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SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Reference: Certain maritime incident

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SENATE
SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Thursday, 18 April 2002

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

Senators in attendance: Senators Bartlett, Brandis, Jacinta 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

BRYANT, Ms Jennifer, Assistant Secretary, Education and Immigration Branch, Department of the Prime Minister and Cabinet 1256

PEEK, Sir Richard, Vice Admiral (Rtd) 1191

PODGER, Mr Andrew, Public Service Commissioner, Public Service and Merit Protection Commission 1191

SMITH, Associate Professor Hugh, School of Politics, Australian Defence Force Academy 1191

TIERNAN, Ms Anne-Maree, Senior Research Assistant, School of Politics, Griffith University 1191

UHR, Dr John, Senior Fellow, Political Science Program, Research School of Social Sciences, Australian National University 1191

WELLER, Professor Patrick, Deputy Director, Key Centre for Ethics, Law, Justice and Governance, Griffith University..... 1191

Committee met at 9.06 a.m.**Participants**

PEEK, Sir Richard, Vice Admiral (Rtd)

PODGER, Mr Andrew, Public Service Commissioner, Public Service and Merit Protection Commission

SMITH, Associate Professor Hugh, School of Politics, Australian Defence Force Academy

TIERNAN, Ms Anne-Maree, Senior Research Assistant, School of Politics, Griffith University

UHR, Dr John, Senior Fellow, Political Science Program, Research School of Social Sciences, Australian National University

WELLER, Professor Patrick, Deputy Director, Key Centre for Ethics, Law, Justice and Governance, Griffith University

CHAIR—I declare open this meeting of the Senate Select Committee on a Certain Maritime Incident. Today the committee continues its public hearings in relation to its inquiry. The terms of reference set by the Senate are available from the secretariat staff. Today's hearing is open to the public. This could change if the committee decides to take any evidence in private. The committee has authorised the broadcasting of the public aspects of proceedings. The hearing will last until around 4 p.m. today.

Today's hearing will commence with a roundtable discussion. The purpose of the roundtable is to allow the committee to explore matters such as sound practice in public administration, various models of the possible relationships between ministers, advisers, the bureaucracy and the defence forces and so on.

We shall attempt to deal as expeditiously as possible with witnesses. I urge witnesses to be concise in their answers and I urge senators to keep their questions highly targeted. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. 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, officers 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.

When witnesses are first called upon to answer a question they should state their names and positions; in fact, we will invite you all to state your names at the beginning. Because we have been taking evidence, essentially, about what happened from witnesses, we have followed the practice of swearing in witnesses up until this point. That is not a practice we propose to adopt for this procedure this morning.

Senator BRANDIS—Mr Chairman, may I suggest—I would find this helpful, and perhaps other senators would as well—that when witnesses introduce themselves, they might utter a couple of sentences about their particular fields of expertise.

CHAIR—I think that is a very good idea, Senator Brandis. In fact, if I read the next paragraph of my notes, it actually says that.

Senator BRANDIS—I am sorry to have anticipated you.

CHAIR—This is an appropriate point for me to invite the witnesses to introduce themselves, perhaps starting with Ms Tiernan.

Ms TIERNAN—I am in the School of Politics and Public Policy at Griffith University in Brisbane. I am a doctoral research student and a senior research assistant there. I have done quite a bit of work on the topic of ministerial staff and exploring the factors that are driving the continuing growth and evolution of the ministerial staffing system. I am interested in developing a much stronger empirical base to support the causes and consequences of greater reliance by ministers on ministerial staff.

The work that I have done that is probably of most interest to the committee or most relevant to the issues here is a chapter that I have written in a book called *Motivating ministers to morality*, which looked at the role of ministerial staff as problem or solution in assisting ministers to behave ethically in their jobs. That is my expertise.

Prof. WELLER—I am a professor of politics at Griffith University. I am also Director of the Centre for Australian Public Sector Management and Deputy Director of the Key Centre for Ethics, Law, Justice and Governance, all of which neatly fit into one another. I spent the last 20 years writing about ministers, senior officials, prime ministers and cabinet and the interchange that goes on between them. Twenty years ago I wrote a book with Michelle Gratton called *Can ministers cope?* I wrote a study of Malcolm Fraser, and I wrote a biography of John Button. My most recent book is called *Australia's mandarins: the frank and the fearless?*, which came out last year. It is about that interplay between senior officials, ministers and cabinet both in Australia and comparatively, which has been the subject of my study for the last 20 years.

Mr PODGER—I am the Public Service Commissioner. I had also been a secretary of department for about eight years before that and have worked in the public sector for the last 30 years. I was, at one stage, President of the ACT Division of the IPAA.

Prof. SMITH—I am an associate professor in the School of Politics, University College, University of New South Wales at the Australian Defence Force Academy. My main field of expertise is the relationship between armed forces and society, broadly defined. It includes topics like personnel issues—such as recruitment, retention, public opinion about the armed

forces—and, most relevant today, political-military relations. That has been the field that I have taught in, researched in and published in for a good many years.

Dr UHR—I am a senior fellow in politics at the Australian National University. I teach ethics and public policy at the ANU. I have written a fair bit on ethics and public service issues. I am a generalist on the area and am attracted to it because it is a matter of increasing concern within the system.

CHAIR—I think we should not allow your modesty to overcome the fact that you spent some distinguished service time in the Senate.

Dr UHR—As a committee secretary.

Sir RICHARD PEEK—I act as an individual. I retired from the RAN in November 1973 after 45 years service in increasingly responsible positions from about 1939. These involved operational requirements, administrative jobs, leadership and strategic matters. As I am sure someone will allege, I recognise that it will be claimed that I am now out of date. I believe, however, that most of my experiences apply today.

I place on record that, after 1939, although my professional advice was sometimes challenged by ministers, departmental heads and other bureaucrats and officers of the other two services, I cannot remember ever having it overridden. To put it clearly, I claim I was a professional naval officer. I would like to make one further statement. You will have various public statements I have made. There is another ABC television interview which happened on 3 April for which you do not have the transcript, and neither have I. There is a phrase in it, though, which I would ask to be deleted should you ever have it, for which I wish to apologise to the senator for any hurt that he may feel about it. The phrase, ‘should be shot,’ was a colloquial one from my youth and was inappropriate. I apologise to Senator Brandis. However, I also wonder if the senator would consider apologising to the naval people, particularly to Commander Banks of the HMAS *Adelaide* and the crew of *Adelaide*, for the hurt that his adversarial cross-examination style has caused them. Thank you.

CHAIR—Thank you.

Senator BRANDIS—Mr Chairman, I think it is probably appropriate that I respond to that. Sir Richard, no apology to me from you is necessary. No hurt was caused to me, and your rhetorical gesture was taken in the good-natured spirit in which I am sure it was intended. In relation to what you have asked of me, I think every member of this committee would agree that, like all of the members of the committee, the approach that I have taken in relation to all naval officers, and indeed all witnesses who have appeared before the committee, has been to inquire of them sometimes searchingly. But I have placed on the record several times in the course of this committee’s hearings, and on the public record elsewhere—including last Wednesday in the Brisbane *Courier-Mail*—my very high regard, deep respect and admiration for the professionalism with which the officers and crew of the HMAS *Adelaide* at all times conducted themselves.

Sir RICHARD PEEK—Thank you very much.

CHAIR—That gets us off to a pulsating start. I have to say, Admiral, that a number of us did hope that you meant it literally rather than figuratively.

Senator JACINTA COLLINS—I do not think this is the time for us to have views expressed on our behalf in relation to the senator's style, either. Let us move on to what we are here for.

CHAIR—That is indeed the sentiment of the moment.

Senator FERGUSON—I would like to hear about the senator's styles.

Senator BRANDIS—There are a number.

Senator FAULKNER—Or the lack thereof—it would not take long to talk about style, but a lack of style might take the whole morning.

CHAIR—This is the problem that I have as soon as humour enters the fray, everyone gets to speak and we lose track of time. We have a fair task ahead of us this morning and we have certainly invited you here to make a serious contribution to our deliberations. We think this is a serious matter. It seems to me that the appropriate way to proceed, now that everyone has been introduced, would be to invite you, in whichever order you select, to say a few words to the questions that we are looking at in this inquiry. I am sure all of you have been given a copy of the terms of reference, and many of you may have followed the debate in the inquiry. The issues that we are interested in were outlined in the letters that we sent. Everyone can speak for themselves as to how they apprehend all of those matters. Who would like to start the ball rolling?

Prof. SMITH—I am happy to start. There are a couple of initial points: the term 'politicisation of the Defence Force' has been used in various contexts. I am not sure that is the best way to look at it. It has all sorts of connotations, including that military people become partisan in their actions. That may be a concern, but I would see it as a problem of the broader relationship between government and the Defence Force and the maintenance of the conventions and traditions that govern that relationship. As I said in my submission to the committee, I believe those conventions have been broken, or at the least very severely strained, in recent times, and not least during the certain maritime incident episode.

Another general comment—and senators may take this amiss—but I do see, in a way, this inquiry as being part of the problem. It is embroiling members of the Defence Force in party political issues and this, I believe, is unfortunate. Certainly the Senate and its committees have every right to put searching questions to members of the Defence Force—and I agree with Senator Brandis that they have been very professional and very excellent in their answers. I think they have come out of this ordeal very well. What I would say, though, is that it is unfortunate to have members of the Defence Force being asked seemingly factual questions but behind those questions there is a political agenda—for example, a desire to show that the behaviour of asylum seekers is part of a wider pattern or that it is not part of a wider pattern of behaviour. I can see why senators pursue these lines. My comment is that it does put members of the military in a difficult situation, knowing that every word, every phrase they use, may be

taken up and run with for a political purpose. It is not the sort of thing that people join the Defence Force for and I think it creates an unfortunate impression in the wider community.

Having said that, let me make a couple of general points also about the political-military relationship and stress two ways in which the military are very different from the civilian public service and, indeed, from every other organisation—and I am not referring to their dedication, willingness to risk their lives and all that. Firstly, the military respond to authority; that is their whole system. It depends on people acting with authority so that when a junior officer at a headquarters contacts some person outside those headquarters that officer does so in the name of the commander of the headquarters, acts with the authority of the headquarters. So the person being contacted by that officer assumes that that junior officer has the authority of his or her superior. That attitude seems to carry over to the way in which military personnel respond to approaches by, requests from, directions from members of ministerial staffs.

Unfortunately, it seems to me, ministerial offices do not work in the same way as military command systems, that staffers do act to some extent on their own initiative. They are not always acting in the name of the minister under the direct orders of the minister, such that if they make a mistake the minister is held directly responsible in the same way that a commander is held responsible for his or her subordinates. Approaches from ministerial staffers do put the military in an extremely difficult position; they are used to accepting orders, accepting directions from the military chain of command. To have this outside body coming in and saying, 'Do this, don't do that, give me such information as I require' is very contrary to the military way of doing things, including simple requests for information. The military pass information up the chain where it is synthesised at higher levels. If they pass information out that is liable to be used in all sorts of ways outside the chain of command they are put in a very difficult position—whether they refuse to give the information, in which case they may be offending the minister and the minister's office; or if they give it and then it is used for party political purposes.

My second general point is about the military perspective. The military do not whistleblow—if that is that the term. They do it even less than civilian public servants. There is a loyalty to the organisation which is very strong, a natural support for the chain of command and the recognition that information must be kept in the chain of command. On the other hand, the military are accustomed to talking in public about activities within their sphere of responsibility. They are used to the limits that can be put on this: limits of avoiding party political issues, of privacy, of security and so on.

Both of those principles seem to have been rather overlooked in recent times. The consequences are twofold. One is that it seems the military can be relied on not to—to use John Uhr's term—speak out publicly. Indeed, the government took particularly strong steps, through Defence Instruction (General) No. 8, to ensure that they did not, and there was specific public information policy regarding SIEV4, or Operation Relex in general, I believe. The second consequence is that military personnel can become extremely discontented about, firstly, the way their story is not told and, secondly, the way that information which they do provide up the chain is or is not used.

Certainly, there have been problems in reporting and lack of clarity in who said what to whom. But I can certainly say, from talking to quite a number of military people, that the way in

which this whole episode ran has caused a lot of unhappiness. Military people have felt used, embroiled in party politics. I am hoping that one of the outcomes of this inquiry can be at least some sense of what conventions and traditions should be observed to ensure that the military do not become embroiled in party politics in one way or another, in one arena or another, including Senate inquiries. Perhaps I had better stop at that point.

CHAIR—Thank you, Professor. I think Senator Brandis has a couple of quick questions. We really want to get an opening statement from everybody so that we can all hop in, but it does raise a question, if there are a few things that come up that need some quick comments.

Senator BRANDIS—I do not have a couple of quick questions. I was going to engage Professor Smith in a discussion by way of elaboration of two points that he made and I did not want to lose the contemporaneity, as it were, of his remarks. But I think that, in view of the fact that it will open up a substantive discussion, I will defer that, Mr Chairman.

Dr UHR—One way in which I think the committee could respond to Hugh Smith's challenge—because I tend to agree with him that the committee inquiry might be part of the problem—is to try and identify where the inquiry is going in terms of conventions, practices, standards and the like. I think one way in which the committee can do that is by starting to compare: not just looking at Australian practice and puzzling over it, but trying to compare. One useful point of comparison is still the UK. We tend to judge things in terms of the Westminster system and I think one of the features that is dangling itself before the committee is that Westminster has moved on, specifically in relation to the issues that Hugh Smith raised in relation to the power and authority of ministerial staff.

Ministerial staff in the UK now are subject to a major public inquiry, in part because they have already established a specific code of conduct for ministerial staffers which is absent in the Australian case. They have a legislative framework which is worth the committee looking at by way of comparison to identify the practices and conventions that might be appropriate to the power that is increasingly exercised by ministerial staff. When you look at the details of the UK code, there are things that we can learn from that, because they have lots of prescriptions about the duties of ministerial staff to respect the political neutrality and professionalism of public servants, particularly in relation to the management of public information. I would be happy to direct the committee's attention to the specifics of that, but there are things we can learn other than just regurgitating issues of anxiety here. Trying to search around and look at possible models of best practice and the UK is a good place to begin.

Prof. WELLER—I will mention very briefly four or five areas which have been canvassed directly and indirectly and which seem to be brought up by the committee. The first is the relationship between ministers and their senior two or three levels of officials, which has changed quite dramatically over the last 25 years, partly because of the growing professionalism of ministers. It has changed also because of the terms and conditions under which senior public servants are now employed. We have combinations of contracts and shorter periods—they started at five years and they have become more limited. We also had the Barratt case a couple of years ago, in which a public servant's position was terminated. It went before the court saying, 'Due to no action of his own.' There was an agreed point when the appeal came up: it had not been anything that the secretary had done; it was simply that the minister decided they

had no confidence in them. What are the implications of that sort of position for secretaries and their relationships with ministers?

If the pendulum swung too far in the 1970s, as I would argue, towards the overprotection of senior officials, the question is whether it has swung too far the other way and is having an impact on the preparedness occasionally to give advice in particular cases. When I wrote a book 20 years ago, the comment was made to me that if the minister is doing something with which you don't agree, to object once is desirable, twice is necessary and three times is suicidal. There is a balanced position which we need to find, and I am not sure if the pendulum has swung too far in that case.

The second question which will keep coming up is that of ministerial staff, particularly the fact that the role of ministerial staff has changed very dramatically over the last 25 years. The change started, in a sense, in the early seventies, and it has grown increasingly, but I am not sure that the legislation, the terms of accountability that might be applied or the codes of conduct which may or may not exist have moved at the same speed. The notion that people would, to the same extent as they do now, make demands at all levels of a department I do not think occurred 15 years ago. We have two ex-ministers here and they can probably talk about what happened 10 years ago.

At some stage the question is not only what they should be doing and how they should be relating to the public service, but also accountability, and accountability to the Senate which is currently, I believe, excluded, yet they are on the public purse and they are giving advice to ministers in the same way that secretaries of departments are on the public purse and giving advice to ministers, and they are playing a major role in the decision making of this country. The assumption that once applied that if you tell a ministerial staff member something you have de facto told the minister something quite clearly no longer seems to apply. When you had smaller staff, that did apply. I do not think it does now, so perhaps that question needs re-examination.

A third point is the question of—I suppose the public's right to know is one way of putting it at its extreme—who corrects incorrect data if people know it is incorrect. It becomes quite difficult—Hugh has talked about the military—but how far do you press it if you believe that something is wrong and the public is being given the wrong impression? Is there any way of saying quite simply that what you have been told is wrong and where does it come from? In this case you had a highly centralised media process which required everything to be checked through the minister's office—even basic facts about what happened in particular events. This inquiry raises the question of whether that is desirable or whether there ought to be other ways in which the public can know what is happening. I am talking not about secrets or national security, but simply what is happening and whether there are better mechanisms available for correcting the public record.

The fourth one, which I know you have touched on on one or two occasions, is the question of caretaker conventions. It would seem to me, from the evidence that is before you, that this all occurs during an election period. I think that a couple of times people have said the caretaker conventions do not affect it. The question that raises is: ought it to? Ought there to be different circumstances during an election campaign? Perhaps it is not a matter of making appointments or new policy, which is certainly covered by caretaker conventions, but it is the use of the

Public Service by a government—any government—within that period to do things. Should they be different from those that are done during normal process? I do not know the answer; I raise the question because it is something that seems to have occurred on several occasions during your discussions.

CHAIR—I will not interrupt, but on that last point, on a matter of fact, there is a certain piquancy in this because the election had been announced but the caretaker convention for a short time had not been invoked. I think the first report of children overboard came during that period, and then the caretaker convention kicked in.

Prof. WELLER—The other question then is: should we change the time limits invoked—is it the announcement or is it the prorogation of parliament? Those are the sorts of questions that we can raise.

Senator FAULKNER—In fact, the Prime Minister announced at the time he indicated he would be calling the election the date from which the caretaker conventions would apply. That has become normal practice. The time lag has become greater as time has moved on. In this case, I think it was a couple of days.

Senator FERGUSON—It was on a weekend.

Senator FAULKNER—The public announcement of the election was on the Friday. I think it was at a press conference on that day that the Prime Minister indicated that the caretaker conventions would apply from the subsequent Monday.

Ms TIERNAN—I would like to pick up two points that my colleagues have raised on the issue of ministerial staff. John raised the point of comparison being the Westminster system, which is obviously a good one—there has been a lot of work in the UK about that—but another point of comparison is the American system. It is obviously at a more sophisticated level of development, but there is a whole industry developing prescriptions for presidents and congressional representatives about what they should use in terms of advisory arrangements.

I think it is pertinent in this case and for the issues that are emerging in the inquiry to mention that to date Westminster ministers have not tended to see problems that arise as being systemic; they have tended to see those problems as being individual, saying ‘Oh well, if I’d been the minister that wouldn’t have happened,’ or whatever. In the same way as there is no particular appetite for presidents to pick up the prescriptions that have been offered to them, because they do not suit them and they are wanting a flexible system that meets their advisory needs, we need not anticipate that Westminster ministers will pick them up either.

We need to come to a point where executives recognise there is a systemic danger to them in an advisory system that is very fragmented, chaotic and ambiguous potentially, and then be prepared to do something about it. At the moment, my sense—and picking up the point about the nature of the inquiry—is that while the kind of partisan arrangements exist that preclude us from even knowing the total numbers of ministerial staff, except for what is extracted at Senate estimates time, we need to have a base from which to start making some judgments. We do not have that base now because of some of the inherent partisan practices that have grown up around the ministerial staffing institution.

Senator BRANDIS—You accept, I assume—and I think this is commonplace—that the protection of executive privilege, as it were, under the Westminster system is much stronger than it is under the American system. For example, in the British or the Westminster system, jurisprudence knows nothing like the US Supreme Court’s decision in the case of the United States and Nixon—the Watergate tapes case.

Ms TIERNAN—Sure.

Senator BRANDIS—Am I right in thinking that that is something that we can take as a given—that our system, the Westminster system, is much more protective of the privileges of the executive government than the American system?

Ms TIERNAN—I think that is right. But one of the interesting things about the issues and the anxieties that are being expressed about ministerial staff here and about special advisers in the UK is that the language is very similar to what was in the American literature 30 years ago. So there is a period in which everybody says, ‘This is essential for ministers. They are overworked; they are overloaded; there are public expectations. They need help to cope.’ Then it moves on to, ‘All right, we have developed this system and there is this potential for problems in it. What is that potential for problems? How do we reconcile those competing tensions?’ There has not been a book since *Can Ministers Cope?* 20 years ago in which some of what ministers actually need to do their jobs effectively has been explored. On the other hand, what are appropriate arrangements to ensure that they get that within a system that is appropriately accountable, transparent and whatever else it needs to be?

Senator MASON—So it is how to cope with the new reality?

Ms TIERNAN—Sure. And one point of comparison is the UK; the other point is the US.

Senator BRANDIS—They are PhD students of Professor Weller, I think.

CHAIR—Maybe we will look in on the tutorial. Sir Richard, you raised your hand so you can go first.

Sir RICHARD PEEK—I am not very coherent in speaking off the cuff but there are a couple of points I would like to make. There was reference to whistleblowers and discontent. In the bad old days, whistleblowers did not even exist. It was not a word in my vocabulary until perhaps the last 15 years. We did not worry about whistleblowers because, as has been said, we had the loyalty of our sailors and junior officers. On the question of discontent, I wonder whether the committee has had much information about just how unpleasant the tasks of these officers and sailors are. *Manoora*, for example, had hundreds of discontented Iraqis being held off Nauru Island for three weeks. Nobody seems to realise just what life must have been like for the sailors in that time. Similarly, with *Adelaide* they had 240 plus their crew on board for 48 hours. Has anybody thought of what it must have been like? Is anybody going to do anything about that? They were the points I wanted to speak on. But I have a few of my own.

It has been suggested and acted upon that the services are businesses. The services are no more businesses than is the parliament, the police force or the teachers. They are services and

services cannot be organised the same way as businesses. I think that is part of the problem in the current organisation of the defence forces.

It has been said from time to time that the muzzling that goes on is for security reasons. The security of the Commonwealth is protected by the Crimes Act. Anybody in the services with any responsibilities knows of the Crimes Act and everybody sticks to it or else goes to jail. We have not had any go to jail recently. To say that the present instructions, which are signed by the secretary of the department and the Chief of Defence Force, are draconian is putting it mildly. The reason they are written, I believe, is so that the government and its advisers can try to stop people from telling it as it is. One of the great worries of the men at sea is, I am sure, that lies—I say it advisedly—are being told about what they are doing. The ‘babies overboard’ event, which happened on 8 or 10 October—

CHAIR—The 7th.

Sir RICHARD PEEK—By mid-October, around Canberra, you could hear it in every pub and club everywhere that it was untrue. Yet it did not percolate up the political spectrum because of bad advice, because of bad advisers, or just didn’t they want to listen? But I can imagine what a job the captain of the *Adelaide* must have had to pacify his troops about the ‘inaccuracies’—let me put it another way—that were being alleged about what they had done.

The security reasons, which you have quoted and I mentioned before—do not stand up to investigation. Presumably, the government’s requirement was to get the word to the people smugglers, to the illegal immigrants, that it was not an option to try to come to Australia. Surely the way to achieve that was to get first-hand stories of what happened to people who had tried to get to Australia. One would have thought that a sensible government would have used the reports from the commanding officers of the patrol boats, the frigates, the landing ships, to get this information into the press and the media and out into the big wide world. To say there are security reasons for not allowing people to talk, or their reports to be made public, is just plain stupid.

I would also use the word ‘stupid’ about the chain of command. Currently—and I keep a fair eye on it—it is obscure and complicated. The captain of the *Adelaide* had a conversation with a brigadier in Darwin—Lord knows where it went between then and the time it got to Defence who, at the moment, are the authority. They passed it, allegedly, to the minister—or to their advisers, departmental heads—but nobody knows after quite a long investigation, which you gentlemen have been carrying out, just what did happen. Now in the bad old days, the captain of the *Adelaide* would have sent a signal to the Naval Board, with copies to anybody who was interested, and the Naval Board, through its own minute public relations organisation, would have issued the statement and told the Minister for the Navy and then it was up to him. There is no Minister for the Navy now.

What the chain of command should aim to do, I believe, is to get the information from the operator to people who have the technical knowledge, who can do something about the complaint breakdown or whatever it happens to be, and who have the power to release the good and bad news to the media. It seems so simple, but it is what happened in the old days. I could give examples but I am not going to bore you with those. That was the drill. If something happened that you thought was of public interest or of concern to the government, you reported

it to headquarters who then took it from there. Nowadays, one does not know; it goes through ministerial advisers. I do not like to get emotional about ministerial advisers because I had a nasty session a few years ago when a few of us were trying to get justice for something that had happened to sailors in the late 1950s—this has been won since then—and the garbage I got from the ministerial advisers of two ministers was breathtakingly dreadful.

I have mentioned the security aspect ad nauseam. I personally think that the present document, issued under the signature of the secretary and the Chief of Defence Force, needs to be torn up and scrapped. People should use their commonsense as to what they do—and the commanding officers are responsible citizens. At the risk of boring you for one minute, let me tell you what went on in the prawn war of the sixties. Does anybody remember it? Have you heard of it?

CHAIR—Yes, of course.

Sir RICHARD PEEK—The prawn war was caused by the invasion of our territorial waters and prawning grounds in the Gulf of Carpentaria by a Russian squadron of prawners and a large mother ship. We had a few patrol boats available and we sent a couple of patrol boats, commanded by lieutenants of the ages of 24, 25 or 26, with instructions to get rid of the Russians. They were a bit more specific than that, but not much more: ‘Try not to get into trouble, but get rid of them.’ And they did. Their chain of command was to the admiral at sea and to the Naval Board. There was some concern expressed by legal authorities that they should have a legal officer on board. There was no room for that, so then they suggested that they should have a legal library. This was understandably laughed at and scorned—because what do you do when a Russian mother ship is bearing down on you? Do you ram her or go to your legal library and inquire as to what you should do?

CHAIR—Maybe you throw the book at them!

Sir RICHARD PEEK—However, I have talked for long enough. Basically what I am saying is that you must accept that the Navy at sea is commanded by responsible people. The men and women they command are splendid people, and it is hurting to me personally that they be treated the way they have been over the last six months.

CHAIR—Mr Podger, would you like to say a few words?

Mr PODGER—If I may, I would like to say a few things. The first point in your note to us was about sound practice in public administration. I thought it might be useful to make a few comments about that in the light of the Public Service Act 1999. There has been a major shift over the last 20 years in devolving authority to agency heads and away from a central body of the Public Service Board and away from prescriptive rules in the Public Service Act. The provisions in the act now are around values and a code of conduct. There are some people who view those as aspirational things that you put on the wall and you hope people think about. But I want to make it clear that it is a lot more than that. The values and the code of conduct are in the law. They are in sections 10 and 13 of our act. There are obligations in the act on agency heads to uphold and promote the values and to ensure that there is compliance with the code of conduct, and the Public Service Commission has an evaluation role in its functions on both

those scores. The Public Service and Merit Protection Commission has put out some guidance on these things in terms of a document on values, and there are directions on each of the values.

We are currently looking closely at the guidelines on official conduct and bringing them up to date under the act. What I would expect agency heads to have in their own arrangements to ensure that the values are being abided by and the code of conduct complied with are in their chief executive instructions, in their governance arrangements, their various decision making processes within the organisations, their various plans, their performance management system and accountabilities and in their training and development. The values and the code of conduct, if you like, set out what is the institution of the Public Service, the relationships between the Public Service and government and between the Public Service and the public, workplace relations and the personal behavioural points expected of public servants in the Public Service, including their personal ethics.

The second thing I want to raise that was in your letter was about the Public Service and ministerial office arrangements. Pat Weller mentioned that there has been a swing of the pendulum over the last 25 years or so, and I think that is absolutely right. One of the major themes of the Coombs royal commission back in the 1970s was that the Public Service was not responsive enough to the elected government. I note that Prime Minister Howard in mid-1996 when he released the then values for the service made a comment about how much he appreciated the shift from when he had previously been a minister in the responsiveness of the service and its working relationships with ministers' offices.

I think behind the scenes what has been happening is, while the service has indeed become more responsive to the elected government, as it should have been, the relationship has become more complicated, partly I suspect because of the increased pressures of communications in the modern world and the media that require ministers to have more support in their being able to respond immediately to anything and everything and the role of the service being to provide depth and a longer term perspective in the interaction. That interaction has become more complicated. The response has been both to increase the size of ministers offices and also that departments have to change their own ways in order to be able to help respond to that pressure.

In the relations between the Public Service and the government there are particular values that should be drawn out. The first ones are the traditional ones about what is the Public Service as an institution. The first value is about being an apolitical, impartial and professional Public Service. The fifth value is about being accountable. The sixth one is about being responsive to government, and there is also a value about results and performance, which I think also has a major impact on the relationship.

If I turn to the code of conduct, there are a number of points in that which are particularly relevant. The first one I draw your attention to is that public servants are required to comply with all applicable laws. This is not a trivial point. It means that, apart from the Public Service Act, there is financial legislation, there is a whole barrier of administrative law. Most agencies have their own legislative provisions that they must abide by. That governs a great deal of the relationship between the Public Service and the ministers.

There is a provision in the code of conduct about confidentiality, an essential one which refers to confidentiality not only with the minister but also with the minister's office, and that goes to

the need for trust between the service and a minister and the minister's office. There is also a code of conduct provision about the proper use of resources, which also can have a major impact on the relationship between a department and a minister and his office.

There is some tension between the values, and we should recognise that. The value about being apolitical, impartial and professional does not actually say we are independent. If we took that value on its own to an extreme, we would have major problems about responsiveness of the service to the government of the day. I also note that the responsiveness value actually includes within it the terms 'frankness', 'accuracy', 'comprehensiveness' and 'honesty'—that is, if we are truly responsive to the government of the day we have got to be careful that we understand that a short term responsiveness to meet an immediate apparent requirement is not being responsive if we fail to give the frank and more detailed advice that is necessary and with full accuracy.

I would like to say a couple of things on the relationship with ministers' offices. I mentioned that we are looking at the guidelines on official conduct. The current guidelines are very brief on the relationship, and I think this is an area we need to expand upon to clarify for public servants their relationship with ministers. The issue of trust is important so you get the relationship working and I would see that, therefore, the relationship has got to be professional and cooperative. But we need to remember the basic line of authority—that is, that staff are responsible to agency heads, who are responsible to ministers.

In this context, you need to have a close relationship, but the minister's office is not there with a power to direct. The minister needs an office there to help in the process and to handle the scale of activity, and by nature there will be a lot of relationships between the minister's office and the staff of an organisation. But I think we do need to clarify that, in law, there is no power to direct. The relationships are between the staff and their secretary and between the secretary and the minister. Obviously, in making that relationship work, staff would normally expect that, when they are dealing with a minister's office, they will know what the minister is saying, that they will understand the requirements and that this approach will work very easily and properly. But I think there is a need within each agency to clarify the protocols of the relationship. If there are things that are uncertain, when can you escalate these issues up the line to the point where a secretary might need to talk to a minister at a certain stage if there are real uncertainties about the advice being passed between a minister's office and the staff of an organisation? I also believe that it is probably good practice, when public servants are providing advice, that any written advice should be addressed to the minister, albeit it will go to a minister's office. It might be dealt with by a minister's adviser, but I think the important relationship of authority needs to be abided by.

On the issue of codes of conduct for ministerial advisers, that is outside my specific jurisdiction but I would make a couple of points which may be relevant. As I have mentioned, the Public Service Act has a set of values and a code of conduct in it. There is, in fact, also a Parliamentary Service Act—and I am also the Parliamentary Service Commissioner—and it also has a set of values and a code of conduct. There are particular areas of difference between the two sets, recognising, in particular, the different lines of accountability that the two groups have. In my view, there is a case for some articulation of the values and code of conduct of ministerial officers. Whether that should be in legislation or somewhere else, I have no view. It may simply be an issue of some statements from the Prime Minister or something of that sort,

but I think it would be of some assistance if there were some approach there to clarifying the principles.

CHAIR—Thank you very much, Mr Podger. We should turn to the committee to raise questions. This is a different form of procedure from the one we have been adopting up until now, by which we have been questioning people as to the facts. We are here soliciting opinions and this will be a much more relaxed and informal procedure. I will ask Senator Brandis to lead off, but if there is a point that a person makes at the table that other members at the table wish to elaborate on, would they also indicate that so that we at least get a rounded view from all of you about any matter that is before us under discussion.

Senator BRANDIS—I want to deal with two issues. The first of them is the notion of the chain of command, which was addressed by Professor Smith and Sir Richard Peek. We have spoken a lot in this committee about the chain of command, but that is a bit of a misdescription because what we have mostly heard evidence of is something a bit different—that is, the chain of reporting. So, although instructions coming down the chain have been a relevant matter for this committee to be aware of, it seems, at least to me, that a much more important thing that we have heard about is the chain of reporting up the chain, particularly in the famous SIEV4 incident on 7 October—the origin of the report, how the report went up the chain and, most importantly, the point at which sufficient doubt ought to have formed in the minds of the people at the top of the chain before that report was corrected, if at all. I would like to put this in a context and invite Professor Smith and Sir Richard, or other members of the committee, to comment on it. This is, I think, more specifically a military issue than a public service issue.

I will put this in context by reading you a bit of evidence from Admiral Barrie. I will indicate my own prejudices at the start by saying that I, myself, have no criticism of Admiral Barrie; I think he was too self-critical and for the life of me I cannot see what more he could have done. In any event, that is my impression. But let me read you this little piece of evidence about the chain of reporting and, in particular, the point at which a report ought to be challenged or set aside or action taken at variance with it. Pages 788 and 789 of the committee's *Hansard* read:

Senator BRANDIS—Admiral Barrie, I would be right—would I not?—in thinking that the reliability of reports received up a chain of command or a chain of reporting is a very important value for the Navy ...

He agreed; he said yes. And I said:

... that one of the professional skills in which naval personnel and in particular commanding officers are trained and in which they accomplish a high level of expertise in fulfilling is the ability to provide reliable reporting—

Adm. Barrie—Yes.

He agreed with that. Then I said:

... and the Navy relies heavily upon that capacity in order to make operational and command decisions?

Adm. Barrie—Correct.

Senator BRANDIS—Would I be also right in thinking that it follows from that that when a report has been received, in particular from a commanding officer in an operational situation, that report would not lightly be disregarded or set aside or changed?

Adm. Barrie—I think I can agree with that, with the only proviso being: provided his superior commander was not in receipt of other information.

I want to stress that word ‘information’, because gossip about doubts is not, at least to my mind, information. And I said—I am coming to the end of this:

Quite. I understand that. There seems to me, I must say, a degree of artificiality about a lot of this discussion because it assumes that there was not a status quo about the reportage of the SIEV4 incident, whereas from the time the first report went up the chain, through Brigadier Silverstone to Air Vice Marshal Titheridge, there was in fact a status quo as to the reporting. And that status quo was the initial report that suggested a child had been thrown overboard. Do you follow me?

Adm. Barrie—The events begin with the initial contact.

Senator BRANDIS—Yes. So that initial position, the reliability or, if you like, the authority of that initial report, would not lightly be set aside. It might ultimately have to be, as indeed, in this case, it was. But it would not be lightly set aside—would you agree?

Adm. Barrie—I agree.

Senator BRANDIS—Nor should, as a matter of proper procedure, such a report lightly be set aside?

Adm. Barrie—No.

Senator BRANDIS—And you as the ultimate commanding officer of the military would in fact be—may I suggest to you, with respect—behaving quite inappropriately were you to disregard or set aside a report on the basis of which decisions had already been made, unless you were well satisfied that it was wrong?

Adm. Barrie—Yes.

Those are the propositions. Admiral Barrie, with the one qualification, agrees with them all. I think it is perhaps useful for me to invite you—in particular you, Professor Smith, and you, Sir Richard, from the military point of view—to speak about the sacrosanct nature, or the extent to which it is sacrosanct, of the chain of reporting.

CHAIR—I am glad that you have raised this, Senator Brandis, because, as you know, I did not get an opportunity in the limited time to conduct an examination of Admiral Barrie for myself, and I am in the hands of the examination you and others in the committee conducted—and I do not complain about that. But this is an area in your examination of him that I was particularly interested in as well. Therefore, I am indicating that I am very interested in the response to the points that you have made, because I think there is an alternative case—but, anyway, let us see.

Prof. SMITH—I am happy to go first. I will begin by saying that the safest assumption is that the chain of command and the chain of reporting should be seen as one and the same thing. Information reporting—synthesised information, intelligence—is absolutely critical to effective command. Having said that, there are some ways in which those involved in operations can speak more openly to the public, subject to all sorts of constraints. The chain of command and the chain of reporting, as a basic proposition, are focused on the Chief of Defence Force, as the commander, the man with effective authority over the whole of the Defence Force. Anything which detracts from his command over those forces or detracts from the CDF as the focus of information has to be carefully monitored. If the government wishes the Defence Force to do something, it should go through the CDF via the minister. Any suggestion that the Defence

Force might be doing things—even providing information—at the behest of ministerial staff or, indeed, civilian public servants, is something that has to be very carefully arranged and organised if it is considered necessary. That is my basic point: consider the chain of reporting and the chain of command as one and the same thing, or different sides of the same picture.

On the specific case of tactical information—reports of an immediate situation being made up the chain of command—yes, it is true that the immediate commander will normally rely on the information coming to him or her. Often, it is the only information that is available, it is necessary for immediate action and it can be critical. That is why, as Senator Brandis says, a great deal of emphasis is placed on training the military in reporting accurately, correctly and quickly. But it is certainly recognised by those in command in the military that information can be wrong. This is one of the great problems of command. You have to, in many cases, take decisions knowing that information is unreliable, incomplete and might change at any moment.

Senator BRANDIS—I agree with that. Perhaps this is the focus of my question. It is a bit difficult to express this in the abstract, but what is the point at which a report, received up the chain of command, is declared to be wrong and to be set aside? More particularly, by what process are doubts about the reliability of an initial report tested, leading ultimately to the initial report being set aside? And how certain does the recipient of the initial report need to be—presumably more than at the level of gossip around the pubs of Canberra?

Prof. SMITH—I am getting to that point. I think it is recognised that a lot of the initial information—that is the only information available and the commander must act on it—is doubtful. It may be proved wrong later. It is, in Brigadier Silverstone's word, 'frangible'; it is not rock solid. So the military have procedures for correcting information, for providing up-to-date reports as the commanders—the chain of command—require.

Senator BRANDIS—Can you tell us what those procedures are? Rather than talking in generalities, I am very interested in the specifics of that process of correcting reports.

Prof. SMITH—I think a lot of the correction is de facto. A report is made, 'The enemy is advancing from the north,' and five minutes later the report is made, 'The enemy is advancing from the east,' and there is no official process to correct it; there is no formal declaration that the initial report was wrong. It is simply corrected by the reporting chain of command in the nature of things.

Senator BRANDIS—But in the example you have just given us, Professor Smith, you have fact A which at a point in time later is directly contradicted by fact B—and the two facts cannot live together so, as long as one is satisfied that fact B is the most accurate and the most contemporary report, fact B replaces fact A. Here we have a situation in which there is a clear and specific piece of information passed up the chain, that is, a child is thrown overboard—and do not worry about whether it is ultimately proved to be right or not, as I am interested in how that information is to be treated—at a time later, commencing quite soon after the initial report is received up the chain, there is a suggestion that that piece of information, fact A, is wrong.

As Sir Richard said this morning, by the middle of October it was the talk around the pubs of Canberra that that was wrong. At what point does 'talk around the pubs of Canberra' or talk within the military, that fact A is not a fact, become sufficiently concrete or defined to cause the

initial report to be set aside? Is there a process for that? If there is not—and this is almost a matter of commonsense—you cannot replace a given fact with gossip about whether or not the fact is true. You can replace a given fact with an alternative given fact that is subject to the same process of proof.

Prof. SMITH—I will make two points there—

Senator MASON—Can I interrupt, because there is something that Rear Admiral Ritchie said right on this point. He said in his statement—and this is Senator Brandis's point:

Any failing on Defence's part is not in how the information was managed or passed in the first instance rather, in the process for refuting the information when it was found to be false.

Senator BRANDIS—If it was found to be false. What is the point at and process through which the finding that fact A is not a fact is arrived at?

CHAIR—I know Sir Richard wants to come in on this, but just before we go to Sir Richard and as you conclude your comments on this point, could you comment on this aspect of it. I understand in the law there is a phrase 'more and better particulars'—

Senator BRANDIS—Further and better particulars.

CHAIR—Further and better particulars; thank you. I am not a lawyer and I have now been corrected by one.

Senator BRANDIS—I am trying to be helpful, as always.

CHAIR—And you often are, Senator. You get a report of something, and the officer up the chain of command is an intelligent human being with responsibilities for his duties. He has to absorb, synthesise and ask where the gaps are and what more he needs to know to get a better picture. So that is an inchoative process; it is not a mechanistic one such that a signal comes up, it stops and people have to focus on interpreting that language to divine meaning and if they are in doubt, go back down and up and down. That is as I understand it. So senior officers, if it comes within their ken that there are doubts and they think they are solid, would reasonably, to discharge their duties, inquire.

Sir RICHARD PEEK—We are not talking about a hypothetical situation; we are talking about an actual situation. I would not know what Admiral Barrie knew or did not know, but it has come out that the brigadier in Darwin interrupted the captain of a ship in the middle of an operation because someone in Canberra had told the brigadier he wanted information about it by a given time—and there was debate about this, I understand. The brigadier, I do not imagine, had much experience of naval operations of rescuing asylum seekers, but his report went somewhere. I do not know where it went first, but ultimately it got to Admiral Barrie. Did Admiral Barrie know that it had been demanded in the midst of an operation? Did Admiral Barrie know what the chain of command had been—or Defence, I should say, because I do not know. That information was passed out as truth. Did anybody ask whether it was true?

Senator BRANDIS—But, Sir Richard, at the time it was passed out—and I assume by that you mean when it was first publicly spoken of in the public arena—

Sir RICHARD PEEK—I am talking about when it was passed out to the bureaucrats.

Senator BRANDIS—But when it was first publicly spoken of—that is, at about lunchtime on the 7th—it was received in Canberra over the telephone at about nine or quarter past nine, I think, on a Sunday morning.

Sir RICHARD PEEK—Over the telephone?

Senator BRANDIS—Yes, it was.

Sir RICHARD PEEK—From who?

Senator BRANDIS—From Air Vice Marshal Titheridge.

Sir RICHARD PEEK—Where did it come from?

Senator BRANDIS—It came from Silverstone.

Sir RICHARD PEEK—From Silverstone by telephone to whom?

Senator BRANDIS—To Banks.

Senator FAULKNER—No it did not. Let's be accurate about this. Sir Richard has actually hit the nail on the head. There was a special arrangement put in place by ministers—or the minister; I am just using ministers in the broad—to facilitate speedy access to information and the transmission of that information, and that was by Brigadier Silverstone in Darwin to Air Vice Marshal Titheridge, the Head of Strategic Command. It was outside the chain of command. That is what happened, isn't it? I want you to comment on this, Professor Smith. This has been identified by Major General Powell in his routine inquiry and by Ms Bryant and others who have investigated it. It was a special arrangement outside the norm, outside the chain of command, so you could have speedy access to get information for a minister going on a television program. Of course, it turned out to be inaccurate, but when it came to transmitting the correction all speed evaporated. It seems to me that that hits the nail on the head. I think Sir Richard has got it right. Major General Powell, in his routine inquiry—please comment on it—says:

There was a number of contributing factors ...

and he goes into it—

But ultimately, it was a direct result of the conflicting balance between the provision of timely information **versus** accurate information.

It seems to me he sums it up in just that one phrase there. He goes on to talk about the chain of the command. He concludes:

I have concluded that the degradation of the command chain of communication in terms of the way information was passed during all aspects of this incident is a contributing factor to this situation.

I think Vice Admiral Peek is right, but I would be interested to hear from you, Professor Smith, as to whether you acknowledge it because I think Vice Admiral Peek has got it absolutely right and hits the nail on head.

Senator BRANDIS—Professor Smith, before you answer Senator Faulkner who came in across me, I wanted Sir Richard to have the opportunity to complete his answer. We were having a dialogue about exactly what the sequence was. The point we were at when I was interrupted was this: you have a report which is publicly released, the substance of which is publicly spoken of by a minister at about lunchtime on the Sunday. It has come up a chain of reporting and I accept that this is a special arrangement—Senator Faulkner, your point is well made. But the point I was at pains to make to you, Sir Richard, is that at the time at which it was publicly spoken of at about lunchtime on the Sunday, it had not been called into question by anyone—nobody.

Sir RICHARD PEEK—How do you mean it had not been questioned?

Senator BRANDIS—By lunchtime on Sunday, the 7th, nobody had questioned the accuracy.

Sir RICHARD PEEK—Who had the chance to question it? Brigadier Silverstone?

Senator BRANDIS—Brigadier Silverstone passed the message up the chain.

Senator FAULKNER—Why? He did not pass it up the chain; he passed it to Titheridge, which is not in the chain of command. You know that.

Senator BRANDIS—He passed it on to the person to whom he had been directed to pass it on.

Senator FAULKNER—He may have passed it up the chain as well, but the point is: the chain of command was bypassed. We all know that.

Senator BRANDIS—We accept that.

Senator FAULKNER—Thank you! Let us get it right.

Senator FERGUSON—If we are going to have a debate amongst the committee members, we might as well allow the witnesses to go home. We are here to ask them questions.

Senator FAULKNER—There is no point in our putting to the witnesses questions which contain inaccuracies. That is all. You have to get it right.

Senator BRANDIS—Can Sir Richard come to my question?

Sir RICHARD PEEK—Can I trust that I can answer your question without any interruption?

Senator BRANDIS—Sure. The point at which, and the process by which an initial report, which is then subject to doubts—

Sir RICHARD PEEK—Whether it was published or not has got nothing to do with it. The initial report—I do not know whether Admiral Barrie knew, or anybody else knew—had come by telephone from the ship to a man in Darwin—

Senator BRANDIS—The Head of Strategic Command.

Sir RICHARD PEEK—to Silverstone. God knows: did it go by telephone to Barrie too or who did it go to?

Senator Brandis interjecting—

Sir RICHARD PEEK—Wait a minute. Let me finish. Then, in the proper chain of command, the captain of *Adelaide* sent a signal, as I understood it, giving the details of what happened. For somebody to suggest that the initial process of telephone calls, when the radio was available for an official report, and the initial report had been demanded because some clot in Canberra wanted to talk on a television station—God, it makes me speechless!

Senator FERGUSON—I think you are a little out of date.

Senator BRANDIS—Sir Richard, by what process is an initial report corrected? Is there a process in the military? To what extent, in other words, would we rely upon the integrity of the original report?

Sir RICHARD PEEK—As I keep on saying, I do not know what Barrie's process was. All I can say is that the proper process is that when you get an official signal from a ship, as opposed to a telephone call through a link of several people, the sensible man—and I understand that the law has a sensible man—would accept the version of the captain, which was specific and detailed. Do I make myself clear?

Senator BRANDIS—I think I understand what you are saying to me, but it is still not apparent to me what you say about the point at which, or the process by which, an initial report—or the reliability of an initial report, which I think people accept is a value of the military—is to be suspended or set aside when doubts are raised about its accuracy. It is not apparent to me what you are saying about that.

Sir RICHARD PEEK—It is a hypothetical question.

Senator MASON—It is a fair question; it is absolutely fair.

Sir RICHARD PEEK—In the battle of the Coral Sea, the *Australia* was bombed. There were dramatic pictures of a ghost ship coming out of high-level bombing, and it made the press in Australia—it probably made the press all over the place.

Senator FERGUSON—Communications were different during the battle of the Coral Sea.

Sir RICHARD PEEK—Two days later, an amended signal from the admiral said that he had discovered that the high-level bombing of *Australia* appeared to have been done by friendly forces. This was the process. What the Naval Board did with it, of course, was to muzzle it because they did not want to upset our allies. That was the process when I was young.

Senator BRANDIS—If I can borrow an expression of Senator Faulkner's, you have once again hit the nail on the head. The example you give is of an initial report of a fact being swiftly contradicted by an alternative report of a contradictory fact. That is not what happened here. You have an initial report of a fact which is contradicted by, to use your expression, gossip around the pubs of Canberra.

Sir RICHARD PEEK—No, it was not a fact. You are misleading us all. The initial report was not a fact—

Senator BRANDIS—But it was presented as a fact.

Sir RICHARD PEEK—and it was demonstrated that it was not a fact.

Senator BRANDIS—That is the point, Sir Richard: at what point is it demonstrated not to have been a fact? That is what I am interested in.

Sir RICHARD PEEK—It was demonstrated not to be a fact when the captain sent an official signal.

Senator BRANDIS—But the captain, in this official signal, did not say it was not a fact. That is the point, and I think you are misapprehending it.

Sir RICHARD PEEK—Oh, for God's sake!

CHAIR—I think we are now bogging down on this. I think it ought to be said that Brigadier Silverstone said in evidence—and I can turn up the reference—that, if everything had been put in writing and procedure had been followed, no mistakes would have been made, or words to that effect.

Sir RICHARD PEEK—It should have been.

Senator FAULKNER—That is true. Can I ask Professor Smith to respond?

CHAIR—And we will then move on, because I know Dr Uhr has a comment to make. I do not know if anyone else has.

Senator FAULKNER—I raise this question specifically on the chain of command issue, given that we know that the problem arose in part because of the fact that the chain of command was not used to pass on this information. It was a special arrangement, as described by the brigadier and the man whom it was with—that is, Air Vice Marshal Titheridge—that was organised by the minister. Isn't that a real problem here? Doesn't it go to the integrity or the

problem of the chain of command—and there is another problem with the chain of command? Isn't this actually bypassing the chain of command?

Prof. SMITH—If I could make some responses to these points—

CHAIR—I think we have demonstrated contention among ourselves sufficiently well already, so please do so.

Prof. SMITH—Maybe I can stir up some more.

CHAIR—Maybe you will—it does not take much effort, I can tell you.

Prof. SMITH—The actual, factual question: was a child, or children, thrown overboard or dropped overboard is, in tactical terms and operational terms, utterly trivial. From Commander Banks's point of view, all that mattered was that no lives were lost. He was fulfilling his directions, which were to deter and deny, and to save lives, to prevent the loss of life. What is extraordinary about this whole situation is that that piece of tactical information—and tactical information, as I said earlier, is normally corrected quite quickly, as necessary, *de facto*—very quickly went up to the strategic level, to the political level; it even got into the pubs of Canberra—and maybe there is no higher level than that. So it was most unlike every other piece of tactical information that the Defence Force normally deals with.

One reason it got to the high level was, I agree, the special arrangement for Brigadier Silverstone to report to the head of Strategic Command, who then, one way or another, reported to the interdepartmental committee. So there was certainly some complexity there in the way that information was managed, and perhaps we can say there were multiple channels of information.

CHAIR—But not to the Defence representative on the interdepartmental committee, who was in ignorance of it.

Prof. SMITH—This was Group Captain Walker?

CHAIR—Yes.

Prof. SMITH—Yes, but I will not comment on that. Certainly there were channels through which information could go. There were other people seeking information from outside the normal channels, including ministerial staffers. That was one unusual thing. The second unusual thing was that, to correct this initial report—which seemed to be correct in the first instance—you had to prove a negative. You had to prove that no child had been thrown or dropped overboard. That is extremely difficult to do, I acknowledge that.

Senator BRANDIS—But doesn't that rather suggest, Professor Smith, that, therefore, this is classically the sort of circumstance in which a careful analyst of facts would be slowest to contradict an initial report that had been presented as a fact, for the very reason that you give: because it so hard to demonstrate a negative?

Senator FAULKNER—According to the commander of the *Adelaide*, there was no initial report to that effect—

Senator BRANDIS—That is not right.

Senator FAULKNER—and so you cannot do the recall.

Senator BRANDIS—That is not correct, Senator Faulkner. I asked—

Senator FAULKNER—And through the formal chain of command—

Senator BRANDIS—Senator Faulkner, that is just not the truth.

Senator MASON—That is not right.

Senator FAULKNER—That is the truth.

Senator BRANDIS—That is not the truth.

Senator FAULKNER—It is the truth.

Senator BRANDIS—I asked him: do you accept that Brigadier Silverstone's recollection of the conversation may be correct, and his answer was an unequivocal yes.

CHAIR—I asked him, 'Was a child, or children, thrown overboard?'—it was the semilast question put to him in the hearing—and he said, 'No.'

Senator BRANDIS—We understand that that is the position he ultimately came to. There is no controversy that that was the ultimate position.

Senator FAULKNER—Isn't it true, Professor Smith, that the integrity of the chain of command—which is crucial in this inquiry but so fundamental to the way Defence works—is an absolute centre point? Nothing can be more important. If the chain of command had worked as it was supposed to work, without a special arrangement, you would have depended on signals from HMAS *Adelaide* and the like and you would have depended on the written record. You would not have had a special fix put in for a television show for a politician in that way, you would not have had this argument about what occurred or what did not occur in the telephone conversation—

Senator FERGUSON—A fix that was never used.

Senator FAULKNER—and we would not be sitting here today.

Prof. SMITH—Certainly it is the case that a report went up from Brigadier Silverstone that a child had been thrown overboard. That seems to be common ground. Disproving that report, as I have said, would require proving a negative. Is that a reason to act on it for some considerable time? Any commander would have to be very careful in those circumstances. You can spend an

awful lot of time and effort trying to prove a negative, and in the end you cannot do it. Military commanders, by and large, will be very careful when they are put in a position where they have to prove a negative. They will evaluate all the information before them and they will expect continuous reports to come up to them, as indeed seemed to occur in this case—a later report from Commander Banks came up the chain. The other point on proving a negative seems to be the way it was used at the political level. It was a way of saying, ‘Let me persist with this report of a child overboard until you can prove to me’—as minister or whoever—‘that no child was thrown overboard.’

Senator BRANDIS—Precisely.

Prof. SMITH—That may be a political way of managing that sort of situation. It does not sit with the military way of handling that sort of situation.

Senator BRANDIS—But, Professor Smith, that is not what Admiral Barrie’s evidence was. Admiral Barrie’s evidence, which I read to you aloud, was that the reliability and the integrity of initial reports are of high value for the Navy and they should not be lightly set aside. Here we have a situation in which an initial report was presented as a fact and contradicted by gossip, speculation and unverified doubt. As you say—quite rightly, if I may say so—to act at variance with it or to set it aside depends on being satisfied about a negative proposition, and that is very difficult. That surely makes my point that if ever there were a case in which the proper military authorities should have been slow to abandon what they understood to be the unqualified initial report of a positive, it would be in a circumstance in which they could only do so were they satisfied of a negative, which, as you rightly say, is so hard to prove, and the only basis—at that stage at least—was gossip.

CHAIR—Can I ask you to pick up the point that I made? I want to bring in Dr Uhr because he has indicated that he wants to make a remark about this as well. This is the iterative nature of this chain of command: the finding of facts and assembling the picture for proper decision making. The overlay here that is unique and different is the political one. What you have described, for operational purposes, as a ‘trivial issue’ is used as a headline, a spectacular national political issue of debate. It seems to me that created some unease in the defence forces. There was a sense—I do not put it any higher than that at this point—that their authority and standing were being used as an element to justify a political conclusion in the context of an election. The evidence is that, by 11 October, the Commander had reported that no children were thrown overboard, and so had Silverstone. That never got out. They had a positive report sent up the chain of command.

Prof. SMITH—Let me comment on that. Yes, the military responded in their normal way by continuing reporting and by correcting what appeared to be misinformation. That went up the chain of reporting—or at least it was expected that it would go up through to the CDF and through to the minister. I have to say that there is considerable disappointment in the ADF that the chain of reporting up to CDF and through to the minister does not seem to have worked as effectively as it should. Where does the fault lie for that? Some fault perhaps, as the Powell report seemed to imply, lies in the military chain of reporting, but equally it lies on the political side, in the way in which the doubts about what had happened were used at the political level to say, ‘Well, we really can’t prove anything either way. Let the first report stand.’

There are certainly some people who feel that Admiral Barrie should have been more active in seeking to find out what actually happened. Having realised that it had become a significant political issue, he should have taken action to find out more expeditiously what exactly had happened. There are mechanisms to do that, not necessarily through the chain of command but through the administrative chain, which is a kind of parallel chain.

Senator FERGUSON—Time after time, senior serving officers have told us that it was not an issue at the time. Officer after officer has said that at that time it simply was not an issue. If you are talking about how Admiral Barrie should have taken further steps, he was out of the country for most of the time, until 7 November.

CHAIR—I understand that Sir Richard wants to make a remark and some time ago Dr Uhr wanted to make a remark. Could we hear from them before we go to the next question?

Sir RICHARD PEEK—Like you, Mr Chairman, I am not a lawyer but I did have the unfortunate experience of sitting around as a professional adviser to the first *Voyager* royal commission. I listened for months to what I called ‘weasel words’ being used by distinguished Queen’s Counsel. Today we have something clear and specific: a telephone call from a brigadier who had taken a message from a commanding officer on a desperate operation. That is clear and specific. Not to me. We have to now disprove negative. What nonsense! The captain is never on official record as agreeing with the initial statement and there is debate as to what the statement was. The captain came a couple of days later, or 24 hours later, and gave his version of the facts. Nobody else was asked. I understand that 14 of his 15 sailors who made reports confirmed the captain’s report. Is that right?

Senator BRANDIS—No, that is not right, Sir Richard.

Sir RICHARD PEEK—You have not heard the evidence?

Senator BRANDIS—There were 16 statements taken.

Sir RICHARD PEEK—All right—we are on to weasel words again.

Senator BRANDIS—Sir Richard, I think I am entitled to some courtesy from you, too.

Sir RICHARD PEEK—I am sorry, but could I finish without being interrupted? You quoted me as talking to pubs and clubs around Canberra, and then completely forget the idea that information that got to Defence in Canberra was on the midday news that day because of a leak. That was the official information that you got from Darwin. That took a few hours to get. If people did not know that the second report, which came in two days later, had got round the bureaucracy in Canberra and the ministers, they need to have their heads read.

Senator BRANDIS—Sir Richard, just so that we are not in any doubt about the witness statements: there were 16 of them, and in two of those—

CHAIR—I think we can say that there is contention in the committee as to what the witness statements—

Senator JACINTA COLLINS—You are on the record several times now, Senator Brandis. You do not need to do it again.

Senator BRANDIS—I am not sure that there is all that much contention.

CHAIR—There is considerable contention from me, I can tell you, at the proposition that you have consistently put—

Senator JACINTA COLLINS—And about how you have presented it.

Senator BRANDIS—Can I just say this, please—

CHAIR—We could spend our time pursuing this in detail and thus not get opinions on a wide range of matters—which is the purpose of this. I suspect that, by proxy, we are debating how valid we regard the witness statements to be, by virtue of interrogating Sir Richard—which is something that we could do—

Senator BRANDIS—Perhaps that is so, but can I just say: Sir Richard, you should not assume that 15 of the 16 witness statements say that no children were thrown into the water. That has been asserted.

Sir RICHARD PEEK—How many did say it then?

Senator BRANDIS—One says—

Sir RICHARD PEEK—One? Oh!

Senator BRANDIS—Please, sir, may I finish? You asked me a question. One says there was—

Sir RICHARD PEEK—Look, I thought I said, ‘Fourteen out of the 15.’

Senator BRANDIS—No. One says there was a child in the water. Two say there was not. Six say they did not see a child in the water but do not claim to have seen the entire event. Seven do not even address the issue.

Senator FAULKNER—So you were right, Sir Richard.

CHAIR—Sir Richard, none of them say that they saw a child being thrown into the water. There is a range of other queries, which I will save for the debate internal to the committee, about the way that has been presented. But have you finished, because I want to go to Dr Uhr?

Sir RICHARD PEEK—Yes. I will not speak again, Mr Chairman.

Dr UHR—From the public’s point of view, maybe there are two issues that are worth separating here, because the public may well get something of value out of this inquiry, although I go back to Hugh’s initial comment, that maybe the inquiry is part of the problem.

Senator FERGUSON—We would agree.

Senator MASON—But we are glad it happened!

Dr UHR—There are two issues. One is the integrity of Defence intelligence. We have spent the last 20 minutes or so looking at how Defence satisfies itself in relation to the integrity of its own intelligence. The other issue that the community is, I think, more keenly interested in is the integrity of public information. That is an issue that does not go to Defence practices, it goes to ministerial practices—how ministers themselves satisfy themselves that they are on top of a true and faithful story.

It may be that the committee at this stage has more evidence in relation to dilemmas within Defence as to how it satisfies itself in relation to Defence intelligence, but can we start to open this inquiry up as to how ministers themselves satisfy themselves that they have got intelligence of integrity that they can divulge to the community at the time of an election? I think there is a duty on ministers themselves not to mislead the community. In fact, it is part of Prime Minister Howard's commendable ministerial code that ministers are under a duty and obligation not to mislead the community. So a companion question is: how do ministers satisfy themselves that they are not in a position to mislead the community? I am not sure of the solution to that. We have the Howard code, which, as I say, is commendable and puts an obligation on ministers to correct the public record in the event that they have tested the information that comes to them and found that it is wanting.

I do not think we have had any evidence yet that ministers have been actively involved in testing advice that has come to them. We have lots of evidence before the committee—and I guess yesterday was the most colourful and dramatic sequence of evidence—where ministerial staff acting on behalf of ministers have, in a way, been acting as testers of evidence. But it has been more like cherry picking rather than testing—not subjecting advice to scrutiny to see whether it is ready for public information, but just picking and choosing those parts that they think are of partisan advantage to them. From the community's point of view, looking to this committee to try to take the issue forward, to exercise some leadership and to come up with some new rules or new structural elements that can help satisfy the community interest in integrity and government, where do we start looking?

You have mentioned, Senator, that we have kind of evolved or are part of the Westminster system. The interesting thing is, by going back and looking at the UK, there are a range of new rules now in process that have come out initially through the Major conservative government, under Prime Minister Major, that have put a whole new sweep of important obligations on ministerial staff not to engage in misleading information, to respect the integrity of the political neutrality of public servants, to abide by standards of practice for the dissemination and management of public information so that they actually do help ministers to respect their own obligation not to mislead the community. I think it is that element, the companion side—not just the integrity of Defence intelligence but the integrity of public information—that the committee might well start to explore, because it goes to the heart of ministerial and ministerial staffers' responsibilities, which I have not seen the committee yet engage with.

Senator FAULKNER—Just following on from that, what we probably need to do today, Mr Chairman, is as much as we can try and focus on what lessons the witnesses at the table might

have learnt from the experience of the ‘children overboard’ incident as opposed to the detail of it. I think we are better off actually trying to focus on the sorts of recommendations this committee might make in terms of improving practice, be it either in the Defence Force or in the Public Service. I do hope, believe it or not, that the committee will be able to make some positive recommendations in those areas.

I think nearly every witness at the table has mentioned at one point the role of ministerial staff and, drawing on the evidence we have about the role of ministerial staff in this incident, I think it is fair to say that more and more in the parliament and in Senate committees like this we are going to face a situation where, as I think Professor Weller has outlined very well, there have been developments in terms of ministerial offices in their size and the nature of their role and responsibilities and the like. I want to ask you how does the parliament deal with, how does the Senate deal with, what does appear to be a problem of a vacuum of accountability if you have, and I am trying to ask this without specific reference to any individual ministerial staffer, a situation—and it is a growing trend under, I would say, Labor and non-Labor administrations—where ministerial staff are having greater responsibility. In recent years we have seen a trend where there is actually executive responsibility, executive actions being exercised by ministerial staff.

Traditionally, as you know, ministerial staff have not been brought before parliamentary committees of this kind. Is that still a reasonable approach for the Senate to take in relation to its own committee work? How do we deal with this growing problem of more activist ministerial staff, executive responsibility being exercised by ministerial staff, when we need to ensure that all actions—be they at the ministerial level, be they at the level of departments or officers—are subject to appropriate levels of accountability? Do you identify a problem of what I describe as a vacuum in accountability; you may care to use other terminology? Is it a problem, in your view? If it is a problem, how do you think committees like this and the parliament more generally should address it? Professor Weller might kick this off.

Prof. WELLER—I think we have got a growing black hole: information in but you have no idea what happens to the information when it has gone in. In this case you have a number of cases where you have evidence that ministerial staff were given certain bits of information. At no stage do we know if that information was or was not passed on to the minister or the Prime Minister. So your findings seem to me to be coming to a situation where we know that the minister’s office knew but we do not know if the minister knew, and we have absolutely no way of finding out. That is the first thing.

CHAIR—Would it not be reasonable, though, to conclude that if the staff knew, so did the minister? Staff are the ears, eyes and often mouthpiece of the minister. The minister cannot divide the staff and the minister.

Prof. WELLER—I do not think it is a reasonable assumption to make, because I think that the size of the ministerial staffs are becoming so large that the notion that all of them necessarily tell them does not necessarily follow.

CHAIR—Size may make a difference in certain other areas, but does it make a difference here? The question I am really going to is: is the minister the individual or is the minister the corporate entity of the office?

Prof. WELLER—It is the minister as the individual who is responsible to parliament.

CHAIR—I know, but he has, under his wing, a number of people.

Prof. WELLER—Yes.

Senator FAULKNER—But, traditionally, in our system, he is also responsible for the actions of his staff, isn't he?

Prof. WELLER—Yes, he is.

Senator FAULKNER—That is the crucial point, isn't it?

Prof. WELLER—I would agree, but we do not know at the moment to what stage people are making calculations that they do not want to pass the information on, but they should.

Senator BRANDIS—But it does not follow, from the proposition that Senator Faulkner just put to you, that a minister is responsible for the actions of his staff, which I think in general we can accept. Nor does it follow from that proposition that a minister shall be deemed to know everything that his staff know.

Prof. WELLER—But the assumption has always been that if you tell ministerial staff you are, de facto, telling the minister. I think that worked in a position where you had comparatively small offices. We now have a different situation. If you assume that ministerial staff are either acting without the authority of the minister—in other words, occasionally charging around a department demanding things without having the authority of the minister—or are choosing, for whatever reason, not to pass on that information to the minister—in classic terms, they think it is something that the minister could conveniently not know—then the ministerial staff should be certainly held accountable.

Senator FAULKNER—I do not know if you agree with me on this, Professor Weller, but I happen to think the best accountability mechanism of the Australian parliamentary system is the Senate committee system. I think it has proved to be a very effective accountability mechanism. What is the interface between this accountability mechanism—whether you think it is a good one or not; I think it is the best we have got—and those actions of ministerial staff, whether they are known to a minister or not?

Prof. WELLER—I am not sure I am interpreting your question correctly, but it would seem to me that if secretaries of departments can be asked to appear before your committee and asked what they told ministers then equally ministerial staff should be able to be called before the committee and asked what they told ministers, because we can no longer assume that telling a minister's staff is telling a minister.

Senator FAULKNER—That is a very significant change in the way these accountability mechanisms have worked.

Prof. WELLER—Yes.

Senator BRANDIS—Are you recommending that that practice be adopted?

Prof. WELLER—Having read the evidence in this case, the evidence leads me to say that, yes, it is desirable that these sorts of things—

Senator BRANDIS—But there is no evidence about what the minister was told.

Prof. WELLER—Precisely. But you have plenty of evidence about what ministerial staff were told and you do have evidence from the CDF about what he told the minister.

CHAIR—There is some evidence that the minister was told, by Air Commodore Houston.

Senator BRANDIS—You have quite rightly corrected me.

Prof. WELLER—Before that it was told on two or three occasions. Possibly it was raised—and there is a point I would like to make on that at some stage—

Senator FAULKNER—CDF and Acting CDF both do have contact, but I think we run the risk—

Senator BRANDIS—Senator Faulkner, I want to pursue Professor Weller on this point. It is a very important conceptual point, and it is one of the main points of this morning's workshop. What in your judgment would be—and you would have to speak broadly—the consequences for public administration and ministerial decision making were the advice to ministers of departmental secretaries and ministerial staff the subject of scrutiny in a forum such as this?

Prof. WELLER—A certain degree of care in the giving of advice in the first place, which I think may well be not a bad thing. Our problem at the moment is that you can call secretaries. You do ask them if they have talked to the minister and they at least tell you what they have done and how far they have gone in those sorts of circumstances. I have not seen the apparatus of government collapse as a consequence; indeed, the additional transparency I would regard as probably desirable. My feeling is that, most of the time, the degree of secrecy in this country is overdone. But that is probably a different point.

Senator BRANDIS—I understand we are going to take a break shortly, but can I advertise to you, Professor Weller, and you too Ms Tiernan, for whom I have a question, that I want to come back to this question of transparency and the limits of transparency—in particular, the trade-off between transparency and accuracy. It seems to me that one of the subplots of this entire inquiry is that the government was, in a sense, too transparent with the first piece of information, according to its critics, by putting it into the public arena too early and before it could sufficiently verify it and then insufficiently transparent in putting out the contradictory material—

CHAIR—At great political convenience.

Senator BRANDIS—It seems to me that the whole point of this inquiry is to define the point at which and the sufficiency of the evidence available at which the initial report ought to have been contradicted.

Senator FAULKNER—Mr Chairman, Professor Weller has commented on this, and maybe some of the other witnesses after the break might care to comment on what Senator Brandis has just raised, which is important, and also this general concept of what I describe as the vacuum of accountability. I think it would be helpful to hear some broader views on it and try, if we can, to concentrate on perhaps some of these broader issues we face as opposed to the committee members dredging through the specific incident, which is of course very important to our terms of reference but I think less important in relation to these witnesses. They have a wealth of knowledge, and it might be useful if we give them an opportunity to impart it to us.

CHAIR—Yes. Can I say of Senator Brandis's questioning that you cannot divorce from that question that the rapid transmission of the first piece of evidence massively provided a windfall for the government and that the failure to provide the correcting evidence also massively provided a windfall for the government.

Senator Mason interjecting—

Senator Brandis interjecting—

CHAIR—Order! This is a matter of contention between us. I sat quietly while you put your view and you will sit quietly while I put mine, thank you. An issue that I would like to take up with you, Professor—because I am not at all satisfied that I have it right—is that I think you made the remark earlier that a ministerial staffer may not tell a minister because that staffer then deems the minister need not know and, therefore, the staffer should be held accountable for making that decision. I wonder why you take that view, because it seems to me that the minister should be accountable. It is a reasonable possibility that a minister may tell a staffer, 'There may be things I do not want to know or I do not want to know immediately,' so why should the staffer be the person in the gun if he carries out that instruction? It is five past 11. Let us take a break for 10 minutes.

Senator MASON—I want to ask some questions, too.

Senator FERGUSON—Can I ask a procedural question about some of these issues?

CHAIR—We can ask some procedural questions. I make the point that essentially—

Senator MASON—I want to ask about the pattern of conduct.

CHAIR—I am speaking. I make the point that essentially I have given the call to Senator Brandis, who has been interrupted—in a discursive way—I admit. When we come back I am going to have to give the call to the opposition in some form, and obviously they may be interrupted discursively. But let us get on with—

Senator FERGUSON—Can I ask a question on a procedural matter?

CHAIR—You can.

Senator FERGUSON—I think when you are having a roundtable discussion like this it is not a matter of whether the opposition, the government or anybody else has the call. Individual senators want to ask questions. In a roundtable, I think it is a different situation. Can I suggest that one of the things that is making things very difficult is that when people like Professor Weller are giving us an answer they are continually interrupted—you yourself are not without blame in this matter, and there are others who have interrupted as well. I have been sitting here trying to get some thread of thought from what someone is saying. They only get two sentences out and then they are interrupted. I would like to see the witnesses given the opportunity to finish their statement before they are interrupted.

CHAIR—In that case, if I rule that way there will not be any interaction from up here.

Senator FERGUSON—Correct.

CHAIR—On the first point, whether I am in error or whether I am right, the fact is that I have basically given the call to Senator Brandis. In a sense of proportional fairness I think I should reverse the order at some stage so that no-one can later argue that, if you like, ‘the sides’ did not get an opportunity to present their case.

Senator FAULKNER—We can continue the argument over the tea break.

Senator FERGUSON—There are no sides in a roundtable. I think we should all individually have a chance.

CHAIR—Throughout you have insisted—

Senator FAULKNER—For God’s sake, let us have the tea break!

CHAIR—that there are sides.

Senator FERGUSON—We have not said there are sides.

CHAIR—Yes, you have.

Senator FERGUSON—This is a roundtable.

CHAIR—Order! The committee will adjourn for 10 minutes.

Proceedings suspended from 11.07 a.m. to 11.24 a.m.

CHAIR—I want to do something constructive here this morning. It seems to me that it would be useful, in the next hour and 35 minutes that we have set aside for this discussion, if we were to put a framework of key subject headings around it and ask the witnesses to comment. I seek, firstly, an indication from the committee whether this is a reasonable procedure that we can adopt. It seems that the first question is: what were the failures—and some witnesses have answered this partly—and can we have an analysis of those failures? I have a number of

subheadings which cover that. Some of the subjects we have already discussed are in that bracket. Secondly, there is a question about how serious this affair was. To put it in my terms: was there a breach of duty of care in this matter, or was it an insignificant issue? The degree of seriousness is an important consideration. Before we suspend the proceedings I want to get on to comments from the witnesses about—where they think this is appropriate—proposals for remedying any defects that are identified. If we are to harvest from this session useful information for consideration in our report, the subject ‘proposals for remedying of defects’ seems to me to be a useful one. The format I propose—subject to the committee’s view—is that, in a segment of about half an hour, we talk, firstly, about an analysis of the failures; secondly, about how seriously to categorise this issue; and, thirdly, what are the proposed remedies for any defects that may be identified. Is that an acceptable procedure?

Senator BRANDIS—In that context am I going to be allowed to pursue with Professor Weller and Ms Tiernan this question of transparency, its implications and its limitations?

CHAIR—In the analysis of the failures a number of subheadings come to mind. One is the chain of command and the circumstances that applied in this case.

Senator FAULKNER—We may have dealt with that.

CHAIR—I think we have dealt with that. There is a question of the lack of transparency, crisis management questions, role of ministerial staff and the political-military relationship—those things. I think it is encompassed in that block. I would urge you, Senator Brandis, to pursue it within that ‘analysis of failures’ block.

Senator MASON—I have a question—I am not sure whether it is to be addressed to Professor Weller, Ms Tiernan or perhaps Professor Smith—about the distinction between, let us say, policy and operations with respect to the defence forces.

CHAIR—That goes to the subject ‘what were the failures or not?’, and I think that is valid.

Senator MASON—Thank you.

CHAIR—I want to adopt that format and I would like an indication of whether the committee agree at this stage.

Senator FAULKNER—That is very sage.

CHAIR—Are we agreed?

Senator BRANDIS—As long as we can pursue our issues within that format, that is all.

CHAIR—I would like to be able to suspend the proceedings at one o’clock having covered those three areas. There is seemingly no objection so let us proceed. Before we suspended the proceedings for morning tea I indicated that I would go to the opposition, but you have asked about finalising the point on your question, Senator Brandis. Perhaps I will ask Professor Weller

now to answer that. I raised a question; he can answer that, too, and then we will click into this format. We have had the question on the record.

Senator BRANDIS—Can I repute it, so that I can collect my own thoughts? Everybody said—

CHAIR—This is not a line of examination; this is a discussion. Let us give it a discursive basis.

Senator BRANDIS—It is a discussion. I will be as discursive as I could possibly be. Professor Weller and Ms Tiernan—but really any of the academic witnesses—everybody says that transparency is a value for public administration and governance generally. I think we would all accept that as an aspirational statement. Transparency ultimately, I suppose, means that the public knows about—and is in a position, on the basis of full information, critically to scrutinise—the working of government. That must, at least to some measure, include the working of the military. That, in turn, basically means it gets into the press or it becomes a matter of public discussion in the media.

It seems to me, in this committee—you could almost treat it as a case study—that you have a situation in which a ‘special arrangement’, to use Senator Faulkner’s words, is made whereby a piece of information of public interest is made public very quickly, within about three or four hours, and that becomes a matter of public discussion. Subsequently, to a certain degree it is called into question. It is controversial how contestable that initial piece of information was and it is controversial how soon it became contestable, but ultimately it did become contestable.

CHAIR—Can you come to the point, Senator Brandis?

Senator BRANDIS—My point is this: what are the limitations on the obligation of transparency? In particular, might I invite you to speak to the trade-off between transparency—and, it seems to me, implicit in that is the need or the desirability to get matters of public concern swiftly into the public arena—and the other value of accuracy, and, more specifically from a public administration point of view, the procedures for verification of information before it becomes transparent.

CHAIR—When you are answering, Professor Weller, could you answer the question that I as well put to you—an addendum to the question before we broke. I will not repeat it. And I put to you a discrete second question—I will not repeat it. Could you answer those as well?

Prof. WELLER—Senator Brandis, you seem to be talking about, in a sense, two different things: one is transparency of ministerial staff and the other is transparency of the information flow which goes up and back to government.

Senator BRANDIS—I am more concerned about the latter, I think.

Prof. WELLER—Quite obviously, in any government process we are talking about speed. There is a massive number of bits of information which is flowing around. There is no way that that is going to be done on the public record from the beginning to the end—not least because the public is not actually interested in most of what is happening. Transparency in giving advice

to ministers on the run and collecting information is a hypothetical that we are talking about, because most of the time it is happening on a day-to-day basis.

The question that is implicit—or perhaps it is not, so I will make it implicit—is: should people be asked later what information they gave and why they gave it, as is happening in this committee, about a particular event? My answer to that is: probably yes, because it occurs very seldom on very small amounts of information and it is usually a long time by the time you meet after the event. I see nothing wrong in people being asked to give explanations for what they did about something some months before. It is not as though you are making policy in the public arena on this occasion.

Senator BRANDIS—But you are talking about retrospective transparency, aren't you?

Prof. WELLER—Yes.

Senator BRANDIS—In other words, subsequent scrutiny and disclosure. But what about, as it were, transparency in real time?

CHAIR—I am waiting for your objection, Senator Ferguson, about interrupting the witness and allowing them to complete.

Prof. WELLER—Transparency in real time happens on some occasions and not on others. The United States has a much more open government than we have. Some of their stuff is secret, some is not. You are not going to have a cabinet meeting while sitting in front of a television set, discussing what you are going to do; if you are, it is a parliament and you have a meeting beforehand. Your question seems to me to suggest a sort of 'Big Brother' approach to politics, where there is a camera in every room and we find out everything that happens.

Senator BRANDIS—I am not recommending that course, I am merely inviting you to comment.

Prof. WELLER—I do not think that is either feasible or a proposition that is likely to occur. The implicit thing is: should we have transparency after the event? Given the fact that it happens seldom—on a few occasions—I can see very little problem. My experience when I was writing a book on Malcolm Fraser was that he very generously adopted the British system, by which you could refresh your memory. He delegated his, in a sense, and allowed me to see all the cabinet documents for the whole of his government, which finished in 1983. I had access in 1985 to all the government documents, so it was a long time before the 30-year rule. What struck me about that at the time was how little of this would have made any stir if it had actually been made public. In other words, by the time you get six months or a year from the event, it seems to me you are doing no harm to the fabric of government to be able to call anyone in front of your committee, including ministerial staff.

As for Senator Cook's question, 'But surely ministers should be responsible?' indeed they should be if they have given that instruction, 'I don't want to know about this.' I wonder sometimes, given the increasing size of ministerial staffs and—how should I put this?—the growing self-belief in ministerial staff about their own significance, if more and more they are

making political judgments about what they think perhaps the minister does not want to know. We will not know this until we actually have them here.

CHAIR—The arrogance of ministerial staff—is that what you are saying?

Prof. WELLER—I was not saying that; those are your words, not mine. But they are certainly now telling members of the Public Service, ‘I am your boss.’ They are not. That is entirely inappropriate activity on their part, and this sort of attitude suggests that you might also translate what is not in fact a minister’s instruction. Given the size and the importance of the role they are playing, which has dramatically increased over 20 years, under both governments, it seems to me that accountability there would not go amiss. I think a bit of transparency on an event like this does our political system no harm whatsoever, and I welcome Senate inquiries of this sort.

Ms TIERNAN—I would endorse everything that Pat has said there too. The other issue is some transparency before the event. What are people doing? What are their roles? Where are they exercising executive authority—where is that happening? We do not have a very good understanding of the kinds of roles, and they are quite blurred. Senator Mason wanted to raise the issue of policy versus operations. There is a blurring, and that is where you get problems—where people blur and where people do not understand the rules.

Senator MASON—I will have a question on that later on, Ms Tiernan.

Ms TIERNAN—You can. But the thing about rules is that, it is not only important for the public to understand them, it is also exceptionally important for people coming through those ministerial staff jobs who, my research tells me, get practically nothing in the way of induction and in the way of instructions about how you should behave or whatever. You learn as you go. There is enormous turnover in those jobs, we know; they are high pressure. People need a clear set of operating arrangements and expectations. That is transparency before the event, if you like.

Senator BRANDIS—Ms Tiernan, would you like to speak to the issue of real-time transparency, as I have called it?

CHAIR—Senator Brandis, I do want to rotate the call between members of this committee and I do want to hear from other experts. We could exhaustively pursue lines of questioning so that no-one else gets a go; I do not think that is fair and I do not intend to operate in that way. We will let Ms Tiernan complete her answer and then call Dr Uhr, Mr Podger—who is a relevant authority on this—and Professor Smith. We will take a quick comment from the members at the table, and then I intend to give the call for a moment to Senator Faulkner. So could you hang onto your question for the moment.

Ms TIERNAN—I have concluded.

Dr UHR—On Senator Brandis’s question about transparency of real-time operations, I have distributed a clipping from today’s *Canberra Times* of an article that I published on the Ponting affair in the UK. I think it does bear upon this. This was a dispute 20 years ago in the UK about lack of transparency in Defence, not dissimilar to what we have heard about through this

committee. The issue of transparency that creatively came out of that genuine heartache in British public administration was not transparency of operations; it was transparency of roles or standards. The institutional response was to try to specify with a greater degree of public transparency what was expected of different actors in the policy chain of command, to use your phrase. The initial response was a codification of a set of appropriate public and credible standards for the civil service. That had not been done before; it was a direct result of this. The second element of transparency was to try to do something for ministers as well, not just the in-house clubby cabinet rules but a public statement that came out under Major for the first time that has been elaborated under the current Prime Minister.

The third one, which is, as I think I emphasised, as significant as any other, is transparency about the roles and standards to be expected of ministerial advisers. It is now a matter of some keen public inquiry in the UK to see whether the codification, or the attempt to articulate the precise set of rules and roles, is not only in the right direction but also going far enough down that road. I think that there you can actually get some purchase on transparency, which is not by looking at it as a set of expectations that we can video into public administration decision making, but we would at least have a better understanding of the standards against which we assess conduct by those who legitimately have some accountability about core Public Service ministers and ministerial staff. One could explore a lot further in that area.

Mr PODGER—I would like to make a couple of points. First of all, as I have mentioned, I think the advice to public servants on their relationship with ministers' offices needs to be set out more clearly than we have done in the current guidelines on official conduct. That is something that the commission is addressing at this time. The second point I want to raise is in relation to Senator Brandis's point about whether there is a balance if you are going to open up accountability within a minister's office.

Senator BRANDIS—That really is my point.

Mr PODGER—There is an issue of balance here that needs to be debated, and it might be helpful—it is a matter for parliaments and governments to sort out—to remember a bit of history around the Public Service and ministers. There has been a shift over the last 25 years. For example, the Freedom of Information Act exposed many more of the deliberations of the Public Service. One of the concerns was whether this might upset the important confidential relationship and trust between a minister and the Public Service. You have within the provisions of that act certain guidance as to what may not be made public for public interest reasons. But the interpretation of that has shifted over time.

I also draw attention to the comment made by the chair in his introduction to this session, as he has made in every introduction to every session, which says that members of departments are not expected to answer questions on policy. There is a general line that we do not answer questions on the policy advice we give, and we as public servants do not comment on policy. So you have a convention that puts some boundaries in order to preserve the important relationship that you have been highlighting and to allow a minister to be able to do his or her job well. The issue for the parliament will be: if there were to be an opening up of some accountabilities for ministerial officers, what are the bounds that would preserve the important roles of ministers' advisers—which ministers have to have—and that would be outside that public scrutiny? That is something for the parliament to consider carefully.

Prof. SMITH—Picking up points made by the last three speakers, I would like to put forward two concrete suggestions, to prevent these sorts of problems arising rather than sorting out the mess afterwards. One is to pick up the suggestion of a code of conduct—a set of rules—for ministerial staffers in dealing with their particular agency. As I have stressed this morning, the Defence Force is a very specific agency of government, which is very unlike any other agency of government in the way it deals with the chain of command, the chain of reporting and the management of information at tactical and strategic levels. Staffers and ministers need to know this. As I have said before, the minister's office works very differently from headquarters. A code of conduct would set out exactly what the relationship was between staffers and military personnel. For instance, when a staffer rings a base commander, is the staffer speaking on behalf of the minister or not? Does he carry any authority or not? Does information have to be provided or not? Who is requesting the information? Those things could be set out in a code of conduct—a set of arrangements—taking particular account of the way the military does things.

My second suggestion is that the military should be enabled to play a much greater role in providing public information than has been the case in the last eight to 10 months or so. We have this in some areas, of course: we get briefings from people in uniform on the operations in Afghanistan, and that is perfectly accepted. It is done well and professionally and due limits are observed. It strikes me as odd that you can trust a military person to deal with operations in Afghanistan but you cannot trust military people to talk about the interception of leaky boats off the northern coast of Australia, which is far less a threat to security or a matter of state.

Having military people speak more regularly and more openly, within their areas of competence and subject to all the qualifications, would provide a kind of check on information or misinformation getting out of hand in the public arena. It would also raise the profile of the Defence Force in the community and perhaps do something to restore the pride that military people feel in the job that they are doing. Certainly, there has been a feeling that they have not been able to speak openly about the very difficult job that they are doing and have done extremely well. It may put them in difficult positions, but we need to trust our professionals—and it is probably less difficult for them than appearing before a Senate committee.

Sir RICHARD PEEK—I want to add two points. Firstly, I do not want to comment on the discussion except to say that there is a practical consideration that I think needs to be addressed. Under the Naval Defence Act—which I imagine has been overtaken by an Australian naval or service defence act—you were required to obey the lawful commands of your superiors. Where do the ministerial advisers fit into this? I ask the question; I do not know the answer.

Secondly, on the general question of muzzling in the services, I would like to record that in 1957—a long time ago—in the early days of television, I came back from a long period in the strategic reserve in Singapore and the Far East and received a signal from the Naval Board as I came up Port Phillip Bay, 'The ABC will be coming on board to interview you on arrival.' There were no instructions, nothing. I was required to use my commonsense. We had had various things happen to us in the Far East which had not been publicised, and I was left to make up my mind as to whether they should be or not. The difference between then and now is quite enormous.

Senator FAULKNER—The chair has asked us to look at some of the failures in relation to this incident and to take a broad perspective of it. One problem, it seems to me, is that there are

a range of things that are not being committed to paper or to electronic mail—to writing, effectively—that might ordinarily have occurred in the past. I would like to hear witnesses comment on this. I will give you one or two examples. The People Smuggling Task Force was set up as a result of a corridor conversation between Mr Farmer, from the Department of Immigration and Multicultural and Indigenous Affairs, and Mr Moore-Wilton, the Secretary of the Department of the Prime Minister and Cabinet. There are no terms of reference, but most importantly there is no paper trail.

We know that Dr Hawke said earlier to this committee that he offered his resignation because he failed, in his view, to follow through some advice in relation to the photographs misrepresenting the ‘children overboard’ incident; he did not place that in writing before Minister Reith. The minister’s staff asked that other matters not be put in writing, so they were not put in writing either. Is this a growing pattern? We know that there has always been a major issue about the original telephonic communication between Commander Banks and Brigadier Silverstone. There is a lot more done on the telephone and a lot less put in writing, and there is a lot more corridor gossip or chat and the like, it seems to me. I wonder if our expert witnesses identify this as a problem. If they do, do they see any remedies, or is it just the fact that modern Australia, modern communication, means this is something we are going to have to get used to?

CHAIR—Do you want to nominate someone?

Senator FAULKNER—I would appreciate hearing from any of our guests who would care to comment.

Dr UHR—One of the things that struck me about the inquiry is the fact that some people who received written advice complained and said that they were not properly briefed because they did not receive phone calls to remind them that they received the written advice. Others who have received phone calls said they had not been properly briefed because they had not received the written advice. I agree that something odd is happening.

Senator FAULKNER—That is an important contribution. In Ms Halton’s case, for example, there are two written communications that go to the Department of the Prime Minister and Cabinet that are well known: one, a chronology with a footnote; another, a brief from the Strategic Command. But she makes the point: ‘If it was important, I would have got a phone call.’ Is that modern public service practice and, if it is, is it acceptable? Ought we be looking at the way we do business?

Prof. WELLER—The third point seems to be that at times ministers announce that they have not been formally advised of something—so that a conversation with Brigadier Silverstone in Northern Command is not regarded as a formal advice. It is regarded as ‘just a conversation I had and I didn’t take it very seriously’. Certainly, in relation to advice to ministers on significant issues it seems to me that we are slipping away from written advice to oral advice, but of course the response to that, I suspect, is going to be that that is the pace of modern government.

Senator FAULKNER—Is written advice stronger and/or better?

Prof. WELLER—Written advice gives you a trail of evidence that it is there, and I think it has got value for that reason. In the old times if you gave oral advice it tended to be a note for

the file. Somebody would have made a note: 'I discussed this with the minister and decided to do such and such' and it went on the file. I suspect that is not happening in terms of the paper trail that we occasionally talk about. I think that is regrettable too. Again, it is possibly down to the pace of government.

Ms TIERNAN—I think it goes to two points: one is the pace and complexity of government; the other one is the proximity of other people to chase it up for you. So that with the entry of new actors and their proximity to ministers—and this interface with the Public Service has added an additional layer of pace there—if a minister is waiting for a written piece of advice there might be more judgment, or there might be more time for reflection, rather than making a decision right there and then. I think that is relevant to your question.

Mr PODGER—The issue of record keeping has started to attract quite a lot of attention. It was mentioned in my predecessor's *State of the service* report last year. It has been mentioned a number of times by the Auditor-General in a report, which I am particularly conscious of, on MRI.

Senator FAULKNER—I knew you were aware of it, Mr Podger.

Mr PODGER—He said in that report:

The level and standard of documentation considered necessary to support an administrative process is always a matter of judgment for management as part of an organisation's control environment. Nevertheless documentation is important for an agency to—

and he lists a number of points around that. He goes on to say:

The level and standard of documentation needs to match the circumstances. However, it would be expected that both the level and standard of documentation would increase as the consequences of decisions and actions increases.

But I think the basic point is the pace of activity has had an impact on the way we document matters and the service has yet to fully respond to that process.

Senator FAULKNER—What about Dr Uhr's point, which seems to be very valid, where some people say, 'I am not properly briefed if I don't get a phone call'—one witness has put to us the very strong view that if something is really serious you would get on the telephone—as opposed to the precisely different point of view that: 'If the advice was to be taken seriously, and to be acted upon, it needed to be in writing.' As I say, one of our witnesses, Dr Hawke, the Secretary to the Department of Defence, offers his resignation on this very point. It seems to me that that really does highlight a very interesting conundrum for the Australian Public Service.

Mr PODGER—I do not think there is a line which says that writing is more serious than a phone call; it depends on the circumstances. I can think of situations I have been in where the fact that I insisted on ringing a minister and speaking directly to the minister was, no doubt at all, then taken as: 'The secretary is doing this directly; it is not coming by way of a minute from one of the first assistant secretaries through the process. It's saying, "Stop, we need to sort this out now."' And that was taken as very serious. On another one, a more complicated issue, the fact that it was put on paper and set out in a formal way makes it much more serious than just a conversation which tries to pick up the points quickly. I do not think there is a rule where you

can say that a phone call is less important than a piece of paper; it does depend on the circumstances.

Regarding the point that Professor Weller made about whether when you do have phone calls you write minutes for the file and have an audit trail, I think the service is finding some difficulty with some of those areas, given the pace of events. That is the issue that the Auditor has raised, and I have to say it has also been raised by Archives people as well. There are a number of pieces of legislation that set the scene for record keeping. There are, by implication, the Public Service Act provisions on accountability, the FMA Act has got some specific requirements, the FOI Act, the Privacy Act, the Archives Act and so on, but I think the service is finding this quite a challenge at the moment.

Prof. SMITH—I have two comments. One is that, again, you have to remember the special character of the military as regards operational matters. These often move very fast at tactical and higher levels, they rely often very much on verbal communications, there is no time to write things down—that would be a luxury. One of my worries about this whole process is that, at the end of the day, every last commander, every last corporal will worry that whatever he has said in a phone conversation will be cross-examined and interrogated at a later date, and that perhaps he or she had better write it down. Operationally, reports come after the event, as far as the military is concerned, where you sum up and then you report to your superior. Again, the fragility of tactical information is important there.

The second point is that the military have a rather different chain for dealing with correction of information—that is, the administrative chain rather than the chain of command. That is more leisured, as it were; there is time to investigate, to find out. Indeed, that was what happened, in effect, with Major General Powell's inquiry. It had time to talk to people, to assess information and it did of course reach a number of conclusions, one of which was that no children had been thrown overboard, as I understand the report. I guess at that point the formal conclusion had been reached through the administrative chain.

Senator FAULKNER—That is right, as far as it goes, but isn't the weakness that there is a misunderstanding, a mistake is made, a wrong report—whatever? Everyone acknowledges that. Defence acknowledge it and they recognise it within a matter of a couple of days, and efforts are made to fix it. How do they fix it? The traditional way. As I said before, I think, chain of command is a cornerstone of Defence operations. The information is passed up the chain of command, right through more junior officer levels, through Maritime Commander, COMAST Australia, ends up with CDF—and there it stays. By 11 October, nearly everyone in the senior echelons of the Defence Force knows there is no truth to allegations that children had been thrown overboard, and they certainly know that the photos that have been in the public arena do not depict such an event. So that information, I think, is largely non-controversial.

The principle is that the correcting information is passed up the chain of command, it goes to the highest military point on the chain of command, which is CDF, and there it stays. Is that a weakness in the chain of command? Does that show a failure or not in this fundamental cornerstone of the way our Defence Force is operated? I have asked this question of some very senior military officers; they grapple with it, struggle with it and they admit that. It is not an easy matter to deal with because there is a mistake, whoever made it. There are serious attempts to fix it; it really does not work.

Prof. SMITH—There was a trivial piece of tactical misinformation originally. I think, in the event, the Defence Force did try to correct that pretty well. I believe some verbal and written reports went up the chain of command. Somehow or other the urgency or the significance of that correction got lost. At exactly what level—perhaps the CDF, perhaps senior officers, perhaps given the complexity of the chain of command and the modifications that had been made to it—

Senator FAULKNER—We know that through evidence. We know that Admiral Ritchie, COMAST, passes it to CDF.

Prof. SMITH—Certainly there is a feeling that the CDF should have been able to pick up more rapidly and more strongly than he did that this was a politically significant piece of corrected information and he should have taken greater efforts to convey it to the minister. Whether his subordinate commanders should also have made greater efforts to convince the CDF of the significance of this and the consequences of not setting the record straight is another question.

Senator FERGUSON—They were of the view that it was not a significant issue at the time.

Prof. SMITH—True. A lot of people say that it did not seem significant at the time. But, I think, one of the responsibilities of people in high office is to have an idea of what is going to be significant before the problem arises. Certainly senior officers are expected to have some political acumen, some political insight into what is important and what is not important, what the minister must know and must be told, even if it is inconvenient, and other information which is less important. I agree we know that at the time it was not highly significant, but we do expect people to make a judgment at that sort of level as to what might be significant. You could argue that even at the time the wider political significance was clearly important given the nature of the election campaign. How well you can expect senior military people to understand the political environment is another question. I think that at that sort of level you must expect some political knowledge and political judgment on their part.

Prof. WELLER—I would like to follow up and go back to that comment I made earlier: if you want to get a message across, to state it once is desirable, twice is necessary, three times is suicidal. We do not seem at any of these stages in correcting to have gone to the second stage. People seem to have said it once and they were told to go away, or there was a side comment about going and checking out the facts. They do not seem to have come back, which it seems to me is a desirable stage. Let me put my second point hypothetically rather than in this specific case. If a secretary—for the sake of changing the argument—is advising his minister about an issue and he knows that the Prime Minister is also on public record about that incident, but he feels that the minister is not passing on the information to the Prime Minister, does that secretary not have an obligation to make sure that at least the Prime Minister and his department are aware that there are facts wrong and that there is severe doubt about what is happening?

In those circumstances I would have thought the appropriate role for the secretary of such a department would be to ring the secretary of the Prime Minister's department and say, 'We've got problems. We have severe doubts. The Prime Minister has been on the record that this happened. He did say "if the reports are correct". The reports are not correct.' It seems to me that the system again has failed in that case. If this stayed within the Department of Defence, the

minister may or may not have been briefed, may not have appreciated the brief or may have just decided that he did not want to pass on the brief, but it seems to me that the department still has a responsibility to the government as a whole and particularly to the Prime Minister to make sure that the Prime Minister's department knows that something is wrong or there is a correction coming through about what has been said in those circumstances. In those senses I would be critical of some of the advice that has been given up and whether or not the system worked.

CHAIR—Under the rules we agreed before, we were now about to move on to an assessment from the panel about how serious this affair is.

Senator FAULKNER—The next issue I would have raised would have been under that.

CHAIR—I had a question which I will ask, but if we conclude our sections I will expect an answer if we have a bit of spare time before we rise.

Senator FERGUSON—What was the first section, Mr Chairman?

CHAIR—The analysis of the failures in this area.

Senator FERGUSON—I have a question about inadequacies, but I can save it for later.

CHAIR—Perhaps you should mention that question and we will come back to an answer to it if we have some time at the end. That is the process I am going to undertake now. My question is to Professor Smith and to Sir Richard. Before we lacerate ourselves too much about mistakes here, how much of this is related to the nature of the operation? This is not a straightforward classic military operation. At least as I apprehend it as a layman, this is more a sort of policing operation or a border security operation—a different class of operation to fighting a war. How much of these types of issues we are canvassing are related to that type of operation rather than the classic war-fighting operation for the military? Having put that on the record, do you want to put a question on the record, Senator?

Senator FERGUSON—No, I will leave it until later.

Senator MASON—I want to ask about the distinction between operation and policy and how problematic that is.

CHAIR—Please articulate that question.

Senator MASON—I think, Professor Smith, you launched this morning with your opening statement and you said that we should all be reluctant to embroil the ADF in the partisan political process—I think that is right. I think all of the committee would agree with that. Professor Weller and Ms Tiernan, I mentioned the distinction between operational and policy matters—that distinction being very important because you can ask questions about operational matters but not so much about policy matters. While I agree with that as a principle, why I think it is problematic is for the following reason. We had hours of evidence that we adduced—particularly from the government senators but right across the board—about a pattern of conduct by illegal immigrants. It was very serious conduct—much more serious than the *Adelaide* incident—where we actually had a child dropped overboard, threats of suicide and

incident—where we actually had a child dropped overboard, threats of suicide and violence against naval staff.

CHAIR—Senator Mason, you were asked to articulate your question.

Senator MASON—We had all that evidence given. In a sense, while that is an operational issue, we asked questions as to what happened. We asked, ‘What did happen?’ and evidence came from, in particular, Rear Admiral Smith about what did happen. That has a potentially inflammatory political effect. Do people understand that? While the questions are operational, that has a potentially inflammatory political effect. Similarly, we asked the Department of Immigration and Multicultural and Indigenous Affairs questions about the pattern of illegal immigrants coming into this country. People, we learnt, flew into Kuala Lumpur and then surfed the people-smuggling pipeline into this country. Sure, it is operational and intelligence based, but I do not think there is any doubt that it has a potentially inflammatory or partisan political effect. I think we would probably agree on that. We might not agree on the facts, but we would certainly agree that it has a political effect. My question to you is: is there any measure to resolve that?

CHAIR—Let me just note those as posted questions, and when we do a wrap-up at the end of the day you can make a remark about them and some of us might want to put some questions on notice. We will come to that.

Senator FERGUSON—I would like to put a question on notice to ask the panel about the inadequacy of the process that we are going through.

CHAIR—A comment on this inquiry?

Senator FERGUSON—Yes, on the committee.

CHAIR—One has already been made by Professor Smith, but that is a fair question.

Senator FERGUSON—I want to follow up his opening statement.

CHAIR—Okay. As we agreed earlier, I will put some questions to the panel. How do we assess the seriousness of this affair or what I might term the ‘duty of care’ of senior public servants in these circumstances and the responsibility on them—and this goes for the Defence Force as well—to get things right in the public interest? How serious is that responsibility and, out of a hierarchy of degrees of seriousness, what assessment would you make? That is the general heading. I ask the panel for comment.

Prof. WELLER—Professor Smith said that, from the point of view of a military operation, the incident itself of whether a child was thrown overboard was trivial. A situation which is on the front page of a newspaper and then is disputed after the events seems to me to be not trivial. The fact it occurs in an election campaign makes it even less trivial. So it does seem of considerable significance—whether or not the other SIEV things happened—that we have a situation where the Australian population is told that this occurred. I might add that I was in Canada for much of that election campaign and this is the only event that the Canadian press

reported about the Australian election campaign, so it was international in its significance. The impression we got was the complete Royal Australian Navy was tied up in picking up—

Senator FERGUSON—You do not know how lucky you were, Professor, being in Canada for the election.

Prof. WELLER—Yes, indeed. So it is not a trivial issue in the impact it has both on the political system—on the election which is beyond this discussion—and on an assessment of the Public Service. The fact that, for whatever reason, corrections take a month to take place also does not seem to me to be a trivial issue. The fact that it takes four weeks before it breaks out into the open is a significant question about whether or not the advice the ministers were getting was going to be honest, comprehensive, accurate and timely. And the ‘timely’ comes into this situation about this being advice that should have been given and should have been pressed home because it was significant. I do not think it is trivial when you are dealing with the management of the media and when you are dealing with the management of military operations which in this case must go through the minister’s office. I think that says something fairly important about questions about how a political system ought to be operated and, again, particularly during an election campaign. So I think there are four or five really major issues about how we are governed and how the system operates which come out of what might initially be a tactically insignificant question and an exercise in Chinese whispers so that threats to throw a child becomes a child becomes children by the time it reaches the media four hours later. On the question you are asking about the procedures of this committee—

Senator FERGUSON—I have not actually asked it yet, but I will.

CHAIR—It is on notice.

Prof. WELLER—I will leave the answer to that one. Yes, I think this is a serious issue. I think it is an issue which goes—almost accidentally perhaps—to some very substantial questions about the operations of our government.

Senator FERGUSON—Is it just as serious an issue that all of the other incidents that occurred during the election campaign were not told to the Australian public either? Is that just as serious?

Prof. WELLER—I do not know enough about the other cases to know who was making the choices and who was informed about them.

Senator FERGUSON—Read *Hansard*.

Prof. WELLER—I have been reading *Hansard*. You keep me going—up all night.

Senator FERGUSON—It would take us too long to explain. I am sorry, Mr Chair.

CHAIR—We keep going all night too. Is there any other comment?

Prof. SMITH—Picking up Senator Ferguson’s point, it was certainly not the job of the Defence Force to inform the public.

Senator FERGUSON—I understand that.

Prof. SMITH—Indeed, there were quite specific instructions not to say anything to anyone—

Senator FERGUSON—No, I understand that.

Prof. SMITH—which I actually regard as rather unfortunate. Getting back to this question of how persistent you should be in correcting the minister: again, note that the Defence Force is trained to be apolitical, non-political. That is seen as absolutely essential—more so than in civilian departments. This makes it even more difficult for the military system—up to the CDF—to correct a minister or a Prime Minister in the course of an election campaign. So there is the reluctance of the military to correct the minister. Some people say that the correction should have been done—and persisted with at Admiral Barrie’s level even more strongly than he apparently did—because it was an important question of misinformation about what the Defence Force had done and had witnessed. On the other hand, it was a very charged political situation. It was an election campaign. There may have been a sense that you would bypass Professor Weller’s stage 1 and stage 2 and go straight to the suicidal level. Certainly, if you found that seeking to inform the minister through normal processes, which are not public, for all sorts of reasons did not work, whether you then have a duty to go public on that information is a step which any military person would regard with, I think, much greater concern than public servants.

Again, we have to take note of the necessary apolitical, non-political, character of the military in all this. To try and prevent that sort of situation arising—which was due in part, it seems to me, to an unwillingness to listen to advice on the part of ministerial staffers and perhaps the minister and Prime Minister—puts the military in a very difficult position; if there is an apparent unwillingness to listen to advice and when correcting that advice firmly, even publicly, would even more deeply embroil the military in party politics.

Senator FAULKNER—On the relationship between the government, as opposed to government, and Defence—and I draw a distinction between those—I have raised questions with two very senior Defence witnesses before this committee, Air Vice Marshal Houston and Admiral Barrie, about how they felt when the Prime Minister used what appeared to be a difference in their testimony to a Senate committee to basically ridicule in the House of Representatives a very senior member of the ADF. This is the torpedo/Exocet comment which no doubt you would be aware of. I would be interested if the admiral or you would care to comment on that. This is new ground in Australian politics, isn’t it? That is the truth of the matter. We have never seen that sort of thing occur in the past. Are you able to say to the committee whether the extent of the politicisation we have seen is unprecedented?

Prof. SMITH—I do not like the term ‘politicisation’. It is too vague and has too many connotations. I would focus on breaches of conventions of understandings in how you deal with the military. Certainly, one of those is that you do not exploit differences between individual military personnel. Frankly, I think the Prime Minister was quite wrong in exploiting the

differences between the CDF and the Acting CDF. Whether or not the Prime Minister was correct in what he said in a factual sense, I think that is something that is simply not done.

Senator BRANDIS—Why not?

Prof. SMITH—Firstly, because the military work very much on a system of solidarity, trust and confidence amongst themselves and any attempt to draw out divisions and differences between military people is undercutting that sense of solidarity. Secondly, because it puts some people in the military on one political side and other people on a different political side in terms of public perceptions.

Senator BRANDIS—But, on the public record, one senior military officer said one thing and another said a different thing. That difference was not one created by the Prime Minister, it was a difference that was on the public record. There is no criticism of them having a difference—people have different recollections of fact all the time, as we know from this inquiry. Much was made by the opposition of the first proposition because it suited their political agenda, and I do not criticise them for calling attention to it. The Prime Minister, in the House of Representatives, called attention to the fact that on the public record there was a difference between those two senior officers—and he did it with a bit of a rhetorical flourish, but that is basically in substance all he said. I am at a loss to see what is wrong with that.

Prof. SMITH—I certainly agree that it was not simply the government but both sides that made something of this apparent difference between the Acting CDF and the CDF. My argument would be rather that both opposition and government should have exercised some restraint in this and not drawn out this difference, such as it was, between the two. Perhaps the Senate inquiry itself has been unfortunate in that it has, I guess, had to draw out that difference.

Senator BRANDIS—Professor Smith—

CHAIR—Just a minute, Senator Brandis. You have just walked back in and we have been going quite well. As soon as you are finished your comment, Professor Smith, the other two are I think in order Sir Richard Peek and Dr Uhr. Would you please complete your comment to the question.

Prof. SMITH—To put it simply, people in the military and people in the general community could take from the Prime Minister's remarks the perception that Admiral Barrie was on the side of the government and Air Vice Marshal Houston was on the side of the opposition. I think that is a total misunderstanding, but it is one likely to gain currency. It is not going to improve the understanding of the general community about how the military works; it is not going to do any good for the morale of military personnel, who any day may find themselves quoted by one side or the other.

Sir RICHARD PEEK—There are a couple of things. Firstly, my personal view of Air Marshal Houston is that he is top of the list. I would hazard a guess, from my experience, that the vast majority of people in the Navy think he did a very brave and wonderful thing. Secondly, you asked earlier on whether I would give some indication of what I thought about the difference between active service and coastguard service.

CHAIR—Perhaps you could save that for your summary.

Sir RICHARD PEEK—That was all I had to say.

Dr UHR—We have your question, we have Senator Ferguson's anticipated question, and we have Senator Mason's anticipated question. We have about half an hour. Is that right?

CHAIR—No. I will ask you before we close to summarise your points of view. The questions that some of us have articulated, you might comment on in your summary so that we have some feedback from you on them.

Senator Ferguson interjecting—

CHAIR—Very soon I want to go onto the remedies part. We are still in discussion about how serious an issue this was.

Dr UHR—Just very briefly on yours, and I will hold back on the others. Yours was an issue about how fundamental this duty is not to mislead. To me, it is absolutely fundamental—not to democratic politics as such but to democratic governance. It is fundamental to all public officials in democratic governance, not just to public servants. If the committee were to focus on a set of duties not to mislead and confined those to public servants and left ministers and ministerial staff out of the loop, I think that would be a grave injustice to the gravity of the situation. The duty not to mislead is an obligation that sits on the shoulders of all public officials—ministers and ministerial staff, as well as public servants.

CHAIR—Is there any member of the committee that wants to mention a question?

Senator FERGUSON—We were talking about inadequacies. I want to talk about the process that we are going through and have gone through right from the start. I did recollect that Professor Smith, in his opening statement, talked about the inquiry, the way it was conducted and the fact that he felt that the serving Defence officers had done so well at this inquiry in their evidence. We would concur with that. He then raised his concerns that some of the questions had a political agenda. I think I have paraphrased you correctly, Professor Smith—correct me if I am wrong. I think it needs to be understood that, whether we like it or not, in the 10 years that I have been in the Senate there has not been a select committee formed that does not have a political agenda.

The initial terms of reference were drawn up by the opposition and the Democrats without consultation with the government, which innately gives it a political agenda. So, when it comes to evidence that is given before us, it is only natural that opposition members of this committee will question along a certain line to try to gain some—

CHAIR—Senator Ferguson, can you come to your question.

Senator FERGUSON—Yes, I will; I will come to it very quickly—information they can use to discredit the government, and it is understandable that government senators will go as hard as they can to try to get information which will help the government's argument.

When talking about politics being drawn into this inquiry, I am not sure that a Senate committee such as this is the best forum to find out which is the best way to deal with ministerial advisers and all of the other questions that have been raised this morning. This is by nature a political inquiry with a political agenda, and each one will pursue their own particular point of view for political advantage. I think we need to be clear about that. Maybe it is another forum that should be looking at whether or not ministerial advisers and others—public servants—should be acting in a different way.

CHAIR—That may go to the next heading about possible remedies. Would the panel please take note of that question and comment on it in their summary. Are there any further questions on this that people want to mention now and which they would like the panel to comment on in their summary?

Senator BRANDIS—Is this all we can do? I want to pursue a somewhat similar point to Senator Ferguson's. I would rather do it in dialogue with the witnesses, but am I limited to merely announcing the proposition that I want commentary on?

Senator JACINTA COLLINS—I think Senator Brandis has had sufficient time so far.

CHAIR—When we entered this session, we agreed that we would look at a number of topics. I invite the panel to comment on the remedies that they think should be applied. I think that is a constructive heading that is useful for our report.

Senator BRANDIS—By seeking guidance and support.

CHAIR—Perhaps we will go to that now. There may be some questions on that. In the time remaining to us, we will get a summary from the panel, and if there are additional questions we can take them. Again I look searchingly at the panel. Does anyone want to go first? Some of you have mentioned this already, so you do not need to go back over the ground that you have already mentioned other than to point to it. Given the consideration we have had of this, are there any particular proposals that you would like us to take on board for our report that might point to remedies in a situation like this?

Ms TIERNAN—The clear one that is implicit to a lot of what other speakers on the panel are saying is the need to evolve institutional arrangements that are appropriate to the contemporary reality of government. The Public Service has evolved and has had its arrangements changed to accommodate new realities and new directions. The Members of Parliament Staff Act was passed in 1984 in a particular set of circumstances. It no longer provides an appropriate institutional framework for how the system is working. So an important one is to come up with institutional arrangements that are contemporary, appropriate and take account of the sorts of failures exposed by the case here.

Prof. WELLER—First of all, the black hole of the ministerial staff, a code of conduct, a better set of guidelines, a better set of conditions, better lines of accountability and changing the convention that they cannot be called in front of Senate committees—a whole range of things—could be done in special circumstances. Being called before a Senate committee for a particular inquiry—not a fishing trip—goes to the question of confidentiality.

The second question which I touched on at the beginning is the whole question of caretaker conventions—whether they need to be revamped and reconsidered to take into account what is happening during an election campaign. It might particularly relate to questions about media and media instructions that occur on those sorts of occasions. That might be opening a can of worms at the same time. If caretaker conventions do not apply until it is convenient that they apply, they become slightly questionable. You get everything out that you can between announcing the election and the day that the caretaker conventions start or should we just assume that in these sorts of occasions we will have very limited caretaker conventions and that it is an open house otherwise?

CHAIR—Mr Podger, you indicated that some things are under consideration. Do you have anything additional to say or do you want to emphasise some of those earlier points?

Mr PODGER—If I may first of all make a caveat: as Senator Ferguson said, this is by its nature a political process, as a lot of other things are. The Public Service and, indeed, the ADF have to accept that there is a political dimension to public administration. That is why I did not comment on the seriousness of the issue. I see that, in itself, as obviously an issue of political debate. Having said that, there are serious issues arising from this that require careful consideration by many players, and I would hope that this committee can help guide that as well.

For us in the Public Service and Merit Protection Commission, we are looking very carefully at the area of the values and the code of conduct. We are articulating what it means so that it is not just charts on the wall. It is in fact meant to be implicit in chief executive instructions—a series of processes that agencies ought to have in place to make them real. We are also, in looking at that, particularly focusing on an issue from this inquiry: the public servant's relationship with a minister's office. That is an issue that I think we need to tease out a bit more. I have given some lines on that which give an indication of the sort of thinking going on in the commission.

Another aspect of that is the record keeping. That is an area that the service is grappling with. I think there is some guidance coming through from the Auditor-General about that, which needs to be pursued a bit further within the service. The final one is about the minister's office itself and whether anything that corresponds to the sorts of things that apply to public servants ought to be in place. Exactly what they are is a matter for political consideration in this parliament—exactly what the bounds ought to be to get the balance right—but I think there would be some advantage for the system if those things were better articulated.

CHAIR—Professor Smith, do you wish to comment?

Prof. SMITH—Yes, I have two or three brief points. First, responding to Senator Ferguson's question, I certainly do not expect any parliamentary committee to be apolitical. I think, as Senator Ferguson himself implied—

CHAIR—My first induction into this was the committee of inquiry into the conduct of a judge.

Prof. SMITH—Yes. Senator Ferguson implied that the definition of a politician is someone who can find sides on a round table.

Senator FAULKNER—Who is Sir Lancelot?

Prof. SMITH—Is there such a thing? My argument is not that Senate committees should be apolitical but that we should be very reluctant to bring an essentially apolitical institution into this sort of political arena. It may be necessary on occasions—that is another question—but at least we should be aware of the potential damage that is being done to the military when this happens. I am worried that a lot more damage has been done than has become apparent in hearings. This really leads me to emphasise the importance therefore of prevention of this happening. I made two suggestions earlier about the code of conduct—particularly in relation to understanding the military and, secondly, the greater role for the military in public information.

Senator FAULKNER—But you would not suggest that the ADF or the Department of Defence should be beyond parliamentary accountability or accountability in the broad, would you?

Prof. SMITH—No. I am not suggesting that.

Senator FAULKNER—That is the fundamental tenet of our system.

Prof. SMITH—What I am suggesting is that governments in particular, and to some extent oppositions, have to be very careful when they are dealing with the Defence Force. It is a national institution. It is not something that belongs to the government, though that the phrase has been around. It has been peddled by ministers and—

Senator BRANDIS—But neither does the Commonwealth Public Service.

Senator FAULKNER—I think Senator Brandis makes a good point: neither does the Australian Public Service. I am sure Mr Podger would quickly say that is the way it should be. Whether it is the way it operates is different.

Prof. SMITH—What I am referring to are statements by ministers and, indeed, the Chief of Defence Force that, for example, the military belonged to the minister; the government owns the military; the government is the customer of the military. These are common phrases. They are in writing. I can cite you speeches by the CDF. I think that is a fundamentally misleading way of understanding government's relationship to the military.

Senator BRANDIS—But nobody has said, Professor Smith—at least not so far as I am aware—that the government owns the military, or words to that effect.

Senator FERGUSON—Not in this inquiry.

Prof. SMITH—I am happy to look through my records and find some for you.

CHAIR—What is often said, though, is that the government is the customer, or some such phrase.

Prof. SMITH—That is certainly said. I will look through my records.

Senator BRANDIS—That was said by somebody from the military.

CHAIR—Not in this inquiry.

Senator JACINTA COLLINS—Perhaps, Professor Smith, you can do that on notice.

CHAIR—I will come to you in a minute. I think what you are saying, Professor, as I apprehend it, is that, in the conceptual debate about the role of the military and its relationship with the government, this is a phrase that increasingly lately has been occurring.

Senator FERGUSON—No. I disagree with that—lately. How about for a long time?

CHAIR—For a long time, perhaps.

Senator FERGUSON—Like prior to 1996, I suspect.

Senator BRANDIS—I want to pursue this point now, and it is the same point that Senator Faulkner raised and I think he and I are in agreement with each other about this. What you have exposed, Professor Smith—and also in some observations, Sir Richard, you made earlier in the morning it seemed to me you were addressing this topic—is the appropriate nature of parliamentary oversight of the military, and in particular the question of whether when a committee such as this, for instance, is given the task by the Senate of inquiring into a number of controversial events, which necessarily involves the making of judgments on the conduct of military officers in an operational and administrative situation, there is any different principle that the Senate or senators should adopt in undertaking that parliamentary oversight.

I asked a lot of searching questions of Commander Banks, and Sir Richard said I should be taken out and shot! I take that in a good-natured way, as I said earlier this morning, but there does seem to be an implication in the minds of some that the military is less susceptible to parliamentary oversight, that its conduct and activities should be less readily questioned than other agencies or other parts of government. I must say, Professor Smith and Sir Richard, that that is not a proposition I readily accept. Would you care to comment on that?

Prof. SMITH—Let me make clear what I am saying: I am not challenging the right of parliament to inquire at great depth into what the military do, but I am questioning the wisdom of it on all occasions. It is perhaps a little bit like parliamentary privilege; that is a very significant power and right but it needs to be used with care and discretion and a sense of responsibility. I am simply arguing that parliament, and the government for that matter, should accept that the military work in a different way. They have their own very strong chain of responsibility. It is very strict, and necessarily so for operational reasons. That has to be respected, but ultimately parliament can say, 'You've been doing things wrong,' and there have been occasions when parliamentary committees have brought out problems within the military that the military did not—

Senator Ferguson interjecting—

Prof. SMITH—Yes, and there are others, too.

Senator BRANDIS—Cut to the chase. Do you think there is a different rule for the military and the Public Service?

CHAIR—Order! We can come back to that point. Please complete your remarks, Professor.

Prof. SMITH—The basic rule is the same: parliament has the right. I do not challenge that. I am arguing that there are conventions and traditions that say to parliament and to government: ‘Be careful when you are handling the military. Think twice about putting them in the party political arena, because this will have all sorts of unfortunate consequences.’ Getting back to an earlier point, perhaps one factor is the line that we have heard in recent years that the government owns the military; it owns Defence—and I will find chapter and verse later for that sort of phrase. If the government is taking that line then that in itself puts the military into the political arena. If the government owns something then the opposition is going to query and question what it is doing with the property it owns. My argument is much more that the military is not owned by the government; it is certainly responsive and ultimately controlled by the government. My argument is that really the government has stewardship of the Defence Force. It can ultimately tell the Defence Force to do exactly what it wants done subject to international law and other legal limits.

Senator BRANDIS—Would you take a question on notice?

CHAIR—Hang on.

Senator BRANDIS—There is a question on notice I want to notify.

CHAIR—Please, but let us complete the evidence because I want to ask for comments from Dr Uhr and Sir Richard, and we are running out of time.

Senator BRANDIS—Professor Smith, would you take this on notice, please?

Prof. SMITH—Yes.

Senator BRANDIS—Can you point to a single occasion on which any member of any Australian government in the last—however long you wish to go back—10 years has said the words that you have suggested—that is, that the government owns the military? I have never heard that said by any minister, Liberal or Labor.

Prof. SMITH—I will happily take that on notice and provide you with the chapter and verse.

CHAIR—You had some concluding remarks to make, Professor. I am going to give you a chance to wrap up an overview of comments. If you want to pause at this point then that is fine, but if you do want to complete then please do so.

Prof. SMITH—Very briefly, we are talking about conventions, traditions, understandings—implicit and explicit—in the political-military relationship. I think these have to be treated with care. We do not simply look at legal authority or the parliamentary right of inquiry and say that that means the Defence Force is open slather, in practice. In principle, it is. The Defence Force can be called to account for anything by parliament. I am simply saying that the more you do that in the political context, the more damage you will do to the Defence Force, and the less effective you will make it in operational terms. If people have to think that every move they make might be called to account before a parliamentary committee, then that will clog up operations, but it will also harm the Defence Force in terms of morale and dedication. Members of the military see themselves as serving the country. They join up to serve the country. They do not join up to serve a government.

CHAIR—That is why the Governor-General is the commander-in-chief.

Prof. SMITH—That symbolises the relationship, yes.

Senator FERGUSON—Should we have not had this inquiry then, Professor Smith?

Prof. SMITH—From the military point of view—

CHAIR—Take that on notice.

Senator FERGUSON—It is only yes or no.

Prof. SMITH—From the military point of view, preferably not.

CHAIR—Dr Uhr, do you have any comments to make, not necessarily on what we have just been discussing? The heading we are inviting you to make comments under is ‘Are there remedies that you should consider?’ If there is something you would like us to consider in our report or if there is something else that has been said, please weave that into your remarks.

Dr UHR—Can I just add two items to the list of remedies. I think the remedies on the list that you already have, coming from the right, have been excellent ones and I endorse all of them and am happy to help specify them if you want. Of the two that I would suggest, one is a ‘below decks’ remedy and one is an ‘above decks’ remedy. I do not think they have been mentioned yet, certainly not today. One is a kind of specific framework to help people in the Public Service manage public information, manage media. We have general codes of conduct; we do not have anything like the UK guidelines on information management by public servants. I think that is an issue that has come out of here that has been quite painful to Defence—that they have not had enough advice within the system as to how to manage media, particularly when there are other players in the media management game. I suspect there is a kind of subset of Public Service professionalism dealing with media management that we need to perhaps acknowledge and treasure by giving them a more specific framework.

The ‘above decks’ remedy is again something that has not been mentioned today, although I think it came up earlier in the inquiry, and it involves post-employment rules for ministers. This is just another aspect of the ethics-in-government regime. I do not know whether you have enough evidence on it to incorporate it, but there is a heap of comparative material that

illustrates dramatically Australia's distinctiveness in not having anything there that can add to the public credibility of ministers after they leave ministerial office.

CHAIR—Thank you very much. Sir Richard, do you have any suggestions to make as to what we should do?

Sir RICHARD PEEK—I have three suggestions, Mr Chairman. One can be done, the other two I think are impossible. The first one, that can be done: I believe the reporting system of incidents should be the same sort of reporting that we had from East Timor, where the commanding general was communicating directly with the government and with the press. It worked splendidly, I thought—I do not know about everybody else. The impossible ones are: I would like to improve the integrity of not only the parliament but the bureaucrats, and certainly the ministerial advisers. The third one, which is obviously not possible, is to do something medically about defective memories!

CHAIR—I have a couple of questions that I want to mention now because I want to quickly go to inviting you to make concluding remarks. If there is anything that you think that you ought to bring to our attention and you have not had an opportunity to do so, then, following the discussion we have had, you can make a summary. But answer as well, if you would not mind, where you think it is appropriate, the questions that have been, if you like, posted on notice.

One of them is in 'Proposals for remedying defects'. Admiral Barrie is on a two-year term, which means that sometimes his term straddles the life of a government and sometimes it does not. Is there a consideration here that, to remove the commander-in-chief from any suggestion that he is hostage to political fortune, his term should be longer? That is one question.

Secondly, we had evidence before us that the former Minister for Defence, Mr Reith, was called back to conduct a performance assessment of the Secretary of the Department of Defence after the former minister had vacated his position for some time and when it was public knowledge that he was a lobbyist on defence issues for a private company to the Department of Defence. It seems to me that those are things that stand out as issues that trip my imagination as to areas to look for remedies. I have mentioned those questions, so in your summary, if you would not mind, when you are replying to all the other questions that have been posted—

Senator FERGUSON—How did that relate to the inquiry?

CHAIR—We have to make recommendations. You asked how it relates to the inquiry. It goes to the general area of the allegation—I put it no higher than that at the moment—of politicisation. With respect to the terms of secretaries of departments, if you have a four-year term and you are coming up to an election, you know your job is secure after the election. If you have to face a renewal of your contract before the election, maybe—so the argument goes—there is a degree of pressure that is applied as to whether you will be reappointed. It goes to those issues. I now ask committee members whether there are any other matters that they would like to draw to the panel's attention that they would like the panel to comment on when the panel does its concluding summary.

Senator FERGUSON—I have a brief one for the academics here. I notice there has been a lot of talk about how quickly the defence forces should correct any mistaken information that

might be put out into the public and how they are very quick to get the information out and very slow to correct any misinformation. I am just wondering how quickly academics do the same thing.

CHAIR—That is a question they may wish to answer. It is a reasonably provocative question. Are there any other questions?

Senator FAULKNER—I think Professor Smith raises an interesting point about Defence Force accountability. I prefer to use the terminology ‘Defence accountability’, as we do have a diarchy here: a Department of Defence and the ADF. I suspect that Professor Smith is perhaps suggesting a different accountability approach for the two elements of the diarchy—I am not sure. I just wondered whether, in the concluding remarks, any of the witnesses would care to comment on the appropriateness or otherwise or thoroughness of accountability for Defence and the appropriateness of accountability mechanisms, including the Senate committee systems, such as select committees like this and the estimates committee which, historically, are taken very seriously by Defence—I used the term ‘Defence’ deliberately—that is, the Department of Defence and the ADF. I would be interested to hear any views.

Senator JACINTA COLLINS—Mine is a specific question for Dr Uhr. Could you elaborate a bit further on the UK code that you mentioned in your earlier comments, specifically with respect to how ministerial advisers are held accountable to the code?

Senator FERGUSON—Was that the UK code, Senator Collins?

CHAIR—Yes.

Senator JACINTA COLLINS—It is one thing to have a code, but how they are then brought to account with respect to that code is the question.

CHAIR—As there are no further questions, I now invite the panel to comment. We have posted a number of questions. I do not think I need to go back over them. I am sure you have taken note where you think it is appropriate and you can comment. Unless there is a volunteer to go first, I may start with you, Ms Tiernan. There appears not to be a volunteer. They have all stepped back.

Ms TIERNAN—I will confine my comments to ministerial staff, which is my primary expertise. I think there is broad agreement among the academics here today that this case exposes important problems or dangers in the system of advice to ministers that exist in a model that has evolved beyond its institutional capacity. So my primary recommendation to you would be, as I said before, to evolve a new set of arrangements. But, if we are going to do that, we need to recognise that ministerial staffing is a very important political institution about which we know comparatively little. What we know about the Howard government’s period in office is quite limited. There is a study currently under way about the Keating government, but there is this problem about how long it takes you to produce the material to leave it around.

So I think an important priority is to develop our knowledge and understanding of the system. To do that you have to overcome a range of impediments which are primarily partisan to get access to that information. We also need to understand and explode some of the myths about

ministerial staffing, the growth of which is because ministers need something different from what was there before to do their jobs effectively. So we need to have a good understanding of that, of what I call the demand side. We need to understand the supply side and the demand side—I think that is really important—and how advisory arrangements can be structured to be effective. I think we need to understand that, systemically, the arrangements are not working.

Senator Ferguson, you said that Senate committees are not necessarily a very good forum in which to do that, and you may well be right. It is problematic to find a non-partisan forum in which to do it. In 1975 the government appointed the Royal Commission into Australian Government Administration. They looked at some of these vexed questions that people wanted to try to understand. I know there are a lot of royal commissions going on, and I do not know whether it is appropriate to go with a recommendation like that, but that certainly was a comprehensive exercise that brought everybody up to a level of understanding about what was going on and what was an appropriate way forward. Having had a lapse of 25 years, I think it may be time to do that again.

CHAIR—Professor Weller, do you have any wrap-up comments?

Prof. WELLER—Let me make a few, if I may. Academics are challenged: before we go to publication, we have peer reviews. So you have to submit work to other people.

Senator MASON—By other academics, though, Professor.

Prof. WELLER—I am sorry?

Senator FERGUSON—By other academics.

Prof. WELLER—Of course!

Senator FERGUSON—You would not want to be tested by a parliamentary inquiry.

Prof. WELLER—Oh, I would be quite happy to put any of my publications in front of you. The second thing about the focus of this inquiry, Senator Ferguson, is that the most significant changes in the United States government over the last 30 years came out of an investigation into a lousy little third-rate burglary by a highly partisan Senate committee that had the advantage that the President's staff could be called before it—and one remembers John Dean and others sitting there and Butterworth sort of saying, 'Well, they were all taped.' It was partisan and it was aiming to impeach the President, but the consequence of that exercise was a greater understanding of the problems of the overmighty executive in the United States and a whole range of countervailing responses.

On that basis, you can gather that I think exercises like this are probably a good thing. The fact that it is partisan does not worry me in the slightest. The investigation is up to the senators, but what comes out of it is a range of comments about the way the political system works, which you will probably never get by any other system. So, on that basis, I think inquiries like this actually serve a useful purpose even if you never get round to writing a unanimous report, which I have a shrewd suspicion you will not.

Senator FERGUSON—Don't hold your breath.

Senator BRANDIS—I think we might be unanimous on some issues.

Prof. WELLER—You may be. So I think that it is a useful exercise, because estimates committees do not receive the attention from the press—nor even, I suspect, from the senators—that perhaps this sort of inquiry does. I would probably disagree with Professor Smith and think that the Defence Force and the Public Service are both, in a sense, part of the exercise of government and available to it. On that basis, let me quote the exact terms we used.

Senator FAULKNER—From an outstanding publication, you were about to say.

Prof. WELLER—Yes, it is from an outstanding publication; you must allow me to advertise. We say:

No government 'owns' the public service. It must remain a national asset that services the national interest, adding value to the directions set by the government of the day. The responsibility of any government must be to pass on to its successors a public service which is better able to meet the challenges of its time than the one it inherited.

That is the current Prime Minister speaking in the Garran oration.

Senator MASON—That is your book, is it? What is called, 'Mandarins' or something?

Prof. WELLER—Yes, that is my book.

Senator BRANDIS—That is Professor Weller's new book on mandarins; it is an excellent book.

Senator MASON—What is the retail price?

Prof. WELLER—I do not know. However, there are times, I think, when various people in the political system should be reminded of the Prime Minister's statement that 'nobody owns the public service'. And there are times when some ministerial staff should be reminded that they in particular do not own, and are not the boss of, the Public Service. I think one of the things to come out of this is a reminder that that does not necessarily happen. And I have a suspicion—since the minister is no longer a minister, so to speak—that the media arrangements that took place during the election about announcements in the media, on this occasion, also suggest that that was going a bit too far in the notion of who owns the Public Service. I think the media controls that were put in then were excessive.

Then it raises the question that Senator Cook raised about term appointments. It is not so much the question of whether the Public Service is politicised in terms of people putting partisan people into positions of authority in the Public Service. My finding here—and I think it would certainly be the same with the Defence Force—is that there is very little evidence of that. The question is whether or not they are operating the Public Service in such a way that they seek to—'cow' is probably too strong a word—make nervous some of the people operating within the Public Service. There are shortening terms under which people are put on contract in the Public Service. Secretaries used to be on five-year contracts when they started, and could

expect to survive at least the term of the parliament. Increasingly, they are being put on three-year contracts. The Public Service Commissioner, as a statutory officer—and I knew this before I came today, so this is not because I am sitting next to him—was put on a three-year contract, although the statutory office is usually a five-year contract.

I think these are perverse trends which are going to move in the opposite direction to which I believe the Public Service should be going—which is to say, one which gives them a certain degree of security in exchange for the freedom to give advice. If they were not pushing the advice in this particular case, it could well be because they felt that their positions were coming up for grabs some time in the not too distant future. I would prefer to see it in the slightly more distant future. We know from the Barratt case that, if anything goes wrong, you can get rid of people at the drop of a hat. I am not suggesting that that will happen all the time, but I do think that these are important issues—which I do not expect you to find an answer to. But I hope you will actually raise these questions about what sorts of advice might be given. I think they are fundamental to the nature of our government.

Mr PODGER—I will not comment on the last couple of points raised by my colleague here beside me. I will make a comment, however, about this issue of accountability that has been raised, because it is a very important one. I was in the defence department myself for a period, a few years back, and I think the military are particularly sensitive to their apolitical professional position. I think the command structure adds to that culture in the organisation. But, as Dr Hawke, the Secretary of Defence, has said on a number of occasions—I think, quite rightly—accountability within the framework of ministerial responsibility to the government, parliament and public, which is the value that the Public Service has, applies also to the Defence Force. There may need to be recognition of some sensitivities, as suggested, but I think that Dr Hawke's pressing that point quite hard has actually been quite important as an issue.

Senator BRANDIS—Are they oversensitive?

Mr PODGER—They can be oversensitive, in my view, but I think Dr Hawke was feeling that this was an issue that needed to be pressed hard. That is not to say that he was trying to do so in contradiction to the other values, of being apolitical and professional. Those things are very clear.

Senator BRANDIS—There is no necessary inconsistency between these values, of course.

Mr PODGER—No. There can, at times, be some tension between them. My own experience has been that those in uniform are generally treated with greater respect by the government and by the parliament than some of us who do not have uniforms.

CHAIR—Professor Smith, before I go to you, I should mention this. I referred to Admiral Barrie's two-year terms. I understand now that the arrangement in the military is that it is a three-year term, or that the military has moved for appointment of officers to three-year positions.

Prof. SMITH—I believe Admiral Barrie was extended for a further two years—two original years and two more.

CHAIR—Yes, he was. They were in blocks of two.

Prof. SMITH—I have comments on three areas. Let me comment on one aspect of the question of how different the Defence Force is from the rest of the civilian Public Service. Only the military is a profession in itself. The people who work for the departments of education, or transport, or whatever they are called—

CHAIR—What about Foreign Affairs, where we have diplomats?

Prof. SMITH—and Foreign Affairs are not, in themselves, self-contained professions. There is only one military profession in the country. You cannot get out of the military and go and work for someone else, at least not without upsetting a lot of people—that is another question. I think that has to be recognised in the sense that, as a profession, the military have practices, they have criteria, ways of doing things that are unique to the military. The question of the diarchy was raised. I am a little concerned that in recent years too much pressure has been put on to bring the civilian element of Defence and the military element into a single team. Sure, a lot had to be done to align them and to get them working better together, but I get some sense that this has been pushed too far, so that, for example, you have civilian public servants in Defence seeking to issue orders to military people—I have had complaints from the military side about that sort of approach—simply because the public servant ‘outranks’ the military person. That is a problem for the military.

Secondly, the question of appointments was raised. Again, remember that the military is a distinct profession. Promotion, in theory, comes on the basis of military ability, military performance, qualities judged by military professionals amongst themselves. I certainly recognise that, at the most senior levels, it is proper for government to have some say in who is promoted to the most senior positions—though, even there, there is a purist view that it should be totally up to the military. I do not accept that. So I think the idea of making the senior appointments totally out of political hands is not workable. The rationale is that you need a Chief of Defence Force and senior commanders who can work with, and who are responsive to, the government of the day. I accept that. What has worried me, again, in recent years is the greater involvement of ministers in promotions down to the one-star level. I am reliably informed that this goes back at least to 1985, with a directive from the then defence minister. The problem with that is that you are talking about a relatively large number of officers who may feel that their promotion, even in the lower and middle levels, is sooner or later going to be dependent on how they are judged from the political perspective.

Finally, on the overall political-military relationship, let me just quote from a speech by Admiral Barrie on 10 August 2001, where he is talking about Defence’s business from a number of perspectives. One of them is:

Results to government as customer. This perspective reports on the results delivered to government as customer for the six Defence outputs.

The second is:

Results to government as owner. This perspective reports on the results delivered to government as Defence’s ‘shareholder’—

albeit ‘shareholder’ in inverted commas. With all due respect to Admiral Barrie, who actually does disagree with me on this, I think that is not a sound view of the proper political-military relationship. I would argue that it is more a relationship of stewardship, of trusteeship by the government, which certainly has total control of the military, but with that total control there comes the duty to deal with that stewardship by paying regard to conventions, traditions that seek to keep the military out of the party political arena. They do not always do that; sometimes it is necessary for political involvement to take place, sometimes that can produce good results.

Senator BRANDIS—Doesn’t that beg the question, though, when a military event becomes the subject of a dispute between the government and the opposition?

CHAIR—In answering that: you may not wish to comment, but I asked that earlier question about how much of this is related to a border protection type exercise as opposed to a war fighting exercise used by the military.

Prof. SMITH—It is one of the fascinating questions of political science: when does something become political? The answer is: that it is a political question. It does not always satisfy one’s students.

Senator BRANDIS—As the subject of a dispute between the government and the opposition, they would take it that it is political. Without foreclosing public debate between government and opposition of events occurring, including military events within the armed forces bailiwick, how can we possibly ever protect ourselves from the suggestion that it is being politicised? It is politicised necessarily to the extent to which it becomes the focus of a political debate—and, I would say, properly so in a democracy.

Prof. SMITH—Yes, I would agree that a democracy, a parliament, has a right to look at anything the Defence Force does, to have inquiries and to question Defence Force people. What I am arguing is that that right should be exercised with care and with sensitivity to the way the military works and that both governments and oppositions should try to avoid what the Defence Force does becoming party political issues. It will happen on occasions; sometimes it may be necessary. What I am suggesting, though, is that both government and opposition be careful and try to minimise the extent to which that happens, because it does harm the Defence Force.

This relates to the next point, in answer to Senator Cook, about the difference between essentially military or warlike operations and policing, law enforcement, constabulary type operations. By and large, governments have had the commonsense to stay out of warlike operations, partly through commonsense and perhaps partly through simple lack of access—lack of information. If things are happening in East Timor or in Afghanistan, governments are only going to hear about them through the normal chain of reporting, and I think that is a very good thing. When you are looking at law enforcement activities, clearly the potential for political entanglement is much greater and much more serious. Law enforcement is not only dealing with noncitizens on the high seas; potentially it is dealing with Australian citizens in situations of riots or civil disorder where the military may be called out; it is dealing with security questions, as at the Olympic Games; and it is dealing with security at events like CHOGM where the Air Force was authorised in advance to shoot down hijacked passenger aircraft.

The potential for differences within the military or for issues or activities of the military to become political in those sorts of circumstances is very great. There is an argument, which I tend to agree with, that these sorts of roles of the military have been increasing and will go on increasing. The war on terrorism is not going to happen just in Afghanistan; it is going to happen within Australia, at ports, airports and so on. More and more, the military are going to get entangled and given responsibilities in these areas. I heard only this morning that the US seems to be changing its traditional rule which says that its regular forces do not take part in what we would call aid to the civil power. It has been a longstanding practice—in fact, it is an act of Congress—that they do not take part in aid to the civil power.

Senator BRANDIS—Correct me if I am wrong, but under the Australian Constitution isn't the commander-in-chief of the Australian defence forces the Governor-General, acting of course always on the advice of the Executive Council—in other words, on the advice of ministers?

Prof. SMITH—Yes, that is correct. He is the commander-in-chief. In that capacity, the Governor-General has no executive or command power. It is essentially a symbolic relationship.

CHAIR—I draw attention to the fact that we are 15 minutes over time. This time is coming out of the committee's lunch period. Can we try and complete the summary?

Prof. SMITH—I will finish in a sentence. The fact that more military activities are likely to involve law enforcement policing operations which have political potential, shall we say, is all the stronger a reason to reinforce and re-establish those conventions and to get them respected by all parties—government, opposition, ministers and their staffers. That will, in future, serve to keep those sorts of issues, as far as possible, out of the political arena.

Dr UHR—I am very keen to hear what Sir Richard has to say by way of concluding commentary, so I will not hold you up for very long. I have four points, two picking up opposition issues and two picking up government issues. The first is the issue that Senator Collins raised: what is so accountable about the UK code specified for their special advisers or ministerial staff? I would suggest three elements: the first is the fact that it is a specified public document that articulates into the other specified public document, the Civil Service Code—the fact that it is out there. Public focus is one element of public accountability so that we know what to expect of these classes of public officials. The second is that, in relation to ministerial staffers, their accountability in terms of their employment relationships is something that is managed by the Cabinet Secretary as the chief adviser to the Prime Minister. It is something that goes right to the heart of government. You can imagine the parallels that there would be here. The third element is that, in terms of public servants feeling that somehow they are getting an unfair deal and that the people with whom they are working, the ministerial staffers, are unaccountable and irresponsible in their conduct, they have a right of redress to the Public Service Commissioner—or the equivalent officer there as a central government agency that has a supervisory role. They are the three elements of accountability, none of which we have at all in relation to the workings of ministerial staff.

Senator JACINTA COLLINS—But can they be called to appear?

Dr UHR—No.

Senator JACINTA COLLINS—Not in the UK parliament.

Dr UHR—Not to my knowledge, no.

Senator JACINTA COLLINS—I thought there was a recent test case on that.

Dr UHR—It is a matter of lively public discussion now in the light—

Senator JACINTA COLLINS—This is why I asked, and I was trying to work out if it related to the code—but we can establish that elsewhere.

Dr UHR—I then pick up an issue that Senator Cook raised: is it inappropriate for former Minister Reith to be involved in the performance assessment of the civilian head of Defence? No. I would invite ministers to come back to the table to help assess the performance of those people they have supervised—except, as in the case of Senator Reith, if they are involved as an employee of an agency working directly with the department. There is no rule against former ministers being involved in the performance appraisal, and I would welcome their participation—

CHAIR—A correction: it is Mr Reith, not Senator Reith. You may have insulted all of us, including Mr Reith, by calling him a senator.

Dr UHR—The two-year rule that Canada has, and that the UK has, would prohibit the arrangements that he was involved in—not because it is inappropriate for a former minister to be involved but because somebody is in a conflicted role. Of the two government issues that have been dangled before me, one is Senator Mason's: is policy a no-go zone? If we are talking about public accountability, is policy something that is squeezed between politics on one side and operational matters on the other? Commissioner Podger drew attention earlier to a very valuable 1996 document released by the current Prime Minister called *Ethical Standards and Values in the Australian Public Service*. Included in that is a kind of open acknowledgment that public officials—public servants—have an obligation, in terms of their accountability relationships to parliament, to discuss matters of policy. They have to deal with the factual and technical background of policy if called upon to do so. Policy is not a no-go zone for them. It is not something they can hide behind as a screen to say, 'That policy is necessarily political and I will leave that to ministers.' They can be invited—and they routinely are at estimates committees and others—to address issues relating to the factual and technical background.

My final point relates to Senator Ferguson's issue: what are the inadequacies, if any, of this particular inquiry? One of them you may have identified yourself in wondering aloud whether this was actually a political exercise and we should not be too pure in our expectations of it. If it is only a political exercise, that then sets a chain of expectations for ordinary citizens to come forward before the committee. In fact, it might repel them. If you were to model all Senate inquiries as purely political exercises, after a while you would find that the ordinary citizens would have—

Senator FERGUSON—Select committees, not necessarily all Senate committees.

Dr UHR—Even select committees might have a great deal of reasonable based reluctance to participate. Of course, they are not purely political; they are political but they are something else.

Senator BRANDIS—Professor Uhr, it is safer if they are forensic exercises, isn't it—that is, dedicated to finding facts?

Dr UHR—If they can report, and report in terms of adding value to the process of government, certainly.

Senator BRANDIS—But, even if they cannot—even if the committee divides in a party political way on the ultimate report—the process of inquiring and having publicly ventilated the facts through a process of forensic inquiry is surely itself a useful thing.

Dr UHR—It ought to be, but it would not be if Senator Ferguson's idealised model of worst practice held.

Senator BRANDIS—I am disagreeing with Senator Ferguson.

CHAIR—I think he is agreeing with you.

Dr UHR—One—

Senator JACINTA COLLINS—Perhaps you can have your debate elsewhere.

Dr UHR—last point: some of us sat maybe in this room a year ago looking at a whole package of bills relating to ethics and government—

Senator MASON—I remember it very well.

Dr UHR—and I think two of us, maybe three of us, were involved in that. That committee has never reported—

Senator MASON—But it will, Dr Uhr.

Dr UHR—and I think that is a more pressing failure of the committee process, because, again, it is going to—

Senator BRANDIS—It is because they are giving very deliberative care to the report in deference to your submission, Professor.

CHAIR—Do I detect defensiveness in the tone? Please finish your remarks, Dr Uhr.

Dr UHR—The longer the time between evidence and reporting, the less keen witnesses will be to turn up next time, and I think that would be a shame. I turn with expectation to Sir Richard's comments.

CHAIR—Thank you. Last, but not least, Sir Richard.

Sir RICHARD PEEK—I will not keep you long. You asked first of all about the difference between coastguard duties and active service in the reporting line. Obviously, some of them are similar. With the present job they are doing up there, if they had damage or casualties, that would obviously be very secure indeed until the next of kin or the casualties were informed, and if there was damage you would not want to inform people smugglers in Indonesia that a ship was out of action. For the rest, the operational reports are quite different. They must be secure, for a whole variety of reasons. One is electronic security, so that you cannot really broadcast what is happening until you are in harbour. There are a number of others, which I will not bore you with.

I would like to comment on the idea of three- or two-year terms. I think the United States Navy have an excellent system. They do not have contracts; contracts are for civilian staff. They have a system in the United States, as I understand it, where the Commander in Chief appoints a Chief of Staff for three years, and he is there for three years unless he is impeached by both houses of parliament. When I was Chief of the Naval Staff, the President attempted to sack my colleague and was told to go jump in the lake, and he went on serving his three years.

I am going to be a bit controversial, and I do not expect any response, but I obviously was wrong in my three years as Chief of the Naval Staff and in my earlier career in believing that the ultimate control of the armed forces rested with the Commander in Chief. I realise this is not generally accepted. It is certainly not accepted by the Secretary of the Department of Defence and, from what Senator Brandis has said, he does not accept it. As I understood it, Senator Brandis said that the Commander in Chief, in his role as Commander in Chief, was subject to the normal controls of parliament. In my reading of the Constitution, he is not. The restrictions on his control where he needs the authority of the executive council are laid out quite clearly, and one of them is not his duties as Commander in Chief. However, I believed when I was serving that in the long run the Commander in Chief was the man I obeyed.

In practice, my belief was that, for normal life, I was responsible to the people of Australia, which meant parliament, not, I emphasise, the government. Had it ever occurred to me that there would be an occasion when I had a vital disagreement with the government I would have hoped there would have been enough men of honesty and integrity on the government side to the cross the floor of the parliament. It certainly never occurred to me that I had any responsibility for ministerial advisers. In fact, one military adviser tried one afternoon, in the presence of the defence minister, to attack my professional recommendation, and after a slight hiatus the defence minister was good enough to agree with me.

CHAIR—I understand there are no questions that anyone wishes to put on notice. Thank you Ms Tiernan, Professor Weller, Mr Podger, Professor Smith, Dr Uhr and Sir Richard. That concludes this part of the hearing. You have helped us immensely and we appreciate it.

Proceedings suspended from 1.26 p.m. to 2.03 p.m.

**BRYANT, Ms Jennifer, Assistant Secretary, Education and Immigration Branch,
Department of the Prime Minister and Cabinet**

CHAIR—We welcome Ms Bryant to the witness table. Ms Bryant, the normal practice we engage in is to invite you to take an oath or an affirmation and, if at the beginning you have an opening statement to make or comments to offer, please do that. Then, if you would not mind, please make yourself available to take questions. Is that procedure okay with you?

Ms Bryant—Yes, that is fine. I do have an opening statement.

CHAIR—Please proceed with your opening statement.

Ms Bryant—I would take this opportunity to provide some context for the conduct of my inquiry and, in particular, what I understood to be covered by my terms of reference and what was not covered. My terms of reference required me to conduct an examination of the advice provided by personnel involved in the sighting and handling of the SIEV4 vessel, how that advice was obtained and conveyed to authorities in Australia and the nature of advice provided to government ministers and how it was transmitted. I was also asked to make recommendations on how any shortcomings in the collection and transmission of advice might be avoided in the future.

On this basis I viewed my task as being to identify what advice was provided by the Public Service and the ADF to ministers, how that advice was transmitted and what efforts were made by the Public Service and the ADF to correct any misinformation. I believe that in preparing my report I did what I was asked to do: I examined what happened in sufficient detail to identify key failings in communication, and in particular I found that there was no evidence to support the advice to ministers that children were thrown into the water from SIEV4 on 7 October. There were differing recollections between Commander Banks and Brigadier Silverstone of what was said at the start of the information chain, and there was a lack of precision during the initial verbal transmission of information as to whether it was a child or children who had been thrown.

There was rapid public release of information without confirmation or written advice. Photos were disseminated, sourced and cleared outside the established chain of command for Operation Relex, and that undermined the effectiveness of normal clearance processes. Efforts to alert Mr Reith's office to problems of misinterpretation were discounted by the office. Nevertheless, Mr Reith's office had been advised that the photos had been incorrectly attributed by 11 October. Defence did take appropriate steps to confirm the facts of the matter, but the outcomes of these investigations did not seem to have been effectively communicated through the chain of command. There were key communication failures within Defence, in that no written advice about the lack of veracity of the claims was provided to the minister and no advice was provided to the People Smuggling Task Force. Senior PM&C officials did not pursue details about the SIEV4 incident beyond the time when the photos were released on 10 October, because they perceived the issue to have been clarified. There was no evidence that PM&C or DIMIA officials provided advice to either the Prime Minister or Mr Ruddock that there was doubt about the veracity of the original claims.

While subsequent inquiries conducted by the estimates committee and this select committee have provided considerable additional detail and clarification in a number of areas, I submit that I have not seen anything to fundamentally challenge the findings that I have just outlined. Consistent with my understanding of my terms of reference, my recommendations then dealt exclusively with suggested improvements to information handling by the bureaucracy for the future. Doubtless, in the light of additional information, there are additional recommendations for action that might now be made in a number of areas. However, I believe the recommendations I did make remain apt and were appropriate, based on the evidence then available to me.

I draw attention to the very limited time frame during which my inquiry was conducted in late December and early January. My work was very largely undertaken at the conclusion of Major General Powell's inquiry, with key Defence documents provided to me between 10 and 19 December. I was initially asked to report before Christmas, and then before the PM went on leave between Christmas and New Year. It was finally settled that the report would be available for the Prime Minister on his return from leave on 21 January. Nonetheless the time frame was very tight. Although I received good cooperation from those whom I sought to interview, the leave commitments of various individuals at that time of year meant that I generally spoke to people only once and did not have the opportunity for extensive cross-checking. These time constraints also meant that I could not be comprehensive. I had to restrict the issues and the number of interviews that I could pursue. I therefore did not attempt to report exhaustively on the involvement or knowledge of individuals who did not, in my understanding, directly play a role in advising ministers or their officers.

The format of my report is consistent with my understanding of my terms of reference. I made it explicit on page 2 of the executive summary and again on page 4 of the report itself that I was seeking to answer two key questions: namely, how ministers came to be misinformed about the incident and what efforts were made to correct any misinformation. The particular pieces of evidence cited in my report were those that addressed these two questions. Material that was not relevant to answering those two questions was not the text that I quoted in the report.

Clearly the role of ministerial advisers in the transmission of advice to ministers is a key area of interest to this inquiry, and I wish to put on record my approach to this issue. Where the evidence available to me indicated officials had provided relevant advice—either initially or in subsequent efforts to correct misinformation—to ministerial advisers, I spoke to those advisers. My purpose in speaking to them was essentially to fulfil the second element of my terms of reference—that is, it was restricted to whether and how the bureaucratic processes were effective in informing them of the key facts as they became known or, put another way, I was looking to understand the nature of shortcomings in the collection and transmission of advice and what it was about either the content or the form of transmission of the advice that seemingly allowed the advice to be discounted or dismissed.

I consider this emphasis was appropriate for a number of reasons. First, I believe the product of my report was, appropriately, recommendations that would address communication failings in various parts of the bureaucracy and help avoid similar problems in the future. Had it not been for those communication failings, this incident may never have taken on the dimensions that it has. Had, for example, formal advice in writing been provided to ministers correcting the

facts of the matter, then the course of events may well have been different or, at the very least, the context and knowledge base for subsequent decisions or actions by ministers would have been clear. Second, as this morning's debate showed—and, forgive me, I did not watch every minute of it but kept a broad eye on the direction of it—

CHAIR—This morning's televised proceedings seem to have been a bestseller in this building among the attendants, I am informed.

Ms Bryant—I suspect it was a very interesting and novel approach. Second, as this morning's debate showed, the role and protocols for actions and information handling by ministerial staffers are fluid and ill-defined. I do not consider I was well placed to investigate and make recommendations about the complex interplay of legal, political and ethical considerations in this field. Consistent with this, I do not believe it was feasible for me to investigate the transmission of information or decision-making processes by ministers or within and between their offices.

I will now make some final remarks on the process I followed. My investigation took place under general executive power and relied on the cooperation of individuals. Individuals were not on oath and were not compelled to tell me all that they knew. I considered it would be inappropriate simply to rely on the Defence report and therefore sought to review relevant documents and interview relevant people independently of the Defence inquiry—although I did, of course, have considerable regard to information provided by the Defence report in the course of my investigation. I also sought to undertake further inquiries in a number of areas identified by Major General Powell as possibly requiring further investigation.

I sought to ensure processes I followed were procedurally fair whilst maintaining the probative value of the evidence I collected. I therefore kept a written record of interviews I conducted with various individuals. These individuals were afforded an opportunity to look at the records and were asked to amend or clarify them if they did not accurately reflect the tenor of our conversation and to sign the final records. Most individuals did this, but a few were on leave or had moved positions without doing so. In at least one instance I was orally advised by Defence Legal Services that the record was acceptable to the individual but I did not get a signed copy. However, I am satisfied the records are a true reflection of the evidence I collected.

Where it seemed possible that the report would contain adverse comments about any person, I notified that person of the details and I gave them the opportunity to respond. I then sought to take account of their responses in finalising my report. The findings I did make were limited to matters I thought could be supported by the evidence, and I did not offer opinions about matters that were not founded in the evidence I collected. I am satisfied that, in conducting the inquiry, I acted independently and without fear or favour. I was not instructed by anyone as to whom I should interview, nor as to the form and content of my report. I was not motivated by political considerations in the undertaking of this work but sought to meet the requirements of my terms of reference to the best of my ability.

CHAIR—Thank you, Ms Bryant. We have followed the practice of my giving the call to the various interests on this inquiry in rotational order, but I have now lost my way and I have forgotten who is due to get it next. People are pointing at you, Senator Faulkner.

Senator FAULKNER—I do not mind, but could we just be clear about what the time frames are for questioning?

CHAIR—We will have to adjourn at four.

Senator FAULKNER—So how long does the opposition have the call for? There has been some indication at times from government senators that they do not intend to seek the call. I do not know what the situation is here.

Senator FERGUSON—You start off, and I think there will be a considerable time. We have not got a lot of questions.

Senator FAULKNER—Would it be reasonable to suggest that the call stays with opposition senators until three o'clock and then we will see how we are going?

Senator FERGUSON—Yes, I am very happy with that.

Senator FAULKNER—Obviously there will be a bit more time, but we can work it out then.

CHAIR—You seem to have captured the mood of the table, so please proceed.

Senator FAULKNER—Ms Bryant, thanks for your opening statement. My first question is very similar to the one I think I asked Ms Halton a couple of nights ago—it feels like a couple of weeks ago but I think it was only a couple of nights ago. Did you prepare your opening statement with the benefit of input from others?

Ms Bryant—As you can probably tell by the text of this and my reference to the discussions this morning—I finished my typing of it at about midday so I was editing to the very last minute—I did show it to a colleague in the Social Policy Division only to get a view as to tone and so on. Whether that was appropriate—

Senator FAULKNER—No, that is fair enough. I just think it is useful to understand this. Who was that colleague?

Ms Bryant—That was David Webster again, Senator.

Senator FAULKNER—My recollection is another witness followed a similar course of action.

Ms Bryant—Yes. He is my immediate supervisor at the present time.

Senator FAULKNER—I actually read in the *Herald Sun* that you are going to greener pastures—so congratulations.

Ms Bryant—Yes, I am transferring.

Senator FAULKNER—The Department of Immigration and Multicultural and Indigenous Affairs, I think.

Ms Bryant—That is correct.

Senator FAULKNER—That is good. Ms Bryant, you have given evidence before the Senate estimates committee and, of course, you are about to give evidence to this committee. For either of those exercises, have you again had the benefit of advice from colleagues? I am not talking about those outside the Public Service or government, just so you understand the way in which I am defining ‘colleagues’. Have you had the benefit of input from colleagues about what approaches you might take on either occasion?

Ms Bryant—As I have said to you, for example I have certainly tested the tone of my opening statement and so on. I have done that type of thing, but I think it would be accurate to say I have not received instructions or guidance.

Senator FAULKNER—On tone and so forth, who have you sought counsel from?

Ms Bryant—Really only Mr Webster.

Senator FAULKNER—One of the things that strikes me about your witness statements—and I am sure you are aware now that your witness statements as well as General Powell’s witness statements have been made available to this committee—

Ms Bryant—Yes, I am.

Senator FAULKNER—I do appreciate from your opening statement, and I understood before you made it, the fact that you were doing a lot of work over the Christmas vacation period, so I imagine you had a fairly ordinary and unrelaxed Christmas as a result, but as I understand it—and I want to be clear on this—at the time you sought those witness statements no staff member of the Prime Minister’s office was interviewed by you in the preparation of your report?

Ms Bryant—That is correct.

Senator FAULKNER—Did you seek statements from Minister Reith and members of Minister Reith’s staff?

Ms Bryant—I did not directly seek a statement from Minister Reith in the initial phase of the report I put to him part of my draft findings in the natural justice process to give him an opportunity to respond, but that was the only context in which I spoke to him.

Senator FAULKNER—He had an opportunity to make a submission?

Ms Bryant—I recorded the telephone conversation I had with him, yes.

Senator FAULKNER—There was input from members of the then Minister for Defence's staff as well?

Ms Bryant—Yes.

Senator FAULKNER—Did you give consideration as to whether it would be appropriate, or otherwise, to seek any input from members of the Prime Minister's staff?

Ms Bryant—As I have said in my opening statement, if particular witnesses told me they had spoken directly to an adviser—and in the case of those in Minister Reith's office various witnesses did say they had had contact with those advisers and, again, with Mr Ingram in Mr Ruddock's office, witnesses indicated they had had contact with him, but none of the bureaucratic witnesses, the Public Service or ADF personnel, I spoke to indicated that they had had contact with Mr Jordana; I am aware now that Ms Halton did, but at the time I was unaware of that—I did not consider it was feasible for me to investigate transmission of information or decision-making processes between offices. That was not what I thought it was possible or feasible for me to do.

Senator FAULKNER—Given that you now know about that contact between Mr Jordana and Ms Halton, and given the process you adopted, if you had known that at that time would you have taken a similar course of action with Mr Jordana as you did with Mr Reith's staff. Is it fair for me to ask that?

Ms Bryant—I believe it would have been consistent with my practice to do that.

Senator FAULKNER—Had you known about the contact, you would have done that?

Ms Bryant—I believe I probably would have interviewed Mr Jordana. It is, of course, impossible to say since I didn't at the time.

Senator FAULKNER—It is also fair enough to say, isn't it, that Mr Jordana had other bureaucratic contacts? They may not have been in the Department of the Prime Minister and Cabinet, but let me give you an example: Mr Jones from the Office of National Assessments.

Ms Bryant—I had not thought of Mr Jones, but I was aware that—

Senator FAULKNER—My recollection is that you did not get a witness statement from Mr Jones.

Ms Bryant—No. I interviewed Doug Kean from the ONA rather than Mr Jones, but I did, now that you bring that name to my attention, have the ONA minute, a declassified version of which has been provided to you. I did not see that as contact with Mr Jordana in the sense of correcting the misinformation. It was describing the provenance of the ONA report, but I did not see it as part of that and did not connect it with the need to interview Mr Jordana.

Senator FAULKNER—I am trying to understand that background, because it is one of the things that have perplexed me as more information has been made available. As you would

appreciate, with the effluxion of time it is a bit of a paper war on this committee, let me assure you. I imagine you faced a similar situation with your own report, because a lot of the paper is in fact generated by you. I can appreciate the challenges. But I was keen to understand whether you had adopted, if you like, a policy decision in relation to the Prime Minister's office or whether not having input from Mr Jordana may have been a result of the way the inquiry progressed or whatever the circumstances were.

Ms Bryant—I think it was simply a result of the way it progressed. As I have said, I was basically trying to view everything through the frame of the questions I had set out to answer: how did the misinformation happen in the first place and what efforts were made to correct it? The minute to Mr Jordana from Mr Jones, which is in the evidence, I saw as being about the provenance of the ONA report, not about an effort to say it never happened or anything. There was nothing in that minute, in my mind, that was informing Mr Jordana that there was significant doubt. I did think the provenance was relevant and I commented on that in my report. But I chose the primary document addressed to the Prime Minister for that purpose because I thought it was the more weighty of the documents.

Senator FAULKNER—Given that you did not have any formal input from any members of the Prime Minister's staff, did you have any informal input at all from them?

Ms Bryant—I am not quite sure what you mean there.

Senator FAULKNER—Clearly, and I am not critical of this, there are a number of people that you are working with quite closely on a day-to-day basis—take Ms Halton, for example, who is a direct superior. You have a formal relationship or association with her as a result of the preparation of your report. That is fair enough. I do not doubt that on a day-to-day basis you may have been seeing her, along with a range of other people who you would obviously, naturally, have contact with in the conduct of your own professional duties. What I am asking you is: understanding that formal input was not sought from prime ministerial staffers—I am not asking, 'Did you seek prime ministerial staff input on an informal basis?'—was there any contact with prime ministerial staff going to the issues germane to this report?

Ms Bryant—Prior to completion of my report I did not have any formal or informal discussions about the report with anyone in the Prime Minister's office.

Senator FAULKNER—Does that mean that you did have contact after the report was completed?

Ms Bryant—Yes. For example, the day before the tabling I was contacted by the office to ask for copies to be printed ready for tabling—that sort of thing.

Senator FAULKNER—That is before the tabling in the House of Representatives?

Ms Bryant—That is correct. That, I think, would have been the first contact I had from them. The first discussion about the report was in that immediate period.

Senator FAULKNER—Fair enough. From the time that you kick off your report preparation through to the day before the tabling you definitely have no contact with prime ministerial staff. Is that what you are saying?

Ms Bryant—That is correct. It may not have been the immediate day before—it might have been a couple of days before—but certainly it was within a day or two of that tabling.

Senator FAULKNER—And the purpose of that was to get multiple copies of the report or something like that?

Ms Bryant—Yes—to say that they proposed to do that and would I arrange to have copies available for that purpose.

Senator FAULKNER—Did you have any other contact with PMO staff?

Ms Bryant—Any other contact subsequently?

Senator FAULKNER—Did you have any contact from that point onwards about the issues germane to the matters that this committee has been investigating?

Ms Bryant—I think I was asked to provide an additional full set of the witness statements to the office on a separate occasion and I may have been asked a question—I cannot quite recall—about what some acronyms meant. I think I was asked for an explanation of NORCOM and CTJF, or whatever it was—sixty-three or whatever—and I explained they were synonymous. That is my recollection.

Senator FAULKNER—But this is all what, telephone contact?

Ms Bryant—Yes.

Senator FAULKNER—So you did not at any point have any face-to-face discussions with any staffers from the Prime Minister's office?

Ms Bryant—I did in the context of the estimates hearing, you will recall. I think I reported to the committee that evening that over the dinner break I had gone down to the office and, based on a question I think you had asked me in that context, had spoken to Mr Jordana—and so certainly I did on that occasion.

Senator FAULKNER—Are those contacts you have outlined up until the estimates committee the only contacts you had?

Ms Bryant—To the estimates committee, yes, certainly.

Senator FAULKNER—So that was perhaps a request for additional witness statements, an explanation of acronyms and the follow-through of a question that you took on notice that I asked you at Senate estimates?

Ms Bryant—Yes, and I came back and I think I recall at that time saying that I had spoken to Mr Jordana over the break and what his advice to me was.

Senator FAULKNER—In those contacts, were any other matters pertaining to the ‘children overboard’ incident raised with you?

Ms Bryant—None is immediately springing to mind.

Senator FAULKNER—In the lead-up to and at the time of the estimates committee, you only got a couple of telephonic communications about, is it fair to say, technical issues?

Ms Bryant—Technical issues, points of clarification, yes.

Senator FAULKNER—And one face-to-face discussion that was limited to following up a question on notice that—

Ms Bryant—And it took place that evening of estimates, which I reported at the time.

Senator FAULKNER—Who did you do the follow-up with?

Ms Bryant—The one on the evening of the estimates, you are asking me about?

Senator FAULKNER—Yes, sorry.

Ms Bryant—I went down to the office and, as I recorded at the time, I spoke to Mr Jordana. I certainly saw others in the office, but it was Mr Jordana that I sought clarification from.

Senator FAULKNER—But you only spoke to Mr Jordana?

Ms Bryant—No. There were a number of advisers in the office and we nodded and spoke of the progress of the hearings in the course of the day. But it was Mr Jordana I sought the clarification from in response to the question you had asked me.

Senator FAULKNER—What sort of progress of the hearings did you discuss with them?

Ms Bryant—I think the main comments went to a lengthy day and a perception that I was handling it okay to that point—and I am a bit embarrassed to report that. That I was handling it okay to that point was, I think, the broad drift of the comments. It is a little embarrassing to put it like that.

Senator FAULKNER—I am trying to understand this because, as you would appreciate—you may not accept it, but I am sure that you would appreciate it—the fact is that witness statements were not sought from Mr Jordana or anyone else in the Prime Minister’s office. I am merely trying to understand—

Ms Bryant—And on that occasion I was endeavouring to be helpful and fill in the gap, on the basis of the question you had asked me.

Senator FAULKNER—In relation to these matters, either during or post the Senate estimates period, did you have any contact with prime ministerial staff on the matters that are germane to this committee's terms of reference at all?

Ms Bryant—There was contact from the Prime Minister's office yesterday following the evidence of Commander Chatterton to ask further questions about the facts of that. That call did not come to me, but I was in the room and did overhear it on a telephone speaker.

Senator FAULKNER—This relates to the matters he passed on to Commander Steffan King.

Ms Bryant—Yes, that is correct.

Senator FAULKNER—In fact, I was questioning him about this. As you appreciate, that was the source of the so-called tearoom gossip that we discussed on a previous occasion.

Ms Bryant—That was new information to the office, obviously, so they did contact the department and ask questions about that.

Senator FAULKNER—Which advisers in the Prime Minister's office have you spoken to about matters relating to, in the broad, children overboard?

Ms Bryant—Mr Jordana, obviously, as we have already noted. The contact yesterday was with Mr Nutt. I think the earlier requests were principally from him as well in terms of points of clarification and copies of documents and so on. Sorry, Senator, I recall a conversation with Mr Nutt. He did ask me about Mr Scrafton's witness statement.

Senator FAULKNER—Who did that? I missed that.

Ms Bryant—Mr Nutt did ask me about Mr Scrafton's witness statement. I said to him that basically all I knew was what was recorded in the witness statement.

Senator FAULKNER—When did that contact occur?

Ms Bryant—I cannot recall precisely. I would have said maybe the third week of March—a little before the commencement of these hearings when it appeared I could have been a witness early on, is my recollection. I do not recall an actual date.

Senator FAULKNER—What was that about? What was Mr Nutt's interest in Mr Scrafton's witness statement?

Ms Bryant—His interest, as you might appreciate, was with the second or third paragraph of that statement, which said that Mr Scrafton was 'aware of discussions between Mr Reith's office, the Prime Minister's office and the Prime Minister, which he could not discuss'.

Senator FAULKNER—I will just turn it up. I have it in front of me. Which paragraph was that?

Ms Bryant—The second substantive paragraph.

Senator FAULKNER—It states:

Mr Scrafton stated that he had been involved in or aware of a number of discussions between Mr Reith's office and the Prime Minister's Office and the Prime Minister, which he could not discuss.

Ms Bryant—He asked me about that statement. I said I saw it as an opening disclaimer or contextual statement. He did ask me whether I thought I should contact Mr Scrafton to confirm that with him. I said that I thought that would be imprudent and did not. I recall that conversation as well.

Senator FAULKNER—I think you are right—it would have been imprudent and I am glad you did not.

Ms Bryant—I have not had any contact with any of the ministerial staffers since taking their statements.

Senator FAULKNER—Mr Scrafton, of course, is not a ministerial staffer.

Ms Bryant—I have not had any contact with him either.

Senator FAULKNER—I do accept that, but I am just saying he is no longer a ministerial staffer. He did not have that status when you took your witness statement from him, because that was dated 14 December. By that stage he was back in the department, wasn't he?

Ms Bryant—Yes. And you will recall that I was not even clear at estimates whether he was a MOPS person.

Senator FAULKNER—Yes. There was certainly no clarity about that for quite a while. That goes to whether he was a MOPS staffer when he was on the minister's staff, as you would be aware. So Mr Nutt seems pretty heavily involved in this, would that be right?

Ms Bryant—I can gauge it only on the contacts I have reported to you. I really have no other idea.

Senator FAULKNER—What was his concern about the third paragraph of Mr Scrafton's interview?

Ms Bryant—I think he was asking whether I had any greater context, information or background I could give him about that. I informed him that I did not, that I had recorded the particular phrase in an endeavour to keep full and transparent records—as you would appreciate—and that I had seen it basically as a sort of opening disclaimer or contextual statement.

Senator FAULKNER—So you are not aware whether he was asking about what Scrafton might have said over and above what was in the statement?

Ms Bryant—That may have been what he was getting at, but he did not say that to me.

Senator FAULKNER—Has Mr Scafton said anything to you in any way that is not in the written statement?

Ms Bryant—I do not believe so. As you would appreciate, I have endeavoured to make these pretty transparently complete.

Senator FAULKNER—I am not suggesting that is not the case.

Ms Bryant—And for the record, no.

Senator FAULKNER—Given that the Prime Minister's senior staffer raises the matter with you, he has obviously got concerns about it or he would not raise it with you. What he has raised with you is a statement made in an interview Scafton had with you, which says:

Scafton stated he had been involved in or aware of a number of discussions between Mr Reith's office and the Prime Minister's office and the Prime Minister which he could not discuss.

This is germane to the point that I am talking about. I am asking you about contacts with the Prime Minister's office or, more broadly—without beating around the bush, because I don't want to be too cute on this—the knowledge that the Prime Minister's office may or may not have had on this issue.

Senator JACINTA COLLINS—And the Prime Minister too.

Senator FAULKNER—Or the Prime Minister. I assume you would not have had any discussions with the Prime Minister on this.

Ms Bryant—When I went down there on the evening of the estimates he, among others, said hello to me and made some comments about the events of the day. I spoke to him in that context briefly.

Senator FAULKNER—What were the comments the Prime Minister made to you about the events of the day?

Ms Bryant—From recollection, the general passage of the estimates. I think I told him I intended to speak to Mr Jordana with a view to responding to your questions, and he acknowledged that.

Senator FAULKNER—But the Prime Minister talked to you during your Senate estimates evidence about your evidence?

Ms Bryant—No, I would not describe it as that. I informed him of my intention of speaking to Mr Jordana, but I did not see that as discussing the form of my evidence.

Senator FAULKNER—We did not hear that from you before. So you spoke to the Prime Minister on the night of your—

Ms Bryant—I did say that there were a number of others in the office that evening.

Senator FAULKNER—The Prime Minister is a reasonably significant person to speak to.

Ms Bryant—Sure.

Senator FAULKNER—So the Prime Minister is one. Can we be precise about who you did speak to?

Ms Bryant—I recall that evening seeing Mr Jordana and Mr Nutt. I spoke to Mr Hazell in the corridor. I nodded to Mr Sinodinos. I also recall a number of the female staff, assistants to the various advisers and so on.

Senator FAULKNER—That is pretty heavy: Mr Howard, Mr Sinodinos, Mr Nutt and Mr Jordana, amongst others.

Ms Bryant—It was a heavy day, Senator.

Senator FAULKNER—I know that, Ms Bryant. I do appreciate that it was not every day. It is no day for me, so there you are. I know it was not every day, but I would like to understand the flavour of these discussions and the communication that you had.

Ms Bryant—I think I have said that I was going to speak to Mr Jordana and seek clarification, in response to the question you had asked me, and I think I came back and made those remarks. As I recall, the question at the time was about the contact that Mr Jordana had with me on 7 November and what the purpose of that was. I think we had been discussing in the hearing that I had diary notes which indicated that he was looking for sit reps and Defence material, and I could not recall any particular context for that and went down and asked him what he had been seeking that material for and came back and reported to you that he had indicated to me that it was for the PM's Press Club address the next day.

Senator FAULKNER—Did you have any discussions—

Ms Bryant—Sorry, Senator, can I just add one other thought.

Senator FAULKNER—Sure.

Ms Bryant—The other thing I did, which I think I indicated—and I cannot remember to which of the above it was; one or more of them—is that I felt I needed to make clear to the committee, and that was agreed, that I was aware of Ms Halton's new advice. My recollection is that I also came back and commented on that. That was also part of that conversation.

Senator FAULKNER—One of the important issues that, as you know, we are grappling with is to try to understand the extent to which there was knowledge of this matter by a number of ministerial officers. I think you are in a fairly unique position to be able to help us. I am sure you do not want to be in that position, and I can understand why not, but you were chosen to undertake the important responsibility of writing this report and you have probably had broader

and better contacts bureaucracy-wide—not only with civilian personnel but ADF personnel as well. You are in a unique position, I think, to be able to assist us with some of these inquiries.

One of the issues at the moment that remains a matter for ongoing investigation is the extent of contact with the Prime Minister's office in the period from 7 October through to 10 November. We know about Mr Jordana's contact, and that is reported on. Above and beyond that particular contact, which is subject to report, are you aware of any advice going to the Prime Minister's office about the accuracy or otherwise of claims that (1) children were thrown overboard, (2) the photographs may not have represented such an incident and (3) the video may not have depicted such an incident?

Ms Bryant—To take point 1, the veracity of the claims, I am not aware of any information going to the office that there was no truth to the claims. About the photographs, the only advice I am aware of now is the contact from Ms Halton to Mr Jordana. About the video, no contact from the Department of the Prime Minister and Cabinet, but obviously in the context of the inquiry the advice from Mr Scafton to the Prime Minister was that the video was at best inconclusive.

Senator FAULKNER—But did you think it was worth progressing this issue that Mr Nutt has kindly drawn our attention to in Mr Scafton's statement about the number of discussions between Mr Reith's office and the Prime Minister's office and the Prime Minister, which he was not willing to discuss? Do you mean he was not willing to discuss them with you?

Ms Bryant—I am slightly confused about your question. Are you asking me about what Mr Scafton asked me or are you asking me about what Mr Nutt asked me?

Senator FAULKNER—Mr Nutt asked you for further and better information about part of the record of interview with Mr Scafton. That is right, isn't it?

Ms Bryant—Yes. 'Was there any further information?'

Senator FAULKNER—He did that on 8 March 2002. Is that right?

Ms Bryant—I cannot recall the date. I said it was in March; I thought it was probably about the third week.

Senator FAULKNER—I must have misheard what you said. I apologise for that.

Ms Bryant—I cannot be precise about the date. It was prior to the first hearing dates of this committee, when it was thought that I might appear early.

Senator FAULKNER—Mr Nutt drew this to your attention in March. Mr Scafton says in his statement he 'can't discuss them'. Are you aware of any of the details of any contacts with the Prime Minister's office at all?

Ms Bryant—None at all, Senator. In terms of the type of contact Mr Scafton is referring to here, I have no more information than that, but I recorded the fact in the records, to be transparent.

Senator JACINTA COLLINS—Ms Bryant, we will take one example—and it is only one example. Mr Scafton tells us that he spoke to the Prime Minister on two occasions the night before the Press Club speech. You did not ask him, ‘Why did you need to speak to him twice?’

Ms Bryant—No, I did not.

Senator FAULKNER—You do in fact say in your opening statement, in the dot point just above the crosshead ‘Process—procedural fairness’ on page 4:

Consistent with this, I do not believe it was feasible for me to investigate the transmission of information or decision making processes by Ministers or within and between their offices.

So you do make that point. This is a whole area that you are acknowledging and properly placing before this committee and saying that your report is silent on, aren’t you?

Ms Bryant—Correct.

Senator FAULKNER—What I am doing, as I am sure you appreciate, is seeing if we can throw any light on it through this particular process. When you talked to the Prime Minister and senior members of the Prime Minister’s staff on the evening of the estimates committee hearing, did any of those people indicate to you how you should approach your evidence at the Senate estimates committee hearing?

Ms Bryant—No, I do not think they indicated to me how I should approach my evidence. My recollection is that it was more a case of my indicating to them that I felt I needed to come back and make certain points on the record. I made those points to them because I anticipated—I may even have anticipated wrongly—that they may have had some disquiet about that, but they did not pursue that with me and I indicated what I intended to say.

Senator FAULKNER—I do not quite understand what you mean by ‘anticipated’.

Ms Bryant—I was not clear whether the additional information from Ms Halton was something that they wanted on the record at that point, but I stated I believed I needed to have it transparently there. I could not recall the conversation with Mr Jordana and felt a need to try and be helpful, and I stated that to them.

Senator FAULKNER—You did not seek advice from Ms Halton or Mr Moore-Wilton, your bureaucratic superiors, at the same time?

Ms Bryant—Certainly not from Ms Halton. Mr Moore-Wilton and Mr Henderson were here at estimates.

Senator FAULKNER—Why go to the Prime Minister’s office for advice, as opposed to Mr Henderson?

Ms Bryant—I did not go to them for advice. I went to the office because I was endeavouring to be helpful in providing more information in response to the question you had asked me. So I was not seeking advice. I intended to obtain additional information and endeavour to be of assistance and place matters on the record. I was not seeking advice. It was more in the nature of informing them that that was what I believed was necessary.

Senator FAULKNER—No-one suggested to you how you might approach your evidence at the Senate estimates committee?

Ms Bryant—I do not think that anyone tried to influence the fact that I intended to place those matters on the record.

Senator FAULKNER—I did not say ‘influence’; I said ‘approach’.

Ms Bryant—As you will recall, at the time I crafted some words which I read out in the room. I had given the flat presentation of those some thought, but I do not think people sought to dictate an approach to me.

Senator FAULKNER—Did either the Prime Minister or anyone from the Prime Minister’s office indicate to you the importance and significance of the evidence that you were giving in relation to them or the government more generally?

Ms Bryant—I do not recall that being particularly the case. I had a sense of the flatter the better, but I do not recall—

Senator FAULKNER—Did you ask the Prime Minister, the Prime Minister’s office or the Prime Minister’s senior staff about appropriate lines for use at the Senate estimates committee?

Ms Bryant—I did not ask them for appropriate lines for use at the Senate estimates committee. They were aware of what I would say when I came back here, but they did not provide the lines to me.

Senator FAULKNER—Why were they aware of what you would say?

Ms Bryant—Because I had written them down carefully in the fashion that you saw me read out at the time.

Senator FAULKNER—You wrote them down when you were in the Prime Minister’s office?

Ms Bryant—I typed them up on the machine there, yes.

Senator FAULKNER—Sorry, you typed them up. Your answers to the questions were typed up?

Ms Bryant—I typed I think three dot points on a page.

Senator FAULKNER—Then you ran those answers by the Prime Minister's staff?

Ms Bryant—I certainly informed them of what I was going to say. They did not clear the piece of paper and they did not edit the piece of paper, but I certainly said, 'I'm going to say these things.'

Senator FAULKNER—Were those lines shown to Mr Howard?

Ms Bryant—Not to my knowledge.

Senator FAULKNER—Were they taken away?

Ms Bryant—Not that I recall.

Senator FAULKNER—Whose computer did you use?

Ms Bryant—I could describe it to you geographically, but I do not think I know who it belongs to.

Senator FAULKNER—If you do not know—

Ms Bryant—It was sort of in the middle of the room up against a window. I think it was one of the assistant's. That is about as helpful as I can get.

Senator FAULKNER—Mr Chairman, can I interrupt Ms Bryant for a moment. We indicated earlier that I would bat through until 3 o'clock and then seek some advice from other senators. I am obviously very keen to return to this area and will do so at some point. What is our status?

Senator BRANDIS—The government senators are happy for Senator Faulkner to continue.

CHAIR—Do you want to go to questions, Senator Bartlett?

Senator BARTLETT—No. I am happy to give my time to Senator Faulkner as he is doing so well.

CHAIR—Everyone is happy for you to continue, Senator Faulkner.

Senator FERGUSON—That is because we are so generous.

Senator FAULKNER—That is unusual. Was it only the written lines that were prepared in answer to the questions you took on notice over the dinner break in estimates committee that were discussed?

Ms Bryant—Essentially, yes.

Senator FAULKNER—Essentially, yes, or—

Ms Bryant—With respect to the Ms Halton evidence and the Mr Jordana element of the story—those two leaks, yes.

Senator FAULKNER—Can you explain to the committee why it was important to discuss the Ms Halton issue with the Prime Minister's office?

Ms Bryant—From recollection, it had come up possibly earlier in the hearings and I seem to recall someone had walked in an AAP report of question time in the House that afternoon. I would have to go back and double-check that. The Prime Minister had made some comments and I thought I needed to put on the record that I had knowledge of them as well. That was the context for doing that.

Senator FAULKNER—Did the Prime Minister or his senior staff give you the impression of how important your evidence and your performance were at the Senate estimates committee from the point of view and the perspective of the government? Was that made clear to you?

Ms Bryant—I do not think so. I did not have the sense that those things turned on me or on my performance, no.

Senator BRANDIS—Presumably, any evidence you give the Senate estimates committee you regard as important—

Ms Bryant—Exactly.

Senator BRANDIS—and you would assume that senior ministers or, indeed, the Prime Minister would always regard evidence given by senior departmental officers to an estimates committee as important.

Ms Bryant—Yes. I suppose I am also adding that I am not seeing this as being of stand-out importance over and above that normal and—

Senator BRANDIS—I think that is the point I am trying to give you the opportunity to elicit. I know there is an obvious attraction in focusing on an incident to try to lend it a greater significance than it might bear in the great scheme of things, but was this a particular stand-out occasion for you or was it just what always happens with estimates—that is, you think carefully about your evidence, you give truthful and accurate evidence and you take that very seriously?

Ms Bryant—It was stand-out in terms of its duration. Other than that, I did not have the sense that it was of more stand-out significance and of greater weight than evidence in—

Senator FAULKNER—So you did not get the impression from your discussions with the Prime Minister and the Prime Minister's staff on that evening that this was an issue of high significance to the Prime Minister, his staff or the government? You did not have that impression?

Ms Bryant—No, I did not think that turned on my performance.

Senator FAULKNER—In your time in the Public Service, how many conversations have you had with the Prime Minister?

Ms Bryant—I have briefed him on particular things on two or three occasions.

Senator FAULKNER—In informal meetings?

Ms Bryant—No, a specific purpose briefing.

Senator FAULKNER—So how many one-to-one conversations have you had with the Prime Minister?

Senator BRANDIS—She is not saying that this was a one-to-one conversation.

Ms Bryant—I did not have a one-to-one conversation with him.

Senator BRANDIS—On the occasion to which your questions were directed, the witness's answers earlier were that this was not a one-to-one conversation.

Senator FAULKNER—Do you mean there were other staff present?

Ms Bryant—I do not think I have ever had a one-to-one conversation with the Prime Minister.

Senator FAULKNER—How many informal conversations outside the context of a formal briefing or meeting have you had with the Prime Minister?

Ms Bryant—I have occasional ones of a minor nature. For example, I notetake in cabinet. As the PM is going through the cabinet suite he usually acknowledges me and we might exchange pleasantries or something. So 'informal' of that sort.

Senator FAULKNER—But it was very unusual, was it not, Ms Bryant?

Ms Bryant—What was—sorry?

Senator FAULKNER—That sort of contact with the Prime Minister—discussing Senate estimates evidence.

Ms Bryant—I suppose it was unusual in the sense that I think it was probably the only time I have given any significant body of evidence to Senate estimates while I have been in the Department of the Prime Minister and Cabinet.

Senator BRANDIS—This was a matter of great public note at the time. The dogs were barking in the street what was going on in the Senate estimates committee. Everybody in this building was talking about it. I must say, Ms Bryant, that it does not strike me as at all surprising that you would have a conversation about your evidence with anyone, for that matter, with whom you happened to be speaking. You were there on behalf of PM&C as a senior officer

of that department and you happened to be speaking to your portfolio minister—that is, the Prime Minister. Do you agree?

Ms Bryant—I agree. It does not seem to have particular significance to me.

Senator BRANDIS—And, of course, you are not for a moment suggesting, are you, Ms Bryant, that anybody sought to influence your evidence?

Ms Bryant—I have already stated that quite explicitly. I did not feel anyone attempted to dictate the approach I should take.

Senator FAULKNER—Have you ever had a discussion with the Prime Minister about the ‘children overboard’ issue in general, other than the discussion you had on the night of the Senate estimates committee?

Ms Bryant—About the ‘children overboard’, no.

Senator JACINTA COLLINS—Ms Bryant, I would like to go back one step and clarify a comment you made earlier which is not clear in my mind. You mentioned in your discussion with the Prime Minister’s staff being—and I do not want to put words in your mouth; that is why I am asking you this—unclear on whether they might be concerned about your raising these matters in estimates. Why was that?

Ms Bryant—Not so much raising them—

Senator JACINTA COLLINS—That they might not want it on the record yet?

Ms Bryant—No. Given that AAP information had come into the room and I did not know what had been said in question time, it was more in the sense of whether my approach was in any way different. It was more a concern from that respect, because I did not know what the *Hansard* transcript or anything was at that time.

Senator JACINTA COLLINS—Why would that matter if the only thing you were doing was being a fearless and frank public servant at Senate estimates?

Ms Bryant—I guess at its core it probably did not matter, and that is why I think nobody bothered to attempt to direct the approach I was taking.

Senator MASON—Because we were all interested, Senator Collins, I would think.

Senator JACINTA COLLINS—No. I am trying to get to the bottom of why Ms Bryant thought there might be a concern. It just appeared in your head?

Ms Bryant—I might be a natural, born worrier, I think. I did not want to have inconsistency, because that would be something I would in general seek to avoid as a public servant.

Senator JACINTA COLLINS—You did not want to have an inconsistency.

Ms Bryant—I think that, with hindsight, the worry was in my mind and did not exist in reality.

Senator FAULKNER—Did anyone on that night suggest to you that there had been other contacts, apart from the Jordana contact that we are aware of, with members of the Prime Minister's staff about the 'children overboard' issue?

Ms Bryant—None that I am aware of. I do not recall anything of that sort being discussed. As I said, my recollection of the conversation was limited to those two things we have already mentioned.

Senator FAULKNER—So how long was your discussion in the Prime Minister's office that night? You typed up these three points.

Ms Bryant—Maybe 10 or 15 minutes. I think it probably took me longer to find a machine. I spent some time saying, 'Whose machine can I use? I would rather type this up; it is easier to read in the room.' I had spent some time hunting round, and I think the machine needed a password to log in and that sort of thing and it took me a few minutes to do that.

Senator FAULKNER—Who suggested you type them up? Was that something you decided to do yourself?

Ms Bryant—Yes. I wanted them typed because that is easier for me, in the same way that I type notes for myself.

Senator FAULKNER—Who talked to you about the three points? Was there someone there when you typed them up, or did you do them on your own?

Ms Bryant—As I have said, I think Mr Henderson, Mr Webster and Ms Belcher were the departmental officers who were there.

Senator FAULKNER—And which prime ministerial staffers saw the three points?

Ms Bryant—I recall Mr Sinodinos seeing them; I don't recall—

Senator FAULKNER—What did Mr Sinodinos say to you?

Ms Bryant—He read them and he said, 'That's fine.' He did not edit them, alter them or suggest that they be done in any other way.

Senator FAULKNER—So there were no changes?

Ms Bryant—No.

Senator BRANDIS—Mr Sinodinos did not contribute in advance of the three points being typed up by way of suggesting what they should be?

Ms Bryant—No, not to my recollection.

Senator FAULKNER—When did you have your conversation with Mr Howard? Was that before or after the three points being developed?

Ms Bryant—That was before, because I informed him that I intended to go down the hall and speak to Mr Jordana and that I intended to acknowledge my knowledge of Ms Halton's evidence.

Senator FAULKNER—So what did Mr Howard actually say to you?

Ms Bryant—I think he just sort of noted that that was my intention.

Senator FAULKNER—What was your intention?

Ms Bryant—To go down the hall and speak to Mr Jordana.

Senator FAULKNER—How did he know that you were intending to do it? Did you raise that with him? Did you just say, 'I'm just here to do this,' or what? That seems like an end point of a conversation, not a beginning point.

Ms Bryant—It was what the conversation was about. You had asked me what it was about.

Senator FAULKNER—Were there other public servants present when you were having your conversation with the Prime Minister?

Ms Bryant—I think Mr Moore-Wilton was present.

Senator FAULKNER—Of course—was anyone else?

Ms Bryant—Mr Henderson may have been present.

Senator FAULKNER—What did Mr Moore-Wilton say?

Ms Bryant—I do not recall him particularly saying anything. I do not recall him making any insert to the conversation.

Senator FAULKNER—Did Mr Moore-Wilton make it clear to you how important your evidence at the Senate estimates committee was, from his perspective or the government's perspective or PM&C's perspective?

Ms Bryant—No, he did not.

Senator FAULKNER—He did not comment at all on your estimates appearance?

Ms Bryant—No. He did say to me, prior to estimates, that he intended to be available himself and would endeavour to be as supportive to all departmental officers as he could be—but that is the only comment I recall him making.

Senator FAULKNER—When you have your discussion with Mr Howard, Mr Moore-Wilton and possibly Mr Henderson are present?

Ms Bryant—Correct.

Senator FAULKNER—Where does this discussion take place?

Ms Bryant—Just—

Senator FAULKNER—In his office, or in a corridor? It does not matter; I do not think we would require a map of the office, but just in the broad.

Ms Bryant—I think we made a couple of remarks in the corridor outside and may have briefly stepped into the PM's office and then—

Senator FAULKNER—You stepped into the Prime Minister's office?

Ms Bryant—There were five or six of us in a group there, so it seemed sensible.

Senator FAULKNER—Mr Moore-Wilton was one of them?

Ms Bryant—Correct.

Senator FAULKNER—Mr Henderson was possibly one of them?

Ms Bryant—To my memory, yes.

Senator FAULKNER—Who else? Who are the five or six that for a moment step into the Prime Minister's office?

Ms Bryant—The people I have mentioned before: Mr Sinodinos, Mr Nutt, me and the PM.

Senator FAULKNER—Have you ever been in the Prime Minister's private office before?

Ms Bryant—Yes.

Senator FAULKNER—Mr Sinodinos, Mr Nutt, Mr Moore-Wilton, Mr Henderson. Anyone else?

Ms Bryant—The PM, obviously, and me.

Senator FAULKNER—Yes.

Ms Bryant—I am just trying to mentally envisage people sitting around—no, I do not think so. I think that was it. As I said, I think I nodded to Mr Hazell in the corridor, but I do not recall him being in the room.

Senator FAULKNER—Fair enough. So it is a brief—

Ms Bryant—And Mr Jordana was not present. I am confident of that.

Senator FAULKNER—Thank you. He was not present. Anyway, he was well represented. It is a pretty heavy group, isn't it? You have a bit of a conversation about these matters in the corridor and then you step into the Prime Minister's office. Would you have a feel for how long you might have been in the Prime Minister's office discussing 'children overboard'?

Ms Bryant—I do not recall precisely, but 10 minutes or—

Senator FAULKNER—Ten minutes?

Ms Bryant—five maybe. I am not certain, Senator.

Senator FAULKNER—What was discussed, Ms Bryant?

Ms Bryant—I think we have been over that, Senator, in that I intended to go and talk to Mr Jordana, because I think I did report that I had a diary note. I did not have any particular recollections myself. So it was things that were around that issue—not more detail of what I did not remember but the physical evidence that I did have in the form of my diary note. I thought, to respond to this question, I should talk to Mr Jordana and put this question to him and, in terms of Ms Halton, that I was at that point aware of her intended evidence because, as she said to you, she had rung me over the weekend. I think those sorts of things I had reported myself.

Senator FAULKNER—So you are in the Prime Minister's private office for 10 minutes with the Prime Minister and half a dozen of what are basically, it is fair to say, political heavy hitters. I do not think any of them would object to such a description. They would probably all be proud to be so described.

Senator MASON—They are departmental officers, Senator Faulkner.

Senator FAULKNER—I would describe Mr Moore-Wilton as a political heavy hitter.

Senator MASON—But some of the others—Mr Henderson?

Senator FAULKNER—We do not know whether he was there or not.

Ms Bryant—I think he was.

Senator FAULKNER—I thought you were not certain.

Ms Bryant—My memory is that—

Senator BRANDIS—Just for my benefit, let me get this straight. You did not go specifically to see the Prime Minister, did you?

Ms Bryant—No, I did not.

Senator BRANDIS—You did not have an appointment with him?

Ms Bryant—No, I did not.

Senator FAULKNER—You were just dragged in!

Senator BRANDIS—You bumped into him in the corridor when you were in the office seeing someone else?

Ms Bryant—I suppose it was broadly like that. We retired to the office because I intended to go down and speak to Mr Jordana. I think the group of us all walked down there. I did not go in with an intent to talk to the Prime Minister. I did not envisage, as I said, that that would occur.

Senator BRANDIS—I can see what Senator Faulkner, with his usual exquisite Thespian skill, is doing in trying to invest this great significance into the fact that you were in the Prime Minister's private office. The fact is that you went to the Prime Minister's suite of offices to see somebody else.

Ms Bryant—Correct.

Senator BRANDIS—You bumped into him in the corridor. Because it was a bit crowded in the corridor, you stepped into his private office, through that door there, for just a few minutes to continue the conversation.

Senator MASON—So it was serendipity rather than conspiracy.

Senator FAULKNER—How did you get so lucky, Ms Bryant!

Ms Bryant—Some days it just happens like that.

Senator FAULKNER—Well, he certainly would not have wanted me. I admit that.

Ms Bryant—I did not have an appointment with the Prime Minister. I did not leave this room—was it this room?—at the time of estimates with any intention of seeing him.

Senator JACINTA COLLINS—We do not think the intent was from your end, Ms Bryant.

Ms Bryant—I had no awareness that it was likely to happen at all. I did not go there with that purpose.

Senator FAULKNER—Do not worry, Ms Bryant. I am going to give Senator Brandis credit for improving at running interferences at committees like this, which is something that you learn to do early on in your—

Senator FERGUSON—Like Senator Faulkner!

Senator FAULKNER—I have done it myself at times. I would have to plead guilty to that. From time to time, senators do those sorts of things. Do not lose focus on the important issues at hand, Ms Bryant.

I would like to go over with you what happened with Mr Moore-Wilton, Mr Henderson—who, by the way, I think it is fair to say is a senior public servant—Mr Sinodinis, Mr Nutt and the Prime Minister with you in the Prime Minister's office. I would like to go through in some detail what happened in the 10 minutes that you were inside that office, what you were told—to the best of your recollection, please—and who told you. I appreciate this was some time ago, but it was not that long ago. It was mid to late February. I expect that it is something you have a reasonable recollection of, but I am asking you, to the best of your ability and for the benefit of the committee, to provide the committee with all the detail of that discussion, please.

Ms Bryant—I do not think I can tell you a great deal more than I have already said, and that is that a period of time was taken up with my indicating—because I think those in the office may not have been aware that I had the diary note—that I had no particular recollections of what Miles was asking me for at the time he contacted me on 7 November, because at the time it did not appear particularly significant.

Senator FAULKNER—So the first part of the conversation was about Mr Jordana, was it?

Ms Bryant—The first part of the conversation was that the whole thing had been triggered by your question and my belief that it may be of assistance if I asked Mr Jordana.

Senator FAULKNER—It is the only thing in it that gives me any pleasure at all, Ms Bryant. But apart from that, it is triggered by my question, yes.

Ms Bryant—I recall going through that I had a diary note and what the contents of that were.

Senator FAULKNER—I know this but, for the purposes of the record as we work through this, what was the diary note about?

Ms Bryant—The diary note was a brief, I think, three-line reference in my diary of 7 November which said, 'Miles sit reps and Defence material Adelaide SIEV4' or something of that nature. I did not recall a particular context for that request or what it was about; it had not stuck in my memory. In response to that, I thought it would be helpful if I proposed to talk to Mr Jordana to ask him, in essence, what he was looking for the copies for because I have a note that he was looking, but I did not know why.

Senator FAULKNER—Were you basically asking permission for that to occur?

Ms Bryant—I did not see it as permission, but I suppose that, by default, perhaps it had that nature. I did not say, ‘Please may I go down the corridor and do that?’ I said, ‘I intend to do that’ and I was not contradicted in any way. I dare say I could have been and in that sense it would have become a permission circumstance.

Senator FAULKNER—So that is the first part of the meeting, effectively going to what information could be provided to me in answer to a question you had taken on notice at a Senate estimates committee hearing earlier in the evening. That is right, isn’t it, Ms Bryant?

Ms Bryant—Yes, and I think we then talked about the separate events and the connection with Ms Halton’s evidence.

Senator FAULKNER—What was said about that?

Ms Bryant—I think we went through the fact that they seemed to be separate but related events in that we had been looking for documents in response to Mr Jordana’s request. In the process of looking for documents, we had not located much on our files and I had asked an officer in my branch to check with International whether they had Defence material in the Defence branch in International. In the course of those checks she had had contact with Ms Sidhu and had been informed that what was said to us was the tearoom gossip and that was the first time I had been aware of those comments that I had passed them on to Jane. I had not known until the lead-up to estimates and certainly after I had completed my report that she had had any contact with the PMO but because I was now aware before estimates, I felt I had a responsibility to address that in the remarks I made.

Senator FAULKNER—So what did you say about that issue—the tearoom gossip, so to speak? How did you address it? What did you say to that group of senior staffers, senior public servants and the Prime Minister?

Ms Bryant—Senator, just as I have been relaying to you, it was more just the facts of the story as I knew them. It was that it had been complete news to us on that day.

Senator FAULKNER—On which day?

Ms Bryant—On 7 November. It was the very first we had known and I said that was the very first we had had any sense there was any doubt. One comment of the PM’s was that he expressed some surprise at this whole thing because he said, ‘You know, I had no knowledge of this.’ So, in the context of me expressing surprise, he expressed surprise.

Senator FAULKNER—What didn’t he have knowledge of—the Sidhu incident?

Ms Bryant—No, that he had no knowledge of the—

Senator JACINTA COLLINS—That Miles was asking a question?

Ms Bryant—No. He had no knowledge that there was any lack of veracity about the overall incident at all. It was in a context in which I would have said that the only sense we ever had of

it was in a gossip sense on 7 November. That was the first sense we had and it was only about the veracity of one aspect of it—the photographs. Its provenance was at that time to us completely uncertain. But the conversation was more a summarising of the facts; the story as we understood it.

Senator FAULKNER—As you understood it, you mean.

Ms Bryant—As I understood it. As I have said before, because I now knew about Ms Halton's evidence I did not want to be misleading and pretending that by that point I was not aware of that.

Senator FAULKNER—Was there knowledge amongst those in the room about the two sit reps and the Operation Gaberdine advice—that is the Strategic Command brief cleared by Group Captain Walker?

Ms Bryant—I know the documents you are referring to. I recall they are the ones—

Senator FAULKNER—And sit reps 59 and 60?

Ms Bryant—I said in estimates that I believed, from the best we could ascertain from the fax records, that these were the ones we had sent across to Mr Jordana and that, as best as I could connect them, I believed they were in response to his request. I know the documents you are referring to. Could you clarify for me what you are looking for there or what you are asking me?

Senator FAULKNER—I am asking whether, at the 10-minute discussion that you had in the Prime Minister's office with the half-dozen, those documents were discussed?

Ms Bryant—I do not recall those being discussed in the Prime Minister's office. I did discuss them briefly with Mr Jordana when I spoke to him separately and I said, 'Look, Miles, I think these were the documents we sent you,' and I think his comment to me was 'I admit I do not recall it after all this time—that sounds right. I don't recall getting very much from you.' I think that was how he put it to me.

Senator FAULKNER—This is how Mr Jordana puts it?

Ms Bryant—Yes. The documents we sent—

Senator FAULKNER—When did he have that conversation with you?

Ms Bryant—On the night of estimates. I said to him, 'Miles, I've got this note that you are looking for this material but I do not recall the context. Do you?' and he said to me, 'I was looking for material to use in preparing the speech.'

Senator FAULKNER—This is the Prime Minister's Press Club speech?

Ms Bryant—Yes. I duly reported that when I came back to the room. The context of his comment was that the material—those particular documents—were not terribly much help to him in preparing the speech.

Senator FAULKNER—No, of course not, because they did not show that children had been thrown overboard.

Ms Bryant—I do not know why they weren't particularly helpful.

Senator BRANDIS—That is an unfair question, Senator Faulkner.

Senator FAULKNER—It is not a fair question; that is a statement. Of course they weren't any help to him.

Senator BRANDIS—If it is not a question at all then let us forget it.

Senator FAULKNER—But they were provided and yet the Prime Minister made the unqualified statement that he did at the Press Club the next day. We all know that history.

Senator MASON—In relation to which SIEV, Senator Faulkner?

Senator FAULKNER—In relation to SIEV4.

Senator MASON—Not the other ones?

Senator BRANDIS—You mean the ones in which the pattern of conduct was evident throughout mid-September and October?

Senator FAULKNER—The one where the government lied in the entire period of election campaign that the children had been thrown overboard—SIEV4.

Senator MASON—Not the other ones?

CHAIR—Order! We have 25 minutes to go before stumps and we are beginning to debate the matter between ourselves. We have 25 minutes left for Ms Bryant if we use that time up in full and I suggest we hoe in to our task.

Senator FAULKNER—Ms Bryant, do you meet Mr Jordana before the meeting of the half-dozen in the Prime Minister's office or after?

Ms Bryant—After.

Senator FAULKNER—So you do not have an opportunity to directly canvass the three documents, so to speak, until after you leave the Prime Minister's private office? Is that the way it worked?

Ms Bryant—It was not the opportunity. I do not recall discussing them in that conversation in the Prime Minister's office. I do recall talking briefly about them with Miles in the context of our discussion about his request; our response to it.

Senator FAULKNER—Was there general acceptance from Mr Moore-Wilton, was there a general understanding from Mr Moore-Wilton in this discussion, by this point, that children had not been thrown overboard?

Ms Bryant—I do not recall. Are you asking if there was an understanding by Mr Moore-Wilton—

Senator FAULKNER—I am wondering if you do recall Mr Moore-Wilton suggesting and acknowledging that children had not been thrown overboard?

Ms Bryant—In the context of that conversation, no. I recall him making remarks on that subject earlier in the estimates hearing, which I think attracted some commentary.

Senator FAULKNER—So do I; that is why I asked you.

Senator BRANDIS—Do you mean his remarks to the estimates committee, Ms Bryant?

Ms Bryant—I do, but I do not recall him making any further comments about that matter at all in the context of that conversation.

Senator FAULKNER—So there are these two issues: there is the Jordana issue and there is the Halton 'tearoom gossip' issue, discussed in the 10-minute meeting in the Prime Minister's office. Could I ask you what other—

Ms Bryant—I have to say we are referring to 10 minutes—I have said I thought it was not a 30-second conversation; I am really not precise as to the duration.

Senator FAULKNER—Well, you said 10 minute—

Senator BRANDIS—Ms Bryant, are you even comfortable with the description of this conversation as a meeting, in the sense that you would ordinarily use the word 'meeting'?

Ms Bryant—No, I do not think it really was a meeting—

Senator BRANDIS—It was a corridor conversation, wasn't it?

Senator FAULKNER—No, it wasn't; it was in the Prime Minister's office.

Senator BRANDIS—It was a corridor conversation that then debouched into the Prime Minister's office because the corridor was too narrow.

Senator FAULKNER—Someone knocked down the walls of the office and made it a big, large corridor!

Senator JACINTA COLLINS—It was easy for six to just sort of accidentally slide in there!

Ms Bryant—It was easier than standing in the corridor.

Senator FAULKNER—Was the door closed?

Senator MASON—Was it ‘open door Prime Minister’, or something?

Ms Bryant—I had my back to the door so I do not know the answer.

Senator FAULKNER—I am just wondering if you could define it as ‘the corridor extended by an open door’.

Senator BRANDIS—Not like the shut door of Prime Minister Keating.

Senator FAULKNER—Don’t be silly, Senator Brandis—please!

Ms Bryant—I had my back to the door so I do not know the answer.

CHAIR—I think we have satisfied ourselves as to the nature of this conversation.

Senator FAULKNER—I might say, Ms Bryant, I appreciate the point that you make about time. It was you, not I, that said 10 minutes, and I—

Ms Bryant—Yes, I said I am guessing about it.

Senator FAULKNER—I understand that in your saying 10 minutes it might have been nine minutes—it might have been 10, it might have been 12, it might have been seven—we get the message.

Ms Bryant—Yes, and I was trying to be approximate—nor did I want you to get the feeling of, ‘Now, that is sort of three minutes worth of script,’ and another three unaccounted.

Senator BRANDIS—I understand that this is an accidental, occasional conversation that did not go for very long.

Ms Bryant—It did not go for very long.

Senator FAULKNER—There was nothing accidental about it at all, was there?

Ms Bryant—I have no idea. From my point of view it was entirely accidental.

Senator FAULKNER—I appreciate that. I know from your point of view—

Ms Bryant—As to anybody else’s motives, I cannot comment.

Senator FAULKNER—Absolutely.

Senator FERGUSON—Are you surmising the rest?

Senator FAULKNER—No, there is absolutely no suggestion at all—

Senator FERGUSON—You are surmising.

Senator BRANDIS—Our friend Senator Faulkner thinks that the questions are evidence; at this end of the room we think that answers are evidence.

Senator FAULKNER—that Ms Bryant deliberately went down to the Prime Minister's office—

CHAIR—Let us not get into that.

Senator FAULKNER—to have a 10-minute conversation with the assorted heavies.

Ms Bryant—It was entirely accidental, from my point of view.

Senator FAULKNER—There is no suggestion from me, nor any other rational human being, that that would be the case, and you know it.

Senator MASON—Ms Bryant has just said it was accidental, Senator Faulkner.

CHAIR—I think we are debating between ourselves—

Senator BRANDIS—I think Ms Bryant has just said for the third time that it was entirely accidental.

CHAIR—We are debating between ourselves. Let us just ask questions of the witness. Now there is cross-table discussion. Come on, we all know what is going on; let us go back to the witness.

Senator FAULKNER—Anyway, I was asking you about the matters that were discussed in the meeting in the Prime Minister's office. The Jordana issue is discussed, the Halton tearoom gossip issue is discussed, and I think you and I understand what we mean by that issue in the broad—it is true that the Jordana issue was discussed; isn't it, Ms Bryant?

Ms Bryant—It is true we discussed that I had had the request from Miles and could not recall what had prompted his request to me and that I thought it would be helpful to ask him and put that on the record.

Senator FAULKNER—That was discussed. The so-called Halton tearoom gossip issue was discussed—that is right, isn't it?

Ms Bryant—Correct.

Senator FAULKNER—Could I ask you if any other issues or matters were discussed? For example, was the Scrafton contacts issue discussed, as per the third paragraph of Mr Scrafton's interview?

Ms Bryant—To the best of my recollection, there were no other topics discussed, and I am confident that there was nothing about any witness statement that was discussed.

Senator FAULKNER—So Mr Scrafton's name was not mentioned?

Ms Bryant—No.

Senator FAULKNER—Nor the name of any other ministerial staffer; just Mr Jordana?

Ms Bryant—That is right.

Senator FAULKNER—He is the only ministerial—and, in this case, prime ministerial—staffer?

Ms Bryant—Yes. I do not recall anything else being discussed, but I am confident as you put that particular question to me that, no, it was not.

Senator FAULKNER—What was said to you about the importance or significance of the estimates evidence that you were giving?

Ms Bryant—Nothing was said to me about the importance or significance of it.

Senator FAULKNER—There was some commentary by some of those present about your performance, wasn't there?

Ms Bryant—I think it was in the context that it was an unusual day, and I think by that point I had been in the chair for nine hours.

Senator BRANDIS—You had only had Senator Faulkner to put up with, Ms Bryant; that cannot have been too taxing for you!

Ms Bryant—I had had nine hours of the pleasure of the senator's company, and the comments were more about that it had been a lengthy day and we were holding up well type of comment.

Senator FAULKNER—Who made that comment to you?

Ms Bryant—I think it was just a general comment of—

Senator JACINTA COLLINS—Bonhomie?

Ms Bryant—Yes, it was of that nature.

Senator FAULKNER—That is good, but who made it? Did the Prime Minister make it?

Ms Bryant—No, the Prime Minister did not make it. I cannot recall. It may have been Tony Nutt. Certainly Max had sort of said—as we left the room you may have even observed, but it was a bonhomie kind of comment—

Senator BRANDIS—I hope none of these people said anything unpleasant about Senator Faulkner.

Ms Bryant—Definitely not.

Senator BRANDIS—Thank goodness for that!

Senator JACINTA COLLINS—Senator Brandis, have you got a fetish or something?

CHAIR—We won't go there. Let us keep with the witness.

Senator FAULKNER—We have only got a few minutes left today, Ms Bryant, which no doubt will be a relief given that, like me, you do not like these long committee sessions.

Ms Bryant—I was relieved that two hours were set aside, rather than 11, today.

Senator FAULKNER—You were not the only one, I can tell you. I think we may need to ask you to come back at some point, but I want to quickly deal with the second issue, the so-called tearoom gossip incident, not so much from the perspective of what occurred in the Prime Minister's office at that time but going back to the actual substantive incident itself.

Ms Bryant—Sure.

Senator FAULKNER—Very briefly, could you just tell us where you first hear that information, who first passes it on to you, where they do that and what was the context.

Ms Bryant—I think I have been through some of that in responding to your earlier questions but, although I did not link the events at the time, the sequence of the events as I now understand them was: Mr Jordana contacted me, looking for Defence sit reps and Defence material; in response to his request I think we had hunted through our files in Social Policy Division looking for the material; having not identified anything much that fitted that generic description, I had asked an officer in my branch to check with International as to whether the defence branch had anything; and, in the course of those inquiries with International Division, my officer spoke to Ms Harinder Sidhu, and in a sort of casualish conversation between the two of them Harinder said, 'Hadn't you heard that there are rumours circulating in Defence that the photos have been wrongly attributed?'

The officer—and I think she was named by Ms Halton as Catherine Wildermuth—came down to me and said, 'Harinder has just said that there are rumours in Defence the photos are false.' I asked, 'How did they come across this?' and was told that a person working to Harinder had been at an IDC in Defence and had overheard tearoom gossip—that it was an aside in the

context of the meeting—and that was what was conveyed to Harinder. When she passed it on to Ms Wildermuth and Ms Wildermuth duly reported it to me that same evening, it was the first time we in the Social Policy Division had had any inkling of this as a possibility. I thought, ‘It’s pretty uncertain: someone working for Harinder tells Harinder who tells Catherine who tells me,’ and I am not really sure what weight to give this, but I did call Ms Halton and told her that sequence of facts as I understood them at that time. I thought, given its rather uncertain nature, I would leave the judgment for her to make as to how it was appropriately responded to. As I now know, she subsequently contacted Mr Jordana, but she did not inform me at the time of how she intended to take the matter forward.

Senator FAULKNER—When did she notify Mr Jordana?

Ms Bryant—My telephone records show that I called Ms Halton at 1823.

Senator FAULKNER—On which date?

Ms Bryant—On 7 November.

Senator FAULKNER—And when was Mr Jordana informed?

Ms Bryant—I do not know directly. I understood Ms Halton gave you evidence to the effect that she called him that same evening, but I do not know that from first-hand knowledge.

Senator FAULKNER—I am assuming it was after that.

Ms Bryant—I am assuming it was after that, too, but I thought she had given evidence on that point.

Senator FAULKNER—What did you do to satisfy yourself that it was actually tearoom gossip, so to speak, that we were talking about? We know who the member of the ADF was—it was Commander King—because that was clear.

Ms Bryant—I did make some further inquiries about that yesterday, obviously in anticipation of this discussion. I now understand, and again it is the advice to me, that it was not tearoom gossip at all. I did see Commander Chatterton’s evidence—

Senator FAULKNER—I am sorry, please say that again.

Ms Bryant—I saw Commander Chatterton’s evidence and, in the light of that obviously, yesterday I made some inquiries. I was informed that the International Division now understood that it had not been tearoom gossip, that Commander King had advised the International Division officers that it was rumours or tearoom gossip and that that had been their understanding but they now had a view that, in the light of what Commander Chatterton said, it had a much more formal nature. But certainly their understanding right through had been rumours or tearoom gossip, but in the light of the events of yesterday I think they no longer hold that view.

Senator FAULKNER—So it is possible that this was yet another substantive communication to the Department of the Prime Minister and Cabinet that the photographs allegedly depicting children thrown overboard were not the case.

Ms Bryant—I do not know about the use of the word ‘another’, because I am not sure what you are referring to as the previous one.

Senator FAULKNER—I am talking about other direct communications such as the chronology and the footnote, which you are well aware of.

Ms Bryant—But I did not believe they were about the photos, sorry. That was what was confusing me.

Senator FAULKNER—The chronology and the footnote and the brief cleared by Group Captain Walker from Strategic Command, without going to the sit reps and the like. But this is another indication that the Department of the Prime Minister and Cabinet is informed, in the broad, about the inaccuracy of the claims.

Ms Bryant—You are well aware of the views of officers in relation to the chronology and that it seemed to have been overtaken by other things. The perception was the issue was clarified in terms of the Defence brief that you allude to. My reading of it was that it certainly made no reference to children overboard, but the absence of a reference to something does not say it did not happen. In terms of this advice, taking what I understand to be Commander Chatterton’s evidence at face value, he may have made a genuine attempt, but his attempt was seemingly less than entirely successful because of the way Commander King portrayed the information—people did not appreciate that it had significance.

Senator BRANDIS—If I may say so, you seem to have captured in a sentence what some of our colleagues have been struggling with for nine days—that is, the absence of a reference in a document to something does not mean it did not happen.

CHAIR—Is this a philosophical question? If a tree fell down in the Amazon and no one witnessed it, did it happen?

Senator BRANDIS—It was an observation.

CHAIR—Good. Do you have any questions on the tip of your tongue, Senator Faulkner?

Senator FAULKNER—I have many.

CHAIR—That is what I suspected, and that is why I thought we might pause for a minute to briefly contemplate the future, because we are going to have to rise at four o’clock. How much longer do you think you will be?

Senator FAULKNER—I will look at the issues that I would like to raise with Ms Bryant and give consideration to whether that can be done on notice or whether we need to ask her to come back. It may depend on the nature of the answers that are given. I can attempt to do that, but of

course I have said to you before there is no doubt that we will need to ask, on this issue that Ms Bryant and I were just canvassing, Commander King, Ms Sidhu and Dr Hammer, at a minimum, to come back. It may be that we will have to ask Ms Bryant—

Ms Bryant—Can I alert you to the fact that Ms Sidhu is in Europe for five weeks. I think she is due back towards the end of May.

Senator FAULKNER—I did not know that. Thank you for telling us.

Senator FERGUSON—We allotted two hours for Ms Bryant, which when the program was set in place was considered to be enough time. We have not used any of that time. I do not know whether we are going to have timeless witnesses forever, but this inquiry could go to Christmas if we really wanted it to, and I think there ought to be some limitations placed. Government members have ceded all of their time for questioning to Senator Faulkner, and he has taken the two hours that were allotted for Ms Bryant. Two hours of questioning is a reasonable amount, unless there was some notice that you wanted someone here for the whole day. We could extend the time for every witness that comes here for days and days if we wanted to. I think we need to put some discipline on ourselves as well.

Senator BRANDIS—Can I just make two points. First, Senator Faulkner must have expected that roughly half of the available time would be available to opposition senators and, as Senator Ferguson says, he has had it all, so it cannot be that there is any sense of constraint or limitation on Senator Faulkner's line of questioning. Secondly, Ms Bryant is not a witness to any of the primary events. She is neither a witness to the events that happened on 7 October and the days thereafter nor a witness to what might loosely be called 'the process issues'.

Senator Faulkner's questions of her have largely been on the collateral and, as it turns out from his point of view, unrevealing question of what happened in a corridor conversation when she ran into the Prime Minister months after any of these events. If this were Commander Banks, for example—a core witness—whom we had here for a long time, I would be sympathetic in asking her to come back, but Ms Bryant, with all due respect to her, is not a central witness to anything.

Senator FAULKNER—On the procedural point, Ms Bryant is a direct witness to the tearoom gossip and the Jordana issue, and they need to be canvassed at greater length. We can test this out in a private meeting of the committee; there is no need to do this on broadcast. I must admit that I was not expecting—and neither were the coalition senators—the fact that this extraordinary meeting took place in the Prime Minister's office, with Ms Bryant and other assorted heavies. This is new information and there are matters that Ms Bryant is a direct witness to, such as the tearoom gossip issue, the Jordana issue and the meeting in the Prime Minister's office. They do need to be explored further and I intend to explore them further at the available forums. However, we can test that out at a private meeting of the committee if and when we decide that is appropriate.

As I have indicated, I will place whatever questions I can on notice to Ms Bryant. If the answers are adequate and I do not think there are matters that need to be followed through—and that will depend on the nature of the answers; Ms Bryant is experienced in these things and she

would appreciate that, as those from her department would understand—then there will not be a need for her to come back. We will have to make that judgment.

CHAIR—I intend to adjourn this hearing. We can deal with this matter at a private meeting when we next meet. We have a program which has passed under the eyes of everyone on this committee other than you, Senator Faulkner, because you have been engaged, but your office has been consulted on the program changes.

Senator FAULKNER—I do not mind being kept in the dark. The whole country has been kept in the dark about this.

CHAIR—It will give us a sufficient program for the next two sitting days. On that basis, we will now adjourn. Thank you, Ms Bryant. As a result of what we decide, we will get back in contact with you.

Committee adjourned at 3.58 p.m.