditionally dealt, with those questions in a timely and proper fashion. That has been their practice over the years. That might assist matters, but I do not want to delay the committee for too long. I would like to ask some questions of the Admiral, if it were possible today. That is my suggestion as to how to deal with it—just get on with it.

CHAIR—Senator Brandis has accused the chair of misconduct—

Senator BRANDIS—I accused the chair of partisanship.

CHAIR—You do not exist at the moment, Senator Brandis—and refuses to withdraw upon request that reflection. Unless he is prepared to change his mind and can indicate privately that that is the case, I do not intend to hear from Senator Brandis this afternoon.

Senator MASON—Chair, I would like to call a private meeting.

CHAIR—Is it the desire of the committee to call a private meeting?

Senator FAULKNER—It is not my desire, because I think that really does mean that it is very difficult to hopefully conclude the matters that we have to deal with with the witness this afternoon.

Senator MASON—I think in these circumstances, Chair, it would be desirable. I am not as experienced as Senator Faulkner, but I think that when issues of this importance are raised we should have a private meeting.

CHAIR—I have one request for a private meeting and I have one view that there ought not to be a private meeting.

Senator JACINTA COLLINS—I do not think there should be—I think we should just continue.

CHAIR—It would help me in deciding to continue if Senator Brandis would agree to withdraw his reflection on the chair.

Senator FAULKNER—On a point of order: given that I had the floor and I was making my suggestion when Senator Brandis made his disorderly comment, I doubt it is going to be recorded in *Hansard*. One of the problems, Mr Chairman, was that as he made his disorderly comment I was suggesting that he get the 10 minutes and we try to move through it quickly. That is the sensible way. Can I just say this, Mr Chairman: whenever anyone calls me to order—and I would have to admit having been called to order a few times over the years—I always indicate that if I have made a disorderly comment I withdraw it. I do not know what he said, but if it was disorderly he should withdraw it—and he should know that. If he feels it was not disorderly, that form of words should be able to cover the situation. I do not even know what he said, because I had the floor, but I do not think we need to worry about it. My suggestion is the sensible way of dealing with it. He should quickly withdraw if he has made a disorderly comment and get on with his questioning so that other senators get some chance today to ask a question. That is a reasonable way of dealing with it and stopping this farcical interlude.

Senator BRANDIS—Mr Chairman, I have heard what Senator Faulkner has had to say—

CHAIR—I am not hearing you, Senator Brandis, unless you are prepared to indicate that you will withdraw the reflection on the chair. I heard the reflection on the chair. Whether it is in *Hansard* or not, I heard it and I am offended by it and I ask you to withdraw it.

Senator BRANDIS—Mr Chairman, no reflection on the chair was made, but if you consider a reflection on the chair was made I withdraw it.

CHAIR—And you withdraw it unreservedly?

Senator BRANDIS—Yes. And thank you, Senator Faulkner, for your most helpful intervention.

Senator FAULKNER—Can you get on with your questioning quickly now? That would be new ground; it would be much appreciated.

CHAIR—Order! In view of the withdrawal of the reflection you made on the chair, Senator Brandis, you may now continue.

Senator BRANDIS—Thank you, Mr Chairman. Admiral Smith, can I take you now back to your minute on incident 5, please. Is there an incident 5 in your minute, by the way?

Rear Adm. Smith—No.

Senator BRANDIS—Admiral Smith, I think what you will find has happened is that some pages have been collated wrongly, and you will find a reference to incident 5 immediately after enclosure 4 concerning HMAS *Warramunga*.

Rear Adm. Smith—Yes, I have it.

Senator BRANDIS—That is in identical words to incident 5 in the Titheridge minute?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Can you go back, please, to the four-page bundle of signals. The immediate source of that information is the reference at the foot of the second page of the two-page signal to incident 5 on 2 November 2001 at 0739Z.

Rear Adm. Smith—That is correct.

Senator BRANDIS—Again, the advice given in response to the question whether a child had been ‘dropped, thrown or threatened’ is:

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

Do you see that?

Rear Adm. Smith—Yes, that is correct.

Senator BRANDIS—Then, in response to question E, whether statements from members of the boarding party and boarding officer were taken and held on board *Arunta*, the information provided to you by the captain of the *Arunta* was that statements had been provided.

Rear Adm. Smith—Again, that advice was in error. There were no statements to support incident 5. There was, however, another source document.

Senator BRANDIS—That is what I am interested in. So that was a mistake?

Rear Adm. Smith—Correct.

Senator BRANDIS—At least the identification of witness statements held aboard the *Arunta* was a mistake made by the captain of the *Arunta* which you innocently repeated in your minute

to Admiral Shackleton and Air Vice Marshal Titheridge innocently repeated in his minute to Senator Hill.

Rear Adm. Smith—That is correct.

Senator BRANDIS—But, indeed, there were original source documents of a different character to support that proposition?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Is one of those source documents the signal on 2 November 2001 at 1029Z, which is the next page of the four-page bundle?

Rear Adm. Smith—That is correct.

Senator BRANDIS—And, if you look at that, does that verify at paragraph 5 ‘male PII threatened to throw his children overboard if he was not allowed to prepare own meal’?

Rear Adm. Smith—That is correct.

Senator BRANDIS—And is that signal, bearing the date 2 November, contemporaneous, or nearly contemporaneous, with the happening of the event?

Rear Adm. Smith—That is correct.

Senator BRANDIS—And it would have been prepared by another officer but signed off by the captain of the *Arunta* in the circumstances which you explained a little earlier when you read into the record the letter from the captain of the *Arunta*?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Are there other source documents, beyond the signal, to support that incident?

Rear Adm. Smith—Not to my knowledge.

Senator BRANDIS—Are they being looked for, if they exist?

Rear Adm. Smith—I am not pursuing those because I am satisfied, from my own perspective, that the operational report is the source document.

Senator BRANDIS—To quickly summarise this, in relation to the five *Arunta* incidents, which are enclosure 3 to your minute, we have been taken at length by Senator Mason through the witness statements that support that incident?

Rear Adm. Smith—That is correct.

Senator BRANDIS—We are still looking for, and you are assessing outside, the source documents that support incident No. 2?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Incident No. 3 is supported by the original signal?

Rear Adm. Smith—Correct.

Senator BRANDIS—We have not dealt with incident No. 4 yet—although I think I can say, uncontroversially, that that is supported by witness statements—but in deference to Senator Faulkner we will come back to that in the future. And incident No. 5 is supported by the original signal?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Thank you.

CHAIR—Does that conclude your questioning at this point, Senator Brandis?

Senator BRANDIS—On the basis foreshadowed, yes; there are other matters to come back to.

CHAIR—Can you indicate to me how long you think those other matters might take?

Senator BRANDIS—They would not be finished today. Senator Mason and I have to deal with incident 4 of SIEV7, and SIEV8 to 12. I do not think that that would happen in 40 minutes.

CHAIR—So that suggests that Rear Admiral Smith could be required again.

Senator BRANDIS—I think that follows, yes.

CHAIR—Since we have reached this point, and before I call on Senator Collins to ask questions, we have a letter from the Clerk, Mr Evans, seeking to put some issues on the record. I think everyone has seen that letter. As there is no objection, we will now release that letter.

Secondly, in the case of the video, I understand that the edited video has been checked only to the extent that deletions have occurred that might identify Defence Force personnel or in any sense compromise security. My advice from the secretariat is that they are the only deletions. As the committee are in agreement, it is ordered that the video should now be publicly released.

Senator JACINTA COLLINS—Rear Admiral Smith, I just want to go back to where we stand in relation to the information that is available, and that will be becoming available, to the committee. I think it is useful, following that earlier discussion, to clarify that. You said to Senator Brandis a moment ago that, in relation to incident 2 on the *Arunta*, you are looking for source material.

Rear Adm. Smith—I have the source material now and it is being looked at at the moment. There are some security dimensions and people want to review that. It will be made available as soon as that process is complete.

Senator JACINTA COLLINS—In relation to the third incident, you are saying that you have what you tabled earlier today but you do not have the primary source material. Is that correct?

Rear Adm. Smith—That, as far as I am concerned, is the primary source material—that is the report of the activity as it occurred.

Senator JACINTA COLLINS—But you took on notice this morning, I understood, to go back and refer to boarding logs or other material on the *Arunta* to see if, rather than the brief description in the operational report, you could see the full description of the incident.

Rear Adm. Smith—That was in the context of incident 2; I accept that. We could do the same with all of these others, because they would be contained in other documents on board.

Senator JACINTA COLLINS—When I was referring to the primary source of material, that was my meaning and not what I think Senator Brandis has responded to. I would like to see the primary source material for the reports that you tabled today.

Rear Adm. Smith—I will take that on notice.

Senator JACINTA COLLINS—The primary source material in relation to what you have already looked at—and will soon provide, I hope—for incident 2, incident 3, incident 4 because, unlike Senator Brandis, I do not believe the statement that has been provided actually does sustain that report, and incident 5.

Rear Adm. Smith—I will take that on notice if I could, Senator.

Senator JACINTA COLLINS—Okay. Earlier to Senator Brandis you read from a letter from the CO of the *Arunta*. Could I ask that you table that, please?

Rear Adm. Smith—If I could I will just check that one as well. It was a personal letter to me. I want to see what else is in there. I only read to you what was appropriate to the questioning being pursued. I will need time to read it to see if there is anything else in there.

Senator JACINTA COLLINS—Yes. This is also one of our difficulties because it is a bit difficult for us to question you on material that has just been read to us that we do not have a written record of.

Rear Adm. Smith—I did not ask to read it, but this was in the context of trying to answer your question about source material and what was available and how it was developed on board *Arunta*.

Senator JACINTA COLLINS—What was not clear to me from that letter—and you might be able to explain it to the committee—was why it was that the captain originally indicated to you that witness statements existed. According to your evidence this morning, it has become clearly apparent that they do not exist. What explanation do you have for that?

Rear Adm. Smith—It is a simple explanation. The commanding officer was in fact not on board the ship when this reply was generated. It was generated by his executive officer, and the executive officer made an error in compiling it, in indicating that statements had been taken. When the commanding officer returned he realised the error and advised me of that error.

Senator JACINTA COLLINS—So the XO, in preparing the report, provided you with statements in relation to incident 1 at that time?

Rear Adm. Smith—Could you ask that again, please?

Senator JACINTA COLLINS—We were provided with two statements with respect to incident 1.

Rear Adm. Smith—Yes.

Senator JACINTA COLLINS—Did they come from the XO when he compiled this report to you, because they are the only statements that have been furnished in relation to the *Arunta*?

Rear Adm. Smith—Those statements were already held by us. They were not forwarded in the context of that question we posed to them.

Senator JACINTA COLLINS—Okay. But the other ones do not exist?

Rear Adm. Smith—There are no other statements. That is correct.

Senator JACINTA COLLINS—Is there a view that they ever existed?

Rear Adm. Smith—No. They never existed. It was not really our standard operating procedure to do witness statements. Our method of conducting operations, as I have explained, is to provide various sources of information to CO, and we produce these op reps. That is our authority as to what actually occurred at the time. We were not in the business at this point of taking witness statements. Some were taken, I concede that, and that was at the discretion of the CO. Subsequent to that we now have a policy where statements will be taken, but at the time that was not in force.

Senator JACINTA COLLINS—Did the CO advise you of this other point as well in writing, or only what you read on the record?

Rear Adm. Smith—Sorry—the other point of?

Senator JACINTA COLLINS—What we were just discussing, your understanding that the witness statements do not exist.

Rear Adm. Smith—He wrote to my office advising that these witness statements did not exist, and advising my office of the appropriate source document that supported each of those incidents.

Senator JACINTA COLLINS—But not providing the primary source material, if there is any.

Rear Adm. Smith—From our perspective the primary source is the ones that have been tabled, the op reps. You are of the view that lesser information within the ship is that primary source material. He did not provide that.

Senator JACINTA COLLINS—I am suggesting that there may be—you describe it as ‘lesser’—more descriptive material in the ship’s logs.

Rear Adm. Smith—We would need to review that. I think it unlikely, but we will review it.

Senator JACINTA COLLINS—You have already been asked questions by Senator Brandis about the differences between the two reports. One report indicates ‘threatened to’; the other report indicates ‘attempted to’. I am not sure if you are aware but ultimately it ended up as a headline in the *Australian* last week, ‘Boat people tried to kill child: Libs’. So I think you can probably understand why we are trying to get to the bottom of exactly what was said and in what context and why because there is a big difference between a threat to strangle—I think I have probably threatened to throttle my child from time to time—as opposed to a serious attempt to kill a child.

Rear Adm. Smith—I do understand the significance and I do understand the sensitivity, and we will attempt to get you the best clarification we can.

CHAIR—The other point here too is: what is evidence? It is a quite serious point; it is fundamental to how we conduct an inquiry. The evidence is from the people who were there on the spot and saw it. We are shorthanding this by going through you, Admiral. But essentially, if we are to conclude something on ‘the evidence’, we really do need to know what those people saw, and the only way we can do that is to actually ask them ourselves. So, by adopting this procedure, we are in fact taking a very shorthand approach which does bring into question whether or not we have truly got the true evidence. I am sure you do understand that distinction.

Rear Adm. Smith—Yes.

Senator JACINTA COLLINS—Those were all the questions I had in relation to the material that Senator Brandis had addressed.

Senator FAULKNER—I will try and place some questions on notice to you, Admiral Smith, to try and move this along. As it turns out, you have heard the comments from Senator Brandis, who has indicated he wants to ask you a deal more questions anyway, so I am sorry to say it does appear you will be joining us again at some time in the future. I will just ask you a few questions because we are going to break at four o’clock this afternoon.

CHAIR—We are indeed.

Senator FAULKNER—One of the things we can agree with always, of course, is the time to conclude our hearings, you will be pleased to know, Admiral. I want to ask you, first, whether you saw an article that Laurie Oakes had written in the *Bulletin* magazine this year about an unclassified CDF memorandum in relation to the loss and destruction of evidence.

Rear Adm. Smith—I have not read the article, but I heard you mention it previously.

Senator FAULKNER—I wondered whether or not you had had an opportunity to read that memorandum.

Rear Adm. Smith—Yes, I have.

Senator FAULKNER—I wondered whether you were able to say to the committee in relation to that whether you were aware of any loss or destruction—it might be deliberate; it might be otherwise of course—of any material or documents that might be relevant to this particular committee's inquiry. We have heard—and I do not think we need to go over it—from Commander Banks in relation to the video numbered 8 on HMAS *Adelaide*.

Rear Adm. Smith—I am not aware of a loss or destruction of any relevant evidence in this context. Indeed, after SIEV4 we began to realise the political significance and media significance of these operations and we gave some directions that evidence should be collected and safeguarded. I am satisfied that occurred.

Senator FAULKNER—Thank you. You were able to indicate to the committee a little earlier today the precise time when you were able to come to the conclusion that children had not been thrown overboard?

Rear Adm. Smith—Yes.

Senator FAULKNER—You were able to say to us pretty precisely also when you realised that the photographs that had been publicly shown actually did not depict that incident but in fact depicted the sinking of SIEV4?

Rear Adm. Smith—I have a very clear recollection of those dates.

Senator FAULKNER—You might just say that again, for the purposes of the record.

Rear Adm. Smith—I was advised of the allegation that a child or children had been thrown in the water on the morning of Sunday, 7 October. I continued to believe that that was the case until early on the a.m. of Tuesday, 9 October. I was very much aware of the media coverage that this incident had been receiving. I was becoming quite concerned that none of the operational reports that had come to me through the JTF commander at any time contained information saying that a child had been thrown overboard. I had been briefed by Brigadier Silverstone that there was a difference of view between himself and Commander Banks. That concerned me. So I took the unusual step of contacting Commander Banks direct on 9 October and I asked him for his account of what had occurred and what evidence he had to support the allegation of a child being thrown in the water. In that telephone call, he advised me that he himself had not seen such an event, that he had heard a number of his ship's company indicate that they had seen the

event occur. I told him to get out there, to interview his people and to determine, once and for all, did this incident occur or not. That was on the Tuesday morning.

I subsequently rang Rear Admiral Ritchie and told him that I had serious concerns as to our ability to prove that this incident had in fact occurred. On the Wednesday morning, 10 October, Commander Banks rang me, told me that he had interviewed the people relevant to this incident, that he was satisfied that he had no evidence whatsoever to prove that this incident had occurred—the child being thrown over. I then directed him to produce a chronology of events and to signal that to me as a personal message, which he did that evening, and it was received in my headquarters on 11 October.

After my call with Commander Banks on 10 October I instantly rang Rear Admiral Ritchie and told him that I was now convinced that the incident had never occurred. He advised me that he would relay that information to the CDF and he subsequently rang me back to advise me that he had made that call and passed that information. From my perspective, from that moment forward I was convinced the incident had not occurred and I was satisfied the chain of command had been informed.

Senator FAULKNER—Thanks for that. It is helpful to have that in the *Hansard* record because it also confirms evidence that we have heard from both Rear Admiral Ritchie and Commander Banks. I think you would acknowledge that it is consistent with what they have told the inquiry.

Rear Adm. Smith—Yes, I believe so.

Senator FAULKNER—Thanks, Admiral. Of course, part of Rear Admiral Ritchie's communication with you does go to the point that CDF in fact is informed, because Rear Admiral Ritchie is your immediate superior in the chain of command?

Rear Adm. Smith—Rear Admiral Ritchie advised me that he had spoken to the CDF on this matter.

Senator FAULKNER—Did you have any discussions with CDF about this issue in October?

Rear Adm. Smith—No, at no time.

Senator FAULKNER—You still haven't?

Rear Adm. Smith—I still have not.

Senator FAULKNER—Thank you for that information. Of course, you did have a conversation with Air Vice Marshal Titheridge a week or two—that is my recollection—after the event?

Rear Adm. Smith—That is correct, Senator. On 17 October Rear Admiral Ritchie was in Canberra attending, I think, a chiefs of staff committee meeting. We were at that time dealing with SIEV5, and that ship had just commenced its return—taking it back to Indonesia by

Warramunga, as was our requirement. Air Vice Marshal Titheridge had to be informed of these developments as they occurred, and Rear Admiral Ritchie normally did that. I had agreed with Rear Admiral Ritchie that I would communicate direct while he was away, and that is what I did. I rang Air Vice Marshal Titheridge, and according to my phone records that occurred at 11.58 on 17 October. I advised him of what was occurring with SIEV5 and then we had a general conversation about the issue of SIEV4, photographs and children overboard et cetera. I made the point to him: did he know that none of it was true? He advised me that yes, he knew. So that again satisfied me that the chain of command were aware that there was no substance to those allegations.

Senator FAULKNER—You were satisfied that the air vice marshal was clear that this matter was not true. Did it go beyond that level of satisfaction? Did you have concerns that this matter may not have been effectively communicated to ministers, for example? Was that part of your conversation with the air vice marshal?

Rear Adm. Smith—No, we did not address that subject at all. It was purely satisfying myself that the air vice marshal was aware of that information. I subsequently advised Admiral Ritchie that I had that conversation with the air vice marshal.

Senator FAULKNER—But you were in absolutely no doubt that the air vice marshal was very clear on the point that no children had been thrown overboard?

Rear Adm. Smith—I was satisfied in my own mind that he acknowledged that that was the case.

Senator FAULKNER—And satisfied that the pictures of the children in the water did not depict such an event—in other words, depicted the sinking of SIEV4 as opposed to any events on the 7th?

Rear Adm. Smith—I felt that implicit in our conversation, the fact that the incident never occurred, therefore the photographs could not be describing an incident that never occurred.

Senator FAULKNER—Did you yourself have any contact with staff members from the staff of former Minister Reith?

Rear Adm. Smith—No, I did not.

Senator FAULKNER—Would you be aware of the contact, if any, that would occur at Maritime Headquarters?

Rear Adm. Smith—I am aware of contact that did occur with Mr Scrafton. I was in fact in Western Australia with the Chief of Navy on the day that he made his press statement. We had attended a church service, which was a national church service—

Senator FAULKNER—I am sorry to interrupt you, Admiral, but we are now talking about 8 November, are we?

Rear Adm. Smith—That is correct. During the course of my time in Western Australia I was contacted by my chief of staff, Commodore Hancock, and he advised me that Mr Scrafton was seeking an opportunity to view the EOTS tape from *Adelaide* which I had in my safe. That authority had been given for him to do so. Mr Scrafton came to my office and viewed the tape in my office in the presence of my chief of staff. As far as I am aware, that is the only interaction we had.

Senator FAULKNER—Does that mean no interaction between either you or other staff of Maritime Headquarters and Mr Hampton?

Rear Adm. Smith—There was communication through the public affairs chain. I am not aware of any of my public affairs people being directly spoken to by Mr Hampton. I am aware of a request by Mr Hampton through the public affairs chain direct to the JTF commander seeking authority for Mr Hampton to speak directly to the CO of *Adelaide*. I was away from the headquarters that day. I was briefed on it on my return, and I was also briefed that Admiral Ritchie had made the decision and made the direction quite clear that that contact was not to be approved and that if he required information Mr Hampton was to seek that through the chain of command.

Senator FAULKNER—The proper decision, in your view?

Rear Adm. Smith—Absolutely.

Senator FAULKNER—Why?

Rear Adm. Smith—It is in my view inappropriate to have a chain of information, particularly public affairs information, external to the chain of command. Our whole way of doing business is to review information within the chain of command before its dissemination and to have a direct contact invited the dissemination of misleading information. I was particularly acutely aware of that because of the incident with the photographs.

Senator FAULKNER—With the PACC unit—what terminology should I use for that?

Rear Adm. Smith—It is a division within the department.

Senator FAULKNER—A division. With the PACC unit, would you or Maritime Headquarters routinely be made aware of ministerial staff contact with the PACC or only in an exceptional circumstance like we had with Mr Hampton trying to find a phone number to ring Commander Banks on HMAS *Adelaide*? Was it the exception rather than the rule that you would be aware of?

Rear Adm. Smith—It would be the exception. I would only know of those things if it directly involved me.

Senator FAULKNER—Was there any indication about the nature of Mr Hampton's approach—whether it was particularly aggressive or otherwise? Did that come to your attention at all?

Rear Adm. Smith—I was not aware of that during this series of incidents. I became aware of that only through my reading of subsequent inquiries.

Senator FAULKNER—And evidence such as Brigadier Bornholt's, I suppose.

Rear Adm. Smith—That is correct.

Senator FAULKNER—Apart from the two incidents you mentioned—the Hampton-Brigadier Silverstone incident and the Scrafton video incident—there are no others involving the staff of former Minister Reith?

Rear Adm. Smith—No, not from my perspective.

Senator FAULKNER—And there certainly would not be any involving any other ministers or prime ministerial staff, I assume?

Rear Adm. Smith—No.

Senator FAULKNER—What about contact with anyone in the Department of the Prime Minister and Cabinet, as opposed to the Prime Minister's office? Is that something that you had any experience of during Operation Relex at all?

Rear Adm. Smith—I have never had any contact with anybody within the Department of the Prime Minister and Cabinet. In fact, to even be asked so would be unusual. The contact with those organisations is very much at the national strategic level of our business, and it is handled by the Strategic Command.

Senator FAULKNER—The link here, of course, is the task force, as you would be aware—the IDCs that were operating. Was that pretty well exclusively dealt with at the Strategic Command level and the level of CDF and so forth?

Rear Adm. Smith—That is correct, Senator. The outcomes of the IDC's deliberations on the events as they were unfolding would be relayed to us through Strategic Command.

Senator FAULKNER—So you would be receiving orders, directions, about that via Rear Admiral Ritchie? Would that be the way it would work normally?

Rear Adm. Smith—Yes. Either the CDF or Air Vice Marshal Titheridge would relay to Rear Admiral Ritchie what the requirement was, and he in turn would let me know and I would get on with it.

Senator FAULKNER—Could you briefly, for the benefit of the committee, outline your personal experience and that of Maritime Headquarters with the photographs, which of course have become a little bit of a cause celebre for the committee.

Rear Adm. Smith—We are talking here about the two photographs—

Senator FAULKNER—I am talking about the two photographs. I know there was some level of contact, and it might be useful for the record for you to quickly outline that.

Rear Adm. Smith—I received those two photographs on Tuesday, 9 October, I think. At the time, I thought nothing of them in particular, other than that I was very annoyed with Commander Banks in that he had transmitted these two photographs with rather a wide distribution that included direct transmission to the Defence Headquarters in Canberra, which was contrary to our public affairs plan. It was outside the chain of command. That meant that I lost control of those two photographs. We did not know where they went. Apart from that frustration, which I let him know about in due course—

Senator FAULKNER—He seems to have taken it on board, I think.

Rear Adm. Smith—He got the message. Apart from that, I had no real problem with those two photographs. I knew exactly what they were describing. I knew exactly what his motives were for sending it, which was prior to a new ship's company. Frankly, I thought nothing of it. It was only on the evening of Wednesday, 10 October, when I saw them used in the way that they were used, that I became greatly concerned and expressed that concern to my superiors.

Senator FAULKNER—While I appreciate—and I made this point to Rear Admiral Ritchie—that you know what the photographs relate to, would you acknowledge that certainly the Australian public and media who were representing the photos in a public way were not aware of the incident that they were depicting?

Rear Adm. Smith—I am aware that there was a great deal of confusion about what those photographs were all about.

Senator FAULKNER—I hear your use of the word 'confusion': is it confusion or is it misrepresentation? They were in the public arena and were put forward as evidentiary support that children had been thrown overboard. I do take issue with your use of the word 'confusion'. I think it was a misrepresentation of what the photos were actually depicting.

Rear Adm. Smith—May I come back at you, Senator: you asked me about the public perception of these things, and my understanding of the public perception was that there was some confusion as to what they actually represented. My own words on the evening of 10 October to Rear Admiral Ritchie and to Vice Admiral Shackleton were that these photographs were being misrepresented. I had no doubt about what was happening.

Senator FAULKNER—We have not talked about the video here, but we have talked about the fact that children had not been thrown overboard in the SIEV4 incident—fact one. Fact two is that the photos did not depict such an incident—in fact, it was the sinking of SIEV4. Were you satisfied that those matters had been adequately dealt with by the 11th, because of your responsibilities within the chain of command?

Rear Adm. Smith—I was satisfied that I had fulfilled my responsibilities. I had reported them to Rear Admiral Ritchie, who is my operational chain of command, and I had reported them to the Chief of Navy, who is my administrative chain of command. Both of those officers advised me that they were going to contact the CDF that night. Both told me that they had.

Indeed, Rear Admiral Ritchie went on to say that the CDF had spoken to the minister and explained our concerns and that that would be the end of it. On the 11th and from that point forward until, I guess, 8 November, I saw nothing more on the photographs and I assumed that that was the end of that particular issue. It was only when they resurfaced again in November that both Rear Admiral Ritchie and I realised that this was still a live issue.

Senator FAULKNER—So what did you do then? This issue became public again on 7 and 8 November last year. It might be useful for you to indicate, for the purposes of the record, what actions you took at that time.

Rear Adm. Smith—I again informed my chain of command—both Rear Admiral Ritchie and the Chief of Navy—that those photographs did not represent what they were purported to represent and that indeed that incident had not occurred. Both Rear Admiral Ritchie and I were very satisfied that those in the chain of command were aware of that.

Senator FAULKNER—Did you have direct contact with the Chief of Navy about that matter?

Rear Adm. Smith—I ring the Chief of Navy a number of times each day. As I am sure you understand, he is not in the chain of command, but I keep him apprised of what I am doing within the operational chain of command and I do that on a regular basis almost every day.

Senator FAULKNER—What was the timing of the concerns you expressed to the Chief of Navy about the matter because it was in the public arena again? Tell me about the concerns that you expressed to him and their interface with the Chief of Navy's statement of 8 November and what I describe as the so-called clarifying statement later that day?

Rear Adm. Smith—As I said, I was with the Chief of Navy on that day. We had travelled together from the launching of submarine *Rankin*. He had been out of the country for some time. During that particular visit, I advised him again that there was no evidence to support the allegation that a child had been thrown overboard, and that the photographs that had been used were a misrepresentation of that alleged incident. I was satisfied that he understood that, and indeed I believe that it may have influenced what he said when he made his press statement, because he was basically saying that this had not occurred and that there were only threats of this occurring. I was satisfied in my own mind that the people who should know knew.

Senator FAULKNER—Did the Chief of Navy discuss with you the so-called clarifying statement?

Rear Adm. Smith—No, he did not. I remained behind at *Stirling* when he had left there. By the time I had rejoined him in the hotel in which we were both staying, this whole business had surfaced. The clarifying statement had been released and he apprised me of the circumstances.

Senator FAULKNER—Was that a conversation between you and the Chief of Navy?

Rear Adm. Smith—It was just a conversation telling me what had occurred.

Senator FAULKNER—Did you express a view to the Chief of Navy about the circumstances of the clarifying statement?

Rear Adm. Smith—No, I did not.

Senator FAULKNER—Do you believe that the chain of command failed in relation to these SIEV4 incidents. I am not talking about the operational matters; I am talking about the children overboard and related matters. Do you think the chain of command failed?

Rear Adm. Smith—I heard you ask Rear Admiral Ritchie that question, and I have been wondering how I might answer that when you inevitably asked me the same one. I do not think the chain of command failed. I think the chain of command has stood us in great stead through every operation we have been involved in, and I do not see this as being any different. The question, really, I think you are asking is how the information, once relayed through the chain of command, was used—and I cannot comment on that.

Senator FAULKNER—You would appreciate this. You look at it from the point of view of a very senior naval officer; I look at it from the point of view of a politician who sees misinformation—I am trying to put no spin on this—stand uncorrected throughout the period of an election campaign. You would appreciate in the political cycle how sensitive that is. I do not doubt that you have that understanding. So I think you know why I ask the question in the way I do. You can say to me, ‘I report this to my superiors in the chain of command.’ It is a question, as you heard me ask Rear Admiral Ritchie, of whether he believed or you believed the chain of command failed. I ask you because a misrepresentation runs through the whole of the election campaign. The truth about the incident and the so-called evidentiary support—the video and the photographs—do not come out until well after the election campaign. As I said to Rear Admiral Ritchie, I do think it is a reasonable question to ask in that circumstance—the seriousness of this issue at such a significant time in relation to the public debate on these issues. I know there are other defence imperatives, but I am for the moment focusing on those which were significant in the public mind. That is why I tried to press with Rear Admiral Ritchie, and I will now with you, this question of the chain of command—whether it has failed and whether those outside Defence are entitled to say that they feel let down by it.

Rear Adm. Smith—I do understand the sensitivity of the issue that you are describing. I stand by my comment that I do not think the chain of command failed. I think the chain of command has served us well. I cannot comment, however, on the use of that information once it had been relayed through the chain of command. I had no visibility of that and it would be improper for me to comment on it.

Senator FAULKNER—But do you draw lessons from the actual affair itself, or have you personally as Maritime Commander drawn lessons from this?

Rear Adm. Smith—I have learned a lot from this process.

Senator FAULKNER—Could you say to us what you might have learned?

Rear Adm. Smith—I guess in an operation as politically sensitive as this thing has become, our way of communicating some of the information relevant to that operation, which we had

been directed to do by telephone, I would not do it that way again. I would commit to paper those communications simply because, when it gets to a forum such as this, it appears that what we say as our word is not good enough.

Senator FAULKNER—In retrospect you are critical of the special arrangement that was in place—the direct telephonic reporting to Air Vice Marshal Titheridge?

Rear Adm. Smith—I understand the imperative that drove the requirement for that. I think on balance that it contributed to some of the confusion. But that aside, to be frank, whether this incident—the child, that is—occurred or not in my view is irrelevant. There was a series of activities happening. From the naval perspective, what was important was that that information was reported as having occurred and was relayed to government and several days later that information was corrected—which would be our normal way—and that information was relayed. What I do not have visibility of, and it is not my place to comment on, is how that information was handled at the end of the chain.

Senator FAULKNER—Beyond the special arrangement, Brigadier Silverstone says to us he was critical to you and to maritime command, if you like, about your own and others in the maritime command also in fact bypassing the chain of command in terms of direct telephonic communications with Commander Banks and HMAS *Adelaide*.

Rear Adm. Smith—Yes.

Senator FAULKNER—Do you accept that criticism?

Rear Adm. Smith—I accept full responsibility for that. They did that at my direction. I instigated that action because I was becoming concerned at the differing reports that I was getting. I was aware of the different points of view of Commander Banks and Brigadier Silverstone. I was acutely aware of the sensitivity of this particular subject and the visibility it was getting within the media. I just wanted to cut to the chase and find out what actually happened. I did not think I was going to necessarily get that in a timely manner, given the differences that were evident between the brigadier and Commander Banks, and I chose to go directly to the source. That is what I did and I gave my staff authority to pursue other matters on my behalf that way. It was going outside the chain of command, something that I do not do lightly, but it is my prerogative as the commander to do that and I made that point to Brigadier Silverstone and I think he understood that.

Senator FAULKNER—But do you regret it now?

Rear Adm. Smith—I do not regret it at all, because I got to the bottom of it in a day.

CHAIR—I am reluctant to stop you in full flight, Senator Faulkner, given that you have just started really, but it is after the hour of four.

Senator FAULKNER—It is. I had a small number of questions, and a very brief amount of time to ask those questions, unlike the courtesy extended to other senators. But I understand.

CHAIR—That concludes our hearing for today. We will resume at 7 p.m. on Thursday, 11 April. Thank you very much, Admiral Smith, for your appearance today and for your cooperation with the inquiry.

Committee adjourned at 4.06 p.m.