

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

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

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

CHAIR—By all means.

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

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

CHAIR—We have a capacity to make copies here.

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

Vice Adm. Shackleton—Certainly.

Senator FAULKNER—Thanks a lot.

CHAIR—The floor is yours, Vice Admiral.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vice Adm. Shackleton—That would be about right.

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

Vice Adm. Shackleton—Yes.

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

Vice Adm. Shackleton—That is correct.

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

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

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

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

You replied:

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

You go on to say about two lines down:

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

Vice Adm. Shackleton—Yes.

Senator BRANDIS—I asked you:

Among Naval personnel?

And you replied:

Amongst those people involved in these operations, yes.

Do you remember giving that evidence?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—And you confirm that evidence today?

Vice Adm. Shackleton—Yes, I can.

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

Vice Adm. Shackleton—That is what we found.

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

Vice Adm. Shackleton—Correct.

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

We had not seen it before ...

that is, this kind of behaviour—

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

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

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

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

Vice Adm. Shackleton—It was our understanding that they were learning from each event that they interacted or experienced with us and that they were starting to understand our approach to how we operated. It would not be unreasonable to expect that they were trying to find ways to counter what we were doing. Hence we found, in this particular instance, SIEV4 was giving the appearance of being better prepared and more aggressive than the previous ones that we had dealt with.

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

Vice Adm. Shackleton—Yes.

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

Senator BRANDIS—I am just asking questions.

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

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

Vice Adm. Shackleton—Yes.

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

Vice Adm. Shackleton—Yes.

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

Vice Adm. Shackleton—Yes.

CHAIR—Can we have a look at this document?

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

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

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

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

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

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

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

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

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

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

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

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

Senator FERGUSON—Mr Chairman—

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

Senator FERGUSON—Yes.

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

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

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

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

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

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

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

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

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

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

Vice Adm. Shackleton—Yes.

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

Vice Adm. Shackleton—Yes, I do.

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

Vice Adm. Shackleton—Yes.

Senator BRANDIS—You have seen this document before?

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

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

Vice Adm. Shackleton—Correct.

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

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

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

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

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

Vice Adm. Shackleton—Yes.

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

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

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

Vice Adm. Shackleton—That is correct.

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

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

And then you say, and this is important:

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

Is that correct?

Vice Adm. Shackleton—That is correct.

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

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

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

Vice Adm. Shackleton—Yes.

Senator BRANDIS—Was that incident reported to you?

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

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

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

Do you see that?

Vice Adm. Shackleton—Yes, I do.

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

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

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

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

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

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

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

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

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

Vice Adm. Shackleton—Yes.

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

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

Vice Adm. Shackleton—That is right.

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

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

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

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

Vice Adm. Shackleton—Yes.

Senator MASON—When were you first briefed about that?

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

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

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

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

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

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

Senator BRANDIS—SIEV9—

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

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

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

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

Senator BRANDIS—Yes, sure.

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

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

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

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

Vice Adm. Shackleton—Yes.

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

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

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

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—You were made aware of that incident?

Vice Adm. Shackleton—I was.

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

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

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

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

Senator JACINTA COLLINS—Thank you.

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

Vice Adm. Shackleton—Restrained, stopped, prevented—

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

Senator BRANDIS—Yes.

CHAIR—For public release?

Senator BRANDIS—Yes.

CHAIR—At the conclusion of your examination?

Senator BRANDIS—Yes.

CHAIR—Okay, thank you.

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

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

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

/Crew prior to BUNBURY bp.

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

ARUNTA boarding party and TSE—

that is, transit security element—

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

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—You were made aware of that incident?

Vice Adm. Shackleton—Yes, I was.

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

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

Senator BRANDIS—By using children for moral blackmail?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Was that incident reported to you, Vice Admiral Shackleton?

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

Senator BRANDIS—Yes.

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

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

Vice Adm. Shackleton—Yes, I do.

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

Vice Adm. Shackleton—Yes.

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

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

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

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

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—Was that incident reported to you?

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

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

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

Do you see that?

Vice Adm. Shackleton—Yes, I do.

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

Vice Adm. Shackleton—No.

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

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

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—What do you think of that?

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

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

Vice Adm. Shackleton—Yes.

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

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

Vice Adm. Shackleton—Yes, I do.

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

Vice Adm. Shackleton—That is correct.

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

Vice Adm. Shackleton—Yes.

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

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

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

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

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—Was that reported to you?

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

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

Vice Adm. Shackleton—No.

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

Vice Adm. Shackleton—Correct.

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

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

Do you see that?

Vice Adm. Shackleton—Yes, I do.

Senator BRANDIS—That was reported to you?

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

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

Vice Adm. Shackleton—No.

Senator BRANDIS—That is the last of the 12 SIEVs in the period. The first one involving the abuse of children was on 12 September—that is SIEV3—and this one was on 16 December. So on seven of the 10 SIEV vessels that were apprehended or intercepted by the Royal Australian Navy in the three months between September and December, there was, may I suggest to you, a repeated pattern of the abuse of children, the physical harming of children, by the unlawful immigrants? Would you go along with that, Vice Admiral?

Vice Adm. Shackleton—I would say that—because I do not know that the abuse of the children is all that definite—certainly the use of children to demonstrate on their part what they might do with the children was certainly designed to get our attention.

Senator BRANDIS—Do you know whether these threats were taken very seriously by your personnel?

Vice Adm. Shackleton—Of course.

Senator BRANDIS—They were serious threats, weren't they?

Vice Adm. Shackleton—We take all threats like this very seriously.

Senator FERGUSON—We have had an enormous amount of publicity over the incident of SIEV4.

Vice Adm. Shackleton—Yes.

Senator FERGUSON—Were any of the other SIEV incidents—one to 12—reported to the Australian media by the Australian defence forces?

Vice Adm. Shackleton—I do not know; I would have to check.

Senator FERGUSON—It would appear that SIEV4 has become currency for journalists because of statements that were made in relation to children being thrown overboard, yet we have numerous incidents—from one to 12—of children being either thrown overboard or threatened to be thrown overboard. But I have seen no or minimal reporting of any of those incidents in the Australian media in all of that three-month period.

Vice Adm. Shackleton—That would be my recollection.

Senator FERGUSON—Could you check and see whether or not attempts were made to inform the media of those incidents?

Vice Adm. Shackleton—I can do that.

Senator FERGUSON—Senator Brandis talked about moral or emotional blackmail. There was an article by Robert Garran and another reporter called ‘Navy scuttles PM’s story’. The lead-in states:

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

In the light of the series of events presented to you by Senator Brandis and whether or not a person is threatened to be thrown overboard or is actually thrown overboard, it would appear to me that there is emotional blackmail in either of those two actions.

Vice Adm. Shackleton—I am not quite sure whether you can use the word ‘blackmail’. I think in this context you are seeking to get people in the Navy to do something which we might not otherwise do. I agree that it may be a fine line with the word ‘blackmail’—coercion or threat to harm, those kinds of things which would force us to perhaps take a less stringent line and thereby acquiesce to what they want rather than to what we had as a mission to achieve.

Senator BRANDIS—Of course, Admiral, the peculiar evil of this case was that they were not threatening to harm themselves; they were threatening to harm children, including, according to some of these reports, children as young as two. Don’t you think that ramps up the level of moral blackmail?

Vice Adm. Shackleton—I think all of this is very hard on the sailors involved—all of the events.

Senator BRANDIS—I did not say there were not; I said they were also threatening to harm children. They were not merely threatening to harm themselves; they were threatening to harm children including, in relation to the report—

Senator JACINTA COLLINS—This brief asks only in relation to the child incident. That is it; that is all the brief says.

Senator BRANDIS—Please do not interrupt me, Senator Collins!

CHAIR—Order! Senator Brandis.

Senator BRANDIS—Admiral Shackleton, in relation to the SIEV4 incident, we have it from, I think, Commander Banks's report that the four-year-old girl being threatened to be thrown overboard, that you had seen on the video, was later discovered by inquiries as being treated in this way by her own father. Did you know that?

Vice Adm. Shackleton—No, I was not specifically aware of that.

Senator FERGUSON—Can I just continue and perhaps put the original question in a different manner, rather than using the words 'emotional blackmail'. Admiral Shackleton, don't you think that the threat of children being thrown overboard would have just as much a traumatic effect on your Defence Force personnel as a child actually being thrown in the water?

Vice Adm. Shackleton—There is no question about it. Until somebody physically withdraws the child from the position where there is a clear intent to throw somebody over the side, you continue to work on the basis that that is exactly what they might do. It was very stressful and very difficult for sailors to continue to do their jobs in those circumstances. But I think it is to the credit of the Australian Navy that they did do it.

Senator FERGUSON—So whether or not children were actually thrown into the water, or whether it was only threatened that they would be thrown into the water, in effect, it has the same result on your serving personnel.

Vice Adm. Shackleton—Yes, it does.

Senator FERGUSON—So that also leads me to say that there is simply no truth in the story that was put out that the Navy had embarrassed the Prime Minister by undermining claims of emotional blackmail of naval officers because, whether you use the term 'emotional blackmail' or 'having a traumatic effect on those officers', these incidents, regardless of whether the children were in the water or being threatened with being thrown in the water, would have had an effect on your officers.

Vice Adm. Shackleton—It would have had an effect on the officers, but what I would say is that it did not prevent them from doing their job.

Senator FERGUSON—I understand that—under difficult circumstances.

Vice Adm. Shackleton—Senator, you asked me whether we made any reports to the media about other incidents such as this. I am advised that the ADF made no reports to the media on Operation Relex and that all media contact was to be through the minister's office with regard to this particular matter.

Senator FERGUSON—Was that because it was in an election period?

Vice Adm. Shackleton—I have no idea.

Senator FERGUSON—It would seem strange that there was so much publicity about one SIEV4 incident when in fact we had at least 10 others in that period which did involve children

being thrown overboard and which, in the light of public comment, the Australian public were not made aware of.

Vice Adm. Shackleton—Senator, I cannot comment.

Senator FERGUSON—Thank you.

Senator BRANDIS—Admiral Shackleton, you had a conversation at some stage—you will have to help me with the date because I cannot remember—with Brigadier Bornholt about all of this. Is that right?

Vice Adm. Shackleton—About which part of this incident, Senator?

Senator BRANDIS—I am sorry; about the ‘child overboard’ affair, shall we say—the SIEV4 specifically.

Vice Adm. Shackleton—Yes. I had a discussion with Brigadier Bornholt about the veracity of the photographs that were being presented in the media.

Senator BRANDIS—Was the discussion limited to the photographs in relation to the SIEV4?

Vice Adm. Shackleton—Yes, it was.

Senator BRANDIS—You did not tell him anything about these other SIEV incidents?

Vice Adm. Shackleton—I did not discuss those other incidents. I was aware of the other incidents, but my concern at that stage was that the photographs in the paper and on the television were being portrayed as the rescue of children thrown over the side of SIEV4 when in fact they were sailors who had entered into the water—jumped off the side of our ship—to go and rescue those from the sinking vessel.

Senator MASON—Senator Ferguson asked you questions before about press reports. Can I just hand you a document—

CHAIR—Before you hand out other documents, Senator Mason, if Senator Brandis has folded his line of questioning then now is probably an appropriate time for him to—

Senator BRANDIS—Absolutely. I table the document that I have been directing Admiral Shackleton’s attention to. It is a document that was supplied to the committee last Thursday, but I formally table it.

CHAIR—Before you formally table anything—I take that as a statement of intent to table—I just want to say that this is a document in possession of the committee which you have now unilaterally sought to table without first obtaining the permission of the committee so to do.

Senator BRANDIS—If I need to—

CHAIR—If you do not mind, I am speaking, and you will be quiet while I am. The normal procedure, in my understanding, is that the release of documents tendered to the committee is a decision for the committee. I was aware of that when you started and I let you go—so I make that observation: I let you go. But I do think this behaviour of introducing documents that are in the possession of the committee and pre-empting the rights of other committee members to have a say in their public disclosure is something for the committee to debate in a private session. It is not a procedure that I would want to encourage. On this occasion I have let it go, but on a future occasion—and this applies not just to you but to all members of the committee—I think the appropriate course is the traditional one of the committee making decisions about documents in its possession and the release of those documents.

Senator BRANDIS—Senator Cook, may I say in my own defence—and I thank you for your observation—that when I wrote to the Minister for Defence last Thursday I was careful to frame my request as a request that the document be supplied to me and to other members of the committee. As I understand it, the document has been supplied both to the committee corporately and to me individually. Whether it concerns my capacity as a member of the committee and as the personal recipient of the document or my capacity as a person in custody of a document given to the committee, it is the same document, one way or another. I put it before the witness, nobody suggested that this was not directly germane to term of reference (c), The matter has been examined at length without objection and the document is now before you in whatever form is appropriate.

CHAIR—I have said what I have said; I am not going to repeat it. You introduced this document to the committee and, subsequently, I am advised by you and by the secretariat that so did the minister. The remarks I have made are remarks that I do not wish to vary in the face of that explanation. The document is now before us. Is it the wish of the committee to make this document public?

Senator BARTLETT—We have not made public any other document or the other submissions or anything else that we received some time before, have we?

CHAIR—No, we have not.

Senator BARTLETT—So this will be the first document that we publish.

CHAIR—That is my understanding. If it is the wish, that is so granted. The document is now tabled for public information. Senator Mason, do you want to go down this course too?

Senator MASON—Yes.

CHAIR—This concerns a new document which is not in the public domain either—well, it may be.

Senator MASON—Correct. I brought it to the notice of the committee previously—

CHAIR—It is not a document for the committee—I think that is the relevant point. The author and the recipient of this document are outside our immediate purview, so I think you are free to proceed on this document, but would you please identify it for the rest of us?

Senator JACINTA COLLINS—Are we to table this document as well, or are we just providing it to the witness?

Senator MASON—I have no opposition, Chair.

CHAIR—I understand that it is the intention of Senator Mason to ask questions based on this document.

Senator MASON—Just a few questions, yes.

CHAIR—In which case I think it is appropriate that the document on which the questions are based be made available.

Senator FERGUSON—Are you suggesting that in times past either government or opposition senators have not quoted from documents that they have themselves and have not made public to every other senator?

CHAIR—No, and I never said that.

Senator FERGUSON—So why should you make that request of Senator Mason?

CHAIR—I was in the process of identifying what it is. In fact, I think I said to Senator Mason that I do not think that this is a document the origin of which comes from the committee or the recipient of which was the committee, and it is outside our purview. I think I said that, or words to that effect. Therefore, I do not think it is necessary for us to release it. But, because it is going to be the subject of an examination by a member of the committee, I think in due deference to the person being examined and those watching these proceedings they should know what the document is and have access to it. That is fundamental and elementary.

Senator MASON—I think that is right.

Senator JACINTA COLLINS—Courtesy, Senator Ferguson.

Senator FERGUSON—Does that mean we will get all Senator Faulkner's documents that he quotes from in future?

CHAIR—If Senator Faulkner did exactly as occurred here, I would ask him the same question. Circulate it to the committee and provide it to the admiral, please.

Senator MASON—Senator Ferguson mentioned that there was some criticism from the press about the performance of the RAN but not much praise. I wanted to draw your attention to that document. You see a letter from the Leader of the Opposition to the Minister for Defence, Senator Hill, dated 4 March.

Vice Adm. Shackleton—That is what I have in front of me, yes.

Senator MASON—The first paragraph of that letter reads:

Dear Minister

I write to request that you inquire into an allegation that Australian naval ships witnessed a sinking refugee vessel on 19 October 2001, and did not provide assistance.

Vice Adm. Shackleton—Yes.

Senator MASON—If you go to the first page of the letter attached to that letter, it is addressed to the Leader of the Opposition, Mr Crean; the Leader of the Opposition in the Senate, Senator Faulkner; Senator Stott Despoja; Senator Bartlett; Senator Brown; and the Clerk of the Senate. That is correct?

Vice Adm. Shackleton—Yes.

Senator MASON—The heading of the letter is:

Dear Sir/Madam

A REQUEST THAT THE SENATE URGENTLY INVESTIGATE, IN THE CONTEXT OF ITS CURRENT ENQUIRIES INTO NAVAL ENCOUNTERS WITH VESSELS CARRYING ASYLUM-SEEKERS, A SURVIVOR'S ACCOUNT THAT AUSTRALIAN NAVAL PATROL SHIPS WITNESSED A SINKING REFUGEE VESSEL ON 19 OCTOBER 2001 IN THE SUNDA STRAIT, BUT DID NOT TRY TO RESCUE SURVIVORS

Is that correct?

Vice Adm. Shackleton—Yes.

Senator MASON—I think the person who wrote the letter is basing that allegation on an article in the *Australian* of 21 December 2001. In the third paragraph of the letter there is a quote from that story. Let me read it:

“The survivors say two boats, which their rescuers told them were Australian border patrol vessels, shone floodlights on them but did not help.”

A spokesman for the Defence Department said the closest ship was the HMAS Arunta, which was 230 nautical miles south of the spot.”

My question to you is: is it true that Australian naval patrol vessels witnessed a sinking refugee vessel on 19 October 2001 but did not try to rescue survivors?

Vice Adm. Shackleton—Absolutely not.

Senator MASON—That is incorrect—it is wrong?

Vice Adm. Shackleton—Absolutely. It is completely wrong.

Senator MASON—Are you sure of that?

Vice Adm. Shackleton—Yes, I am.

CHAIR—I have got a few questions, Admiral. I think I might just pick up the baton at this point, if I may. My usual procedure is to wait until last, but this time I promote myself up the order. I was going to ask you to tell us what the last document that Senator Mason has kindly provided you with says, but I think I can make this statement: the Leader of the Opposition is not saying that that happened. The Leader of the Opposition is simply seeking advice from the Minister of Defence, having received a complaint which hypothesises that it may have happened. He is seeking comment from the Minister of Defence on what he has to say about this. I might just say, for myself, that I think that is a responsible course of action for the Leader of the Opposition to take.

Senator JACINTA COLLINS—Do you know if the minister has responded?

CHAIR—No, I do not know. That is for the minister to reply to. I also note that the author of the hypothesis contained within that letter has put a submission to this committee. Since this matter is now before the committee, is it the wish of the committee that the submission lodged by Mr Tony Kevin be made public? There being no objection, it is so ordered.

I note as well that in my opening statement this morning I said that people who are referred to under parliamentary privilege will, as far as I am concerned, have the right of reply under privilege to answer any allegations made. I do not think that Senator Mason has made an allegation—I want to say that clearly. He has simply taken a hypothesis and asked the admiral for a reply. I just want to be clear about that. I think, though, that if there is any further weight to be given to this matter—and I express this as my view, and not on behalf of the committee—there is a probable case for Mr Kevin, if he so wishes, to appear and give evidence.

Having said that, let me go to a few questions, if I may. You can refresh our minds on this—at the beginning of your examination by Senator Brandis you made some upfront disclaimer, if I may use those words, that you are not the right person to have these questions asked of, and that there is some other officer who can, I think your words were, tell us ‘chapter and verse’ what actually happened. Is that right?

Vice Adm. Shackleton—I am happy to talk where I can in the broad, but, for the purposes of accuracy, I would defer to others who I know have expert detailed knowledge. I am quite happy to tell you where I think that that can be provided, which might aid you. But I guess that is on a case-by-case basis.

CHAIR—Can you just identify again, for the record, who is the officer that you believe can, as I think you said, tell us ‘chapter and verse’?

Vice Adm. Shackleton—In relation to the SIEV4 incident, blow by blow, I think you would want to talk to Commander Banks. In terms of the detail of other SIEV incidents, in a much higher level of detail than I can talk to you about, you would want to talk to the Maritime Commander, who is Rear Admiral Smith.

CHAIR—I think that, as well, you said—and I am just seeking for you to correct me here, and please do so—that the document from which Senator Brandis quoted in his examination of you was not something that you recall seeing, although you noticed that your name was on the list of people to whom it had been provided. Is that right?

Vice Adm. Shackleton—That is correct. I had seen a version of this document that was constructed slightly differently. I would have to check to see that the information has been faithfully carried across, but I recognise the way in which the information is presented and, without checking, I would—perhaps incorrectly—make the assumption that it has been transferred properly.

CHAIR—The document has a covering letter in the form of a minute from Australian Defence Headquarters Strategic Command, signed by A. W. Titheridge. I should indicate that it is probably to A. W. Titheridge that I will address my major questions relating to this document, since he appears to be the author or the responsible individual in relation to it.

Vice Adm. Shackleton—He would have collated that information provided from within his own organisation and from information available elsewhere in the command chain to compile that list.

CHAIR—Under the heading ‘Unauthorised arrivals information’ there appears the reference ‘Telcon COS MINDEF/CN SEC 28 Feb 02.’ Can you tell us what that means?

Vice Adm. Shackleton—That is a reference to a telephone conversation between the chief of staff for the Minister of Defence—in this case it would have been Minister Hill’s chief of staff—and my secretary, who is my principal staff officer. It relates to a request from the minister’s office to me to provide this information to the minister’s office. I had my chief staff officer—or secretary, as he is referred to here—talk to the minister’s office and say that the appropriate place for that to come from was Strategic Command, which was dealing with these SIEV incidents because of their operational nature.

CHAIR—Did the request to gather this information originate from your office—from your secretary—or from the minister’s office?

Vice Adm. Shackleton—As far as I am aware, it came from the minister’s office.

CHAIR—Would that have been on 28 February?

Vice Adm. Shackleton—Probably a day or so before.

CHAIR—You were asked a number of questions by Senator Brandis, in which he read to you what was in the document. In the first one—he did not always ask you this question—he asked, ‘Is what I have read what is printed there?’ to which you replied, ‘Yes.’ That answer does not mean to say that you verify what is written there, does it? It just means that Senator Brandis has conveyed to you accurately what is written there.

Vice Adm. Shackleton—In most cases; yes. There are areas where I am aware of the detail, and there are areas where I am not so aware of the detail.

CHAIR—This document may be a third or a secondary source; it is not a source document containing the original reports, is it?

Vice Adm. Shackleton—No. It is a compilation of information over a period of time, which was put together to create the chronological history of the events, and what occurred in relation to those events, from SIEV1 through to SIEV12.

CHAIR—In the chronological history, I was thrown by the dating of these reports. I think you have cleared up how that date is read. I was reading the last number in the line of numbers as being the day, but it is actually the first.

Vice Adm. Shackleton—Yes. We have a methodology of having the date, followed by a four-figure time group in 24-hour clock format, then the letter to indicate the time zone—sometimes it is ‘z’-zulu, sometimes it is ‘k’-kilo and sometimes it is ‘I’-India/‘k’-kilo—then sometimes a check digit after that letter, followed by the month.

CHAIR—Some might say that one of the reasons for this inquiry is that the events that occurred—whatever they were—in one place, got transported through a line of command, or by some other means, to another place and that, in the transmission of that evidence, by whatever means, there were foul-ups, inconsistencies and so forth. That is one of the things that we are inquiring into: what they were, how they occurred, who knew what, and when. Are you able to say that the information contained in this report is accurate, to your personal knowledge?

Vice Adm. Shackleton—I did not go back to the primary source. You would have to go back to the primary source for that, but the way it is written indicates to me that it was written by people with access to primary information.

CHAIR—From the primary source?

Vice Adm. Shackleton—Yes.

CHAIR—But there is always the possibility that, in the translation of the primary source—which is the very thing we are inquiring into—mistakes occurred.

Vice Adm. Shackleton—That is always possible.

CHAIR—Following the *Tampa* incident, were the rules of engagement for ships in this particular theatre, or this region, changed by the Navy?

Vice Adm. Shackleton—I do not set the rules of engagement; the CDF sets the rules of engagement.

CHAIR—So you are not the right person for me to ask that question of?

Vice Adm. Shackleton—No. Again, the Maritime Commander, Air Vice Marshal Titheridge or Admiral Ritchie would be able to deal with that. This can work two ways: either a commander lower down, such as Admiral Ritchie or Admiral Smith, can ask for a rules of engagement change to meet what they think are the circumstances that they will find themselves in, so that they have operational flexibility to deal with the contingencies that they see might emerge, or they can be set by the CDF himself as part of the overarching arrangements under

which we are going to operate—and, to complete that, the CDF in the end, and often with the agreement of the minister, will authorise the rules of engagement.

CHAIR—Are you implying to me—I am happy if this is what you are implying, because I will go to the correct person—that it is not appropriate for me to ask you a question about what may be an element of the rules of engagement?

Vice Adm. Shackleton—You could try me, Senator, and, if I do not know, I can tell you.

CHAIR—Let me ask you the question: I do not know how it would be expressed in Navyspeak—and I mean that term nicely—but, in layman’s language, was one of the rules of engagement not to rescue people from the water unless their vessel was sinking or had sunk?

Vice Adm. Shackleton—No, we would not operate that way.

CHAIR—You would not operate in that way.

Vice Adm. Shackleton—No.

CHAIR—So I can see the answer correctly, if their vessel had sunk, you would rescue them.

Vice Adm. Shackleton—Yes.

CHAIR—If their vessel was in imminent danger of capsizing or sinking and people were leaving the vessel, would you rescue them in those circumstances?

Vice Adm. Shackleton—We did that.

CHAIR—You did do it?

Vice Adm. Shackleton—Yes.

CHAIR—It is not clear from this report, is it, as to what the circumstances always were in the case of all the vessels that you have been asked about?

Vice Adm. Shackleton—That information will be available.

CHAIR—But it is not available in here.

Vice Adm. Shackleton—I think there are some where the information is more detailed than others, but there are obviously generalisations in some parts of it.

CHAIR—Just on the subject of generalisations, one of the issues that we will doubtless get around to talking about as this committee wends its way to its final conclusion—over however many days of hearings that it takes to do so—is an argument that I have read about in the media that people holding children up on board a vessel could be interpreted as threatening to throw them overboard or could be interpreted, in other circumstances, as saying, ‘Look, there are

children on board this vessel—back off or go easy.’ Is that second version something you are familiar with?

Vice Adm. Shackleton—I am familiar with the argument, but I do not know whether I would agree with it or not.

CHAIR—That means that you are agnostic.

Vice Adm. Shackleton—No, it means that I would not agree with it.

CHAIR—You do not agree with it?

Vice Adm. Shackleton—No. Somebody holding a child upside down by the leg—

CHAIR—No, I am not going to that incident.

Vice Adm. Shackleton—does not, to me, seem friendly.

CHAIR—It does not seem to me to be very friendly, particularly for the child—you would be traumatised.

Vice Adm. Shackleton—Yes.

CHAIR—Senator Faulkner, you seem to be indicating that you would like to ask a few questions.

Senator FAULKNER—Yes, I would also like to ask a few questions of the Admiral. Admiral, could I please take you to the events of 8 November. You indicated in your opening statement today, or you outlined for the benefit of the committee, what occurred on 8 November. Thank you for that. It does seem—as you said—in part to be similar to some of the information that you provided to General Powell in the preparation of his routine inquiry. Committee members have had the benefit of seeing a copy of your and other witness statements for both General Powell’s and Ms Bryant’s reports, and I hope that they will be able to be released shortly, after the appropriate decisions have been made at the committee level. I wondered, first of all, in relation to that submission to General Powell, whether that was the only contact you had had with General Powell or whether there was any other contact—but it is the only copy that we have in the witness statements that I have been able to identify.

Vice Adm. Shackleton—I had a verbal discussion with General Powell shortly after he took on his role, at which time I think I discussed with him the generalities of some of my thinking and gave him some suggestions as to where he might go and make inquiries to get to the detail, in that he was an Army officer and he was going to spend a fair bit of time dealing with the Navy—in part—which is why Commander Noonan was provided as his assistant, to help him through the maze of the Navy. I then undertook, after he circulated a request to people generally, to respond to what you knew at the time—and that is what I have written down there. I am aware that I have probably made a number of assertions that may not stand up to the full

investigation of fact, because I guess I was going off a certain amount of hearsay, but in the end that was factored in to all of the general's report.

Senator FAULKNER—Okay, so your first discussion about the generalities went more to the general light that you might be able to shed on this from a Navy-wide perspective as opposed to your own role. Would that be fair?

Vice Adm. Shackleton—What, in terms of my conversation with General Powell?

Senator FAULKNER—Your first—the verbal communication you had with the general.

Vice Adm. Shackleton—As I remember it, it was saying to him that you would get the details of the issues from Maritime Command, Strategic Command and the *Adelaide*. In part it was also questions from him as to how he might seek out information from within the Navy and other parts of the defence organisation, and in terms of some views that I had about where, if there had been an issue where it had gone wrong, I would probably start to look myself.

Senator FAULKNER—So it does not really go specifically, at that stage, to the detail of what occurred on 8 November?

Vice Adm. Shackleton—No.

Senator FAULKNER—Thanks for that. You mentioned also, in answer to my earlier question, some assertions which may or may not have held up. Would you be able to identify those assertions for us?

Vice Adm. Shackleton—Yes. I think in my remarks to General Powell I made some assertions about what Brigadier Silverstone may or may not have said—and they were third-hand. That is probably the main area, because I, frankly—

Senator FAULKNER—Would that be in part k of your witness statement?

Vice Adm. Shackleton—There is that, and I think the other thing that was hearsay was part b—although I think subsequently the inquiry, the Powell thing and the Bryant report, seemed to make that turn to be accurate.

Senator FAULKNER—So, with the benefit now of hindsight, in relation to part k you had the advantage of having had a discussion with Commander Banks but not Brigadier Silverstone. Is that the point you are making?

Vice Adm. Shackleton—I certainly spoke to Banks but I did not talk to Silverstone about his side of the conversation.

Senator FAULKNER—So are you saying to the committee that this witness statement in a sense reflects the nature of the discussion that you had with Commander Banks?

Vice Adm. Shackleton—Yes, and the other part of here where, again, it is hearsay—but whether it is fact or fiction I do not know—is part q on the last page.

Senator FAULKNER—What element of that?

Vice Adm. Shackleton—I had discussions with Admiral Ritchie and Admiral Smith on the afternoon of 8 November. If you remember, I said I had been out of the country and I was in a real state of catch-up mode to find out what had gone on and who had said what to whom. In the conversations I had with those people I felt that I had been led to believe that the minister's office was aware of the true assessment—what the tape and the photographs represented. But I have no way of saying that that was true.

Senator FAULKNER—Going back to both your witness statement and the opening statement to the committee, I think it is fair to say that you draw significantly on your witness statement for the opening statement that you made to the committee. That is reasonable, isn't it?

Vice Adm. Shackleton—That is quite right.

Senator FAULKNER—You made the point that, while you were in Western Australia, the statements that you made on the wharf there became a public issue of some notoriety—if you like—really while you were in the air flying back east. Is that right?

Vice Adm. Shackleton—No, I was still in Western Australia at that stage of the game.

Senator FAULKNER—Were you? I see. So where did you actually issue the 'clarifying statement'?

Vice Adm. Shackleton—As I remember it, Perth was three hours behind Sydney. I think I spoke to the media at about 12.30 p.m. Perth time, which would have been 3.30 p.m. eastern time—so it was in time to get in before the five o'clock deadline for the eastern state news arrangements. Then I think it was at about six o'clock eastern time, which would have made it three o'clock Perth time, that I became aware of the furore. I then spoke to Ms McKenry and then had that other statement sent out. In the interim, as I have said, I spoke to Mr Hendy to find out what his concerns were.

Senator FAULKNER—Yes, but actually you were in Perth, and Mr Hendy—you told us at the estimates committee—called your office at Russell.

Vice Adm. Shackleton—I think, as far as I was aware, he was in his Canberra office.

Senator FAULKNER—Yes. Do you know who he spoke to in your Canberra office?

Vice Adm. Shackleton—I think he spoke to my chief staff officer, Captain Goldrick. I had had my telephone turned off during the time that we had been on the wharf at *Sirling*. Then when I turned it on again there was a message to call, which I did, and that is how I found out about it.

Senator FAULKNER—Have you been able to ascertain from Captain Goldrick what Mr Hendy actually said?

Vice Adm. Shackleton—No, and I have not beyond that day said much to him about that particular question, other than he said that Peter Hendy was trying to get in contact with me over this issue, at which time I then phoned Mr Hendy. As I remember it, I could not get through to him the first time, but then I think he called me back.

Senator FAULKNER—Did Mr Hendy just make the one contact with your Canberra office; do you know?

Vice Adm. Shackleton—No, I do not know.

CHAIR—Shall we break?

Senator FAULKNER—Absolutely. I am sure that Vice Admiral Shackleton would agree.

Vice Adm. Shackleton—Absolutely. I always agree with you, Senator.

CHAIR—I think you have got the opportunity for a caffeine hit, Vice Admiral.

Vice Adm. Shackleton—I would be happy with that.

Proceedings suspended from 3.21 p.m. to 3.32 p.m.

CHAIR—We will now resume. Before I give the call to Senator Faulkner, on our indicative list of witnesses, we have fallen well behind the clock. I foreshadow to the committee that before we rise for the dinner recess we might take a moment to see whether we can agree on offering any advice to witnesses who are listed for today but who now appear not likely to be required today so they do not have to waste their evening. There might be one or two other housekeeping matters. I see that we all agree.

Senator FAULKNER—Thank you. I want to clarify with Vice Admiral Shackleton what information we might glean by contact with Captain Goldrick. Just so we can do that, you had one conversation with Mr Hendy?

Vice Adm. Shackleton—Sorry, can I clarify? I can have somebody call Captain Goldrick, who is on a ship in the Persian Gulf, and we can put questions to him that way if you choose. They would be, I guess, questions in the broad about how many times phone calls were made. Would that satisfy you?

Senator FAULKNER—I would not want you to go to a huge amount of trouble. What I would ask you to do, maybe, is take some questions on notice and progress it that way. That is fine. What I am trying to clarify is what information we need before we finalise that, if that is helpful—

Vice Adm. Shackleton—Yes.

Senator FAULKNER—just to save time if we can. You only had the one conversation with Mr Hendy?

Vice Adm. Shackleton—That is my recollection.

Senator FAULKNER—I am wondering if Captain Goldrick or other members of your staff may have had other conversations between the first doorstep interview you did on the wharf at Stirling and the issuing of the so-called clarifying statement. That may involve Captain Goldrick. I suppose what I am trying to be clear about is whether that in fact involves any other officers.

Vice Adm. Shackleton—I would have to check with my office. If Hendy was going to ring, he would either ring me direct, depending on the nature of the business, or he would have phoned—other than that, Captain Goldrick, who was my point of contact for all ministerial dealings. If Goldrick was not available to take that call, then I have got a number of other people in the office who would have taken a message and then forwarded it on. I can ask in my office to see whether there was anybody who took any calls about that time.

Senator FAULKNER—I am interested in the number and nature of such communications. I know we dealt with this at the estimates committee, which is why I do not want to get bogged down in it too much, but if you could ask that of Captain Goldrick at a reasonable time—given that he is in the Gulf, ask him at some time that suits all concerned—and if you could also ask other staff members who might be a little more available, that would be helpful.

Vice Adm. Shackleton—I can tell you whether anybody had any contact with Hendy on that day.

Senator FAULKNER—With Hendy or other members of the minister's staff.

Vice Adm. Shackleton—We can do that.

Senator FAULKNER—Does all contact go through to your Canberra office, or do you have staff who travel with you? For example, when you are at Stirling, do you have any staff who travel with you there?

Vice Adm. Shackleton—I have a more junior ranking officer who typically travels with me, but Goldrick would typically be in Canberra doing what he does, which is essentially Canberra based coordination of my office and my affairs—and by 'affairs' I mean the business of the Navy.

Senator FAULKNER—But in this case, how does the communication go from Canberra to you? It is not all direct. I am sure the Chief of Navy would not get bogged down with every single communication, so you would at least have someone, or some people, around you to assist you with that.

Vice Adm. Shackleton—On that particular occasion there was the media adviser, Mr John Clarke, who was outposted to my office from the PACC organisation. He was there as a strategic communications adviser—a corporate communications and public affairs adviser. I am

trying to think who else was there. My flag lieutenant—as the title is called—is predominantly there to make sure that I get to where I have got to go at the right time. So if there were any media contact that day, it would have gone through Clarke from PACC, or, indeed, from the minister's media adviser. Other than that, it would have gone to Goldrick, who would then phone me direct to get resolution or for me to decide what action was going to be taken.

Senator FAULKNER—We have all got Mr Clarke's witness statement. He talks about informally viewing correspondence from Brigadier Bornholt on the 8th. That, I assume, occurs in Perth?

Vice Adm. Shackleton—I have not seen that—

Senator FAULKNER—Well, if he is with you in Perth, it must happen in Perth.

Vice Adm. Shackleton—I guess so, and he may well have done things which I was not privy to.

Senator FAULKNER—I think that is the other thing that we need to understand, Admiral, just in terms of this, because I was asking you a number of questions about what occurs between your original doorstep interview and the production of what is described as the clarifying statement. So if you could add to the question that you have taken on notice, in relation to the Canberra operations, any of the operations that might involve Mr Clarke or others at the Perth end, that might be useful too.

Vice Adm. Shackleton—I can ask those individuals if they had contact with PACC or the minister's office about this issue.

Senator FAULKNER—Yes, it is contact with the minister's office or PACC, the number of contacts and a small amount of detail about its content and nature.

Vice Adm. Shackleton—We can provide that.

Senator FAULKNER—That would be useful. However, I appreciate the point you make. Your only formal communication that you are personally involved in with the office of the Minister for Defence is your direct conversation with Mr Hendy?

Vice Adm. Shackleton—That is correct.

Senator FAULKNER—I assume that we can categorically rule out any contact from the Prime Minister's office as well with you or your staff members either based in Canberra or with you in Perth?

Vice Adm. Shackleton—There was certainly no contact with me from any other organisation, and by that I mean the Prime Minister or his staff or Minister Reith or any other member of his staff.

Senator FAULKNER—Thank you for that. In relation to the other lose end, as you are checking that other information, could you just let me know if there was any contact with the PMO as I would appreciate that.

Vice Adm. Shackleton—Yes, I will.

Senator FAULKNER—Thank you very much. Going to some of the issues we are dealing with, just for absolute clarity's sake, I think you can be pretty precise—can't you?—about when you realised that the photographs of the kids in the water do not actually depict kids being thrown overboard but rather the rescue of 8 October 2001. I just wondered if, for the sake of the record, you could be clear on that.

Vice Adm. Shackleton—I am clear. As I say, the Maritime Commander sent me those emails on 9 October. I saw them on the *ABC 7.30 Report* the next night. I cannot recollect which day they were on the front page of the newspaper, but as soon as I saw them on the television I spoke to CDF by telephone to tell him that I thought that the photographs were being linked to the wrong event.

Senator FAULKNER—And that time?

Vice Adm. Shackleton—That would have been about 7.45 on the evening of 10 October.

Senator FAULKNER—Thank you. Would you be able to shed any light on the nature of the conversation that you had with CDF after the photographs were screened on the *7.30 Report*? I do not want to put words into your mouth, so it is best if you just tell us.

Vice Adm. Shackleton—You mean the phone call I had with the CDF?

Senator FAULKNER—Yes.

Vice Adm. Shackleton—As far as I can recollect, I said I had just seen these photographs appearing on television and they don't have captions but they are linked to the wrong event—that is, they are not photographs of people being recovered after having been thrown over the side. They are people being recovered from the boat sinking. He then said that COMAST, Rear Admiral Ritchie, had already called him just prior to my call and he thanked me for the call.

Senator FAULKNER—Did you glean from that conversation, or was the matter discussed, as to how ministers might be informed of this?

Vice Adm. Shackleton—I seem to remember asking him, 'Would the minister be told about this?' I got the impression that the CDF intended to talk to the minister about it and I got that also when we were in the Senate—I think it was on the 20th—I thought the CDF made remarks and, in relation to questions about this, that he had spoken to the minister.

Senator FAULKNER—I am asking that just from the perspective of that conversation, that you got that impression?

Vice Adm. Shackleton—Yes.

Senator FAULKNER—In relation to further communications that you might have had with CDF first of all on 11 and 12 October, did this matter then go off the boil?

Vice Adm. Shackleton—As I said, I can remember having a discussion with the CDF, the brigadier and Ms McKenry after we had finished a briefing of the Strategic Command group—on what issue it was I cannot remember; it may or may not have been a SIEV related incident; there was a lot going on at the time—where I said that, from my perspective, I wanted to know what we were going to do about getting into the minister's office the advice that the photos had been portrayed in relation to the wrong incident. At that stage, I think Ms McKenry or Brigadier Bornholt said that they were trying to do that. From my recollection, the brigadier said that he had told Mr Hampton of the incorrect linkage, but after that I was not aware what was going to be done about it or what was in fact done about it.

Senator FAULKNER—You knew about the photos not depicting an actual incident of children being thrown overboard by 7.45 on the evening of 10 October?

Vice Adm. Shackleton—Yes.

Senator FAULKNER—When did you know that the claims that children were thrown overboard were not correct, which is of course a different issue?

Vice Adm. Shackleton—When I returned from overseas on 7 November, I travelled from Adelaide to Perth with the Maritime Commander, during which time I became aware that the video did not show people being thrown over the side. I then visited the ship on 8 November and looked at the tape and, as I said in my opening remarks, I had a half-hour discussion with Commander Banks about it all. At that stage of the game, certainly the video did not portray to me that people had been thrown over the side, other than, as I have said, that there was somebody being held over the side with what I thought was the intent to throw. I think it was on 8 November that it was clear, certainly from the evidence I had, that there was nothing to support the notion that somebody had been thrown in the water.

Senator FAULKNER—I was going to ask you separately about the video, because I heard what you said in your opening statement—and I appreciate that—and what is in your witness statement. It is fair to say in fact that on the morning of 8 November you knew two new things. Again, I would just like you to indicate whether I have got this right. First of all, you knew that the video did not depict any child being thrown overboard?

Vice Adm. Shackleton—Yes. That would have been about 10.30 or 11 o'clock Perth time.

Senator FAULKNER—My second point is that, as a result of that evidence, you came to the conclusion that there was no truth to the story that kids had been thrown overboard? What I am trying to understand is whether you came to the conclusion about those two separate things as a result of seeing the video. I appreciate what you have said about the video—that is clear—but the other question I am asking you of course is about the actual veracity of the claims that kids had been thrown overboard.

Vice Adm. Shackleton—As I said, I spent 30 minutes, or thereabouts, with Commander Banks. He was quite emphatic that nobody had gone in the water, and the video that I saw backed up what he said. He had no doubt in his mind that, irrespective of what was said up front, the reality was that no kids had been thrown in the water. Based on his strength of conviction and on the video, which I saw, one would have to believe him.

Senator FAULKNER—Thank you for that information. It was with that information, presented to you a very short time earlier that day, that you then did your doorstep—I mean doorstep—on the wharf at *Stirling*?

Vice Adm. Shackleton—It did feel like a doorstep. But, yes; that is what happened.

Senator FAULKNER—The committee is interested in what occurred after the doorstep, through to the so-called clarifying statement. You have taken some questions on notice about staff interactions, and I appreciate that. You have indicated in your statement where the clarifying statement was drafted, or who drafted it. I will have to look for that—unless you can point me to the paragraph number. It is Ms McKenry and others.

Vice Adm. Shackleton—It is in paragraph 1.4.23.

Senator FAULKNER—That is basically Captain Goldrick and Ms McKenry?

Vice Adm. Shackleton—No, Ms McKenry, as the head of PACC, Public Affairs and Corporate Communication, drafted it. She and I talked on the phone. After we had made a number of changes and propositions and more changes, the release was sent out the way it was.

Senator FAULKNER—The statement was not cleared with the minister's office, was it?

Vice Adm. Shackleton—Not that I am aware of, but I honestly cannot remember. I said that I was happy with the statement and that, as far as I was concerned, it should go as it was; but, to be honest, I cannot remember whether or not that was cleared with the minister's office.

Senator FAULKNER—But your discussion with Mr Hendy was what led to the clarifying statement later on?

Vice Adm. Shackleton—Yes, it was. If McKenry was required to get clearance on it from the minister's office, then she would have been the one that did it.

Senator FAULKNER—In paragraph 1.4.22 of your statement, you say:

In talking to Hendy—

I interpolate here that that is the one discussion you have with him—

I gained a strong impression that he had not been told that the original report was incorrect, and this came as a surprise to me.

Vice Adm. Shackleton—Yes.

Senator FAULKNER—Did you correct it with him?

Vice Adm. Shackleton—At that stage, I needed to get more information. The conversation I had with Hendy then led me to conversations with Admiral Ritchie to find out more about what had been said by whom to who else. As I think I said earlier, when I made those statements to the press my expectation would have been that the original story, now about a month old, would have been corrected. It was the case that—certainly in the ship *Adelaide*, as I subsequently found in a message from the ship, dated, I think, 10 October—by 10 or 11 October there was some feeling that no children had been thrown over the side. In my own case, I was, for whatever reason, not privy to that at the time.

Senator FAULKNER—We have just established that by the time that you had your discussion with Mr Hendy you knew three things. You knew a lot more than three things but, at least in relation to this incident, you knew three things: one, you thought that kids were not thrown overboard—

Vice Adm. Shackleton—Correct.

Senator FAULKNER—Two, you knew that the video on HMAS *Adelaide* did not depict kids being thrown overboard.

Vice Adm. Shackleton—Yes.

Senator FAULKNER—And, three, you had known for nearly a month that the photographs in the water, the so-called evidentiary support of the claims that kids had been thrown overboard, did not depict kids who were thrown overboard at all but, rather, events on another day—the sinking of SIEV4.

Vice Adm. Shackleton—Yes.

Senator FAULKNER—So I think, Admiral, the discussion you had with Mr Hendy is important. Given that you knew all that, you say in your statement—and I accept it—that you talked to Hendy, you gained the strong impression he had not been told the original report was incorrect and that this came as a surprise to you. I accept that. What I find hard to accept, given your state of knowledge of these events, is that you would not say it to him. You may have said it to him, but I want to be really clear on this because I think it is an important point. Did you tell Hendy any of these three things that you knew?

Vice Adm. Shackleton—Senator, I honestly cannot remember. I had seen the video. The video had been seen by the minister's staff, in the form of Mr Scrafton. I do not know whether Hendy had seen the video or not. It had certainly been played on television here in the eastern states by the time I had the telephone conversation with him. So I guess the fact that that tape had been played—and the minister's staff or minister's advisers had seen it and would have come to the same conclusion as I did—meant that Hendy was now telling me that I was contradicting what the minister had said. I then took what he was meaning as being that, in the technical sense, the first advice to the minister was that children had been thrown overboard. What I had not appreciated up until that time was that at no time had the minister been told that that first report was now incorrect.

Senator FAULKNER—Regardless of the value judgment in the latter part of your answer, there are two things. There is the ABC radio program—I think it is *PM* but I am not 100 per cent sure—and there is the AAP story. There are these two things. AAP says:

Navy chief Vice Admiral David Shackleton said today the navy had never advised Defence Minister Peter Reith that boat people threw children overboard from an Indonesian vessel.

Vice Admiral Shackleton said the navy's advice to the minister was that a child, believed to be aged about five or six, had been held over a top railing of the boat with intent to throw the child overboard.

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

They are your words:

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

To directly quote you on ABC radio:

All I can say is that the video tape shows that this child was held over the side ... all that we can discern from that ... is the absolute intent to drop that child in the water. The boat from the *Adelaide* came underneath—

the vessel at the time—

and then the child was brought back inside, and that's all I can say.

And then, of course, it is those statements that led to the clarifying statement. The words that are in your mouth, so to speak, as opposed to the reportage of AAP, are an accurate reflection of the situation, aren't they?

Vice Adm. Shackleton—It was at the time, which is I guess what surprised him when I spoke to Hendy. I had been aware, like everybody else, of the media reporting of this early in the piece. It had then, in its own way, gone off the scope. I had been overseas and I came back and I saw this tape on board HMAS *Adelaide*, by which time a month had moved along. I was surprised that we were still working off the original report which, from what I could see on the tape and from the way that it was discussed with me, was now wrong.

Senator FAULKNER—Yes, but you put out the so-called clarifying statement:

My comments in no way contradict the minister. I confirm the minister was advised that Defence believed children had been thrown overboard.

How were you able to make that final statement: ‘I confirm the minister was advised that Defence believed children had been thrown overboard’?

Vice Adm. Shackleton—Because I checked; I cannot remember who I spoke to but I verified that that was in fact the report that the minister had been given.

Senator FAULKNER—Again, this is fairly important, Admiral.

Vice Adm. Shackleton—I can understand what you want to know—

Senator FAULKNER— Well, I think it is important.

Vice Adm. Shackleton—All I can say to you is that the fact was that Defence had advised the minister that children had been thrown over the side, or words to that effect. By the time I was dealing with this—the best part of a month later—and when I saw the videotape and discussed this with Commander Banks, it was my expectation that somebody would have told the minister that the first report was wrong.

Senator FAULKNER—Yes, but for you to put a clarifying statement out two days prior to an election with this being—I don't use this language but everyone else does so it seems to be accepted now—a 'hot-button' issue—whatever that means; I think we know what it means but it is just a horrible use of the English language—I think it is reasonable for me to press this question. In that atmosphere, for you to put out a clarifying statement, it is reasonable for me to ask you how on earth you were able to confirm that and who you checked it with in this circumstance. I would like to press you on that.

Vice Adm. Shackleton—I am really not in a position to be able to help you. What I did was send out a clarifying statement which reiterated the facts as they then were, in that the minister had been told that the child or children had been thrown over the side and there had been no change to that advice.

Senator FAULKNER—But who tells you that, given that you actually know, when you put the clarifying statement out, the three things that we have gone through: the video does not show it, the pictures relate to another incident, and you believe there is no truth to the fact that kids have been thrown overboard, for God's sake?

Vice Adm. Shackleton—I cannot help you with who I spoke to there because I cannot remember. The only people I remember speaking to that day were the people from PACC, my own staff, Admiral Ritchie and Admiral Smith. Maybe they can tell you I spoke to them but I cannot remember raising this issue with them.

Senator FAULKNER—I could ask them but, to be honest, on this occasion this is a logical question to ask you. It is your statement: 'I confirm the minister was advised'. It is not Admiral Ritchie or anyone else who is confirming it, it is you: 'I, Vice Admiral Shackleton, confirm'.

Vice Adm. Shackleton—That was my belief at the time.

Senator FAULKNER—But to put out such an important statement in the hothouse atmosphere, literally at the end of an election campaign, and not be able to say to the committee who you confirmed it with—after, as you say, the extraordinary amount of press and public interest in it on that day—is incredible.

Vice Adm. Shackleton—But in my conversation with Admiral Ritchie, he told me that Air Vice Marshal Titheridge was the individual who phoned into the IDC with this information, which said that a child or children had been thrown over the side. That was the original report that was made to the minister and, up until I do not know when, that advice had not changed.

Senator FAULKNER—You confirmed it but you do not know who you confirmed it with. I do find it amazing that you put out a clarifying statement given the circumstances, which we all appreciate—and I know you do, because you have said so earlier—but it is also the fact that the clarifying statement itself is so inadequate in the circumstances. Let me ask you how you can sign off on a statement that says, ‘I confirm the minister was advised that Defence believed children had been thrown overboard,’ when at best that statement—would you agree with me?—is a half-truth. At absolute best it is a half-truth. I do not think there is any truth to it at all, but at best it is a half-truth, given your state of knowledge at the time.

Vice Adm. Shackleton—I do not agree. The minister had been told that children or a child had been thrown over the side.

Senator FAULKNER—But how did you know that?

Vice Adm. Shackleton—From my discussions with Admiral Ritchie and Admiral Smith I knew that. I knew from the media reports and I knew generally from the circumstances that that was what the minister had been told.

Senator FAULKNER—But you also knew a number of other elements. If the statement was to be a fair representation of the facts, don’t you think it ought to have included the fact that you knew that, from 7.45 on the evening of 10 October, the photos did not represent kids being thrown overboard? That did not go in the clarifying statement, did it?

Vice Adm. Shackleton—I saw no need to comment on the photographs.

Senator FAULKNER—Why? They were the evidentiary support, through the whole of this period, that kids had been thrown overboard. The reason people say, ‘Oh, we didn’t have to address that issue,’ is that the evidence was there—and the evidence was the photographs of the kids in the water. That was bodgie; the video did not show those events taking place and you knew, when you issued the clarifying statement, that there was no truth in the suggestions that kids had been thrown overboard in relation to SIEV4.

Vice Adm. Shackleton—But it is not my position to make public announcements on behalf of the minister.

Senator FAULKNER—Of course it is not; I appreciate that. But it is your position apparently to make public statements to say that you have been able to confirm what the Minister for Defence was advised, but you cannot tell us—

Vice Adm. Shackleton—No, what I said was: I confirm that the minister was told. That is what I said.

Senator FAULKNER—Yes.

Vice Adm. Shackleton—I did not say I reconfirmed it, but I knew that was the case to begin with.

Senator FAULKNER—Yes, but how could you confirm it when you cannot even remember who you confirmed it with?

Vice Adm. Shackleton—My point is that I was confirming this in the context of what I had been reported to have said that day, and I wanted to clarify it to make sure that people understood that I was not in the position of contradicting the minister.

Senator FAULKNER—Could you say to the committee now, Admiral, how the minister was advised that Defence believed that children had been thrown overboard? Even today can you say that?

Vice Adm. Shackleton—My understanding is that it went through the IDC. I go back to my original point. I am not in the operational chain of command, so I do not know what the CDF said to the minister. I do not know what Air Vice Marshal Titheridge said to the minister. But I had a very strong sense that in Defence the minister had been told that children had been thrown into the water.

Senator FAULKNER—A strong impression, but it goes back to the IDC?

Vice Adm. Shackleton—I had a strong impression, from the Strategic Command group and other work that I was involved in, that the minister had been told that there had been children thrown into the water.

Senator FAULKNER—But how were you informed about what happened or didn't happen at the IDC?

Vice Adm. Shackleton—When I discussed, on the afternoon of the 8th, with Admiral Ritchie how the information had moved around, it was his advice to me that Air Vice Marshal Titheridge had phoned through to the chairman of that committee and provided the information in that way.

Senator FAULKNER—Do you regret now the statement that you made did not include some of the other elements that would have thrown considerable light on this issue, given that you made a decision to issue a clarifying statement? With the benefit of hindsight, do you regret that that clarifying statement did not go to the issues of the photographs, the video and the question of whether or not children had been thrown overboard?

Vice Adm. Shackleton—Absolutely not. That was not my place. The minister had made it quite clear that that kind of information, that sort of public announcement and those sorts of details would be handled by him and his office. This was not something I had any freedom to deal with.

Senator JACINTA COLLINS—How did you know that the advice to the minister had never been changed?

Vice Adm. Shackleton—Hendy made it quite clear to me.

Senator JACINTA COLLINS—Solely from Hendy?

Vice Adm. Shackleton—Hendy said to me that—I think I used the words in my paragraph 1422—that he could remember the minister being advised by Navy people of this incident and that at no time had the minister been told otherwise.

Senator JACINTA COLLINS—So you confirmed with Ritchie—perhaps others—the nature of the original advice to the minister?

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—Did you not confirm with anyone whether that original advice had been changed?

Vice Adm. Shackleton—Hendy was essentially telling me that the advice had not been changed. He was the chief of staff—

Senator JACINTA COLLINS—You didn't confirm with anyone in Defence?

Vice Adm. Shackleton—No.

Senator FAULKNER—But Admiral Ritchie and the others knew, didn't they—they knew within two days that—

Vice Adm. Shackleton—Well, no—

Senator FAULKNER—Just hear me out. They knew within two days that the initial advice was known to be unsubstantiated and they knew within two days that the photos were out and out frauds as they related to an issue of children having been thrown overboard. They knew that—all of them.

Vice Adm. Shackleton—Is that a question?

Senator FAULKNER—There is a question mark at the end there somewhere.

Senator JACINTA COLLINS—Admiral, I go back to an earlier point. You sought confirmation of what Hendy said to you in relation to the original advice to the minister. Why did you not seek confirmation that that advice had changed?

Vice Adm. Shackleton—Hendy's conversation with me as the chief of staff to the minister said that the minister had not been told that anything had changed.

Senator JACINTA COLLINS—He might as well have drafted your correction then, if that is the only advice you are relying on for not saying more in this statement other than that you are not contradicting the minister.

Vice Adm. Shackleton—I had no reason not to believe Hendy.

Senator JACINTA COLLINS—You checked that what he was saying about the original advice was the case.

Vice Adm. Shackleton—In my conversations with people that day, by the time I was talking to Ms McKenry about what that media statement would or would not say—and this is the position I keep coming back to—the minister had been told that there had been a child or children thrown over the side and that advice had not changed. Hence, I wanted to make it clear that I was not contradicting what the minister had said.

Senator JACINTA COLLINS—Admiral, before Senator Faulkner follows through—

CHAIR—I think Senator Brandis is keen to ask some questions.

Senator JACINTA COLLINS—There is just one more point on this statement that I want to ask you about. Did you have discussions with Captain Mal Wright in relation to making a correction?

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—Did you draft with him a correction?

Vice Adm. Shackleton—No. Captain Wright participated with Ms McKenry's staff in crafting the short statement and participated with them, but it was McKenry's advice that I took.

Senator JACINTA COLLINS—It is just that Ms McKenry's statement to the Powell report indicates that Captain Mal Wright had brought a statement that had been prepared in Navy headquarters down to her office; so before we got to public affairs, Navy had already prepared a statement. Did you not assist in the drafting of that statement?

Vice Adm. Shackleton—I was talking to my staff, saying, 'These are the kinds of words that I think ought to be put together,' but the PACC organisation is the place from where all of that is managed, so that is where they went to gain endorsement and to improve it as it was.

Senator JACINTA COLLINS—Could we have a copy of that original draft statement?

Vice Adm. Shackleton—I honestly could not tell you if it still exists.

Senator JACINTA COLLINS—It may, though. I presume a discussion with Captain Wright would easily unearth a copy of that statement if it still exists.

Vice Adm. Shackleton—It might.

Senator JACINTA COLLINS—Would you take that on notice, please?

Vice Adm. Shackleton—Yes, I will.

Senator BRANDIS—I want to take you back to your statement to the media on 8 November, when you were in Perth for the departure of the *Kanimbla* and the *Adelaide*. As I understood your evidence, and please correct me if I am wrong, you arrived at the view that you expressed in the doorstep—that is, that there was no truth to the claims that children had been thrown overboard—on the basis of two sources of information: what Banks told you and the video. Is that right?

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—Are those the only two sources of information that you used to come to that conclusion?

Vice Adm. Shackleton—No, I had a conversation with the Maritime Commander on the day preceding, and he said it was his opinion that there were no children thrown in the water.

Senator BRANDIS—Remind me: the Maritime Commander being?

Vice Adm. Shackleton—Admiral Smith.

Senator BRANDIS—So Smith expressed his own opinion to you, but he did not purport to speak as an eyewitness, of course; he was merely expressing a conclusion rather than advising you of any facts.

Vice Adm. Shackleton—The only eyewitness in this instance—should there be one—is Banks or a member of his ship's company.

Senator BRANDIS—Quite; that is my point. Of course I accept that you would give some weight to the opinion of Smith, but he was not an evidentiary source, was he?

Vice Adm. Shackleton—Except that I think he had telephoned and spoken to Banks at sea.

Senator BRANDIS—But so did you the next day, so that is kind of the same source, isn't it?

Vice Adm. Shackleton—Yes.

Senator BRANDIS—The video—and I do not think this is controversial—does not show a child being thrown into the water. I do not think that is in dispute. But nor does it purport to show the whole incident, and it only shows the SIEV4 from one side.

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—It is no evidence that a child was thrown into the water, of course, nor is it evidence that a child was not thrown into the water; it just does not tell you one way or another.

Vice Adm. Shackleton—Certainly from the video you would not say that a child had been thrown overboard.

Senator BRANDIS—Of course not. My point in a sense is the converse: certainly from the video you could not conclude to the contrary. It lends no evidentiary support to the proposition.

Vice Adm. Shackleton—Yes.

Senator BRANDIS—But it does not contradict it.

Vice Adm. Shackleton—Correct.

Senator BRANDIS—And then there is what Banks told you. Your words—I made a note of them—were that Banks was quite emphatic, and he said to you that there was no doubt in his mind that no children were thrown into the water.

Vice Adm. Shackleton—That is right.

Senator BRANDIS—And that presumably had a significant bearing upon the conclusion you then reached and subsequently expressed in the doorstep.

Vice Adm. Shackleton—My view was that he was the man on the spot dealing with all of the circumstances, and he had had time to review the evidence as it had been accumulated in the ship post the event, in slower time. His opinion was now quite strongly that there had been no children thrown in the water.

Senator BRANDIS—Were you at the time aware of, or had you in fact read, Banks's statement of 11 October?

Vice Adm. Shackleton—No, I have not.

Senator BRANDIS—In Commander Banks's statement of 11 October, he says:

I DID NOT SEE ANY CHILDREN IN THE WATER.

But he also says, and this is quoting from paragraph 21:

21. I HAVE SINCE BEEN QUESTIONED REPEATEDLY ABOUT THIS EVENT—

That is, the question of whether or not a child was thrown overboard—

(AND TO A LESSER EXTENT OTHERS) AND I AM NOW SO FULL OF CONFLICTING INFORMATION OF WHAT WAS SEEN AND HEARD BY OTHERS AND ME AND STATED BY OTHERS AND ME THAT IT IS DIFFICULT TO RECALL WITH ABSOLUTE VERACITY.

Memory is a funny thing. Often the distance from an event lends a greater certainty to the mind of the witness, but the closer to an event a recollection is recorded the more likely it is to be accurate because there is no element of reconstruction or reflection. That is a fairly common phenomenon that I am sure you would have found in your own career. Would you agree?

Vice Adm. Shackleton—In this instance, where the passage of time may have changed a perception, that is certainly possible.

Senator BRANDIS—What strikes me as noteworthy is that, when he spoke to you on 8 November, a month after the incident, Banks was much more certain than he was on 11 October, three days after the incident.

Vice Adm. Shackleton—There are conflicting parts of all of this, as I have said in my remarks and evidence elsewhere. Silverstone said that he recollected that Banks had said that there had been a child or children thrown over the side, and I know there are some questions about the veracity of that particular statement.

Senator BRANDIS—Can I interpolate, Admiral Shackleton, that it is more than Silverstone recollecting; he has a diary note.

Vice Adm. Shackleton—I was about to say that sitting in the comfort of an office, that is not rolling around in the ocean with other people trying to get your attention, is a place where you could expect to record more accurately what somebody may have said to you rather than somebody who was not taking notes and had only half a mind on the conversation that he was having with you.

Senator BRANDIS—Absolutely.

Vice Adm. Shackleton—As I think I have said, it does not surprise me at all that there is a conflict over this issue in terms of what did Banks say and what didn't Banks say.

Senator MASON—You would describe it, would you, as part of the 'fog of war'?

Vice Adm. Shackleton—That term has been used. I think there is every chance that Commander Banks may have said it; I think there is some chance equally that he may not have said it.

Senator BRANDIS—When you spoke of the 'fog of war' most eloquently in your evidence, and which you have repeated in your opening statement today:

It is fair to say that, often as not, you are dealing with millions of shades of grey and it is only as events start to get to a point of culmination that they start to form up into a real pattern ...

That is, I suppose, your description of the same phenomenon that others would call the 'fog of war'.

Vice Adm. Shackleton—It is. You have all kinds of information, some of which makes sense and some of which does not, and you have to make judgments on what you see at the time. Doing nothing is not an option.

Senator BRANDIS—In any event, we will put these questions to Commander Banks in due course. But the short point is that when you spoke to him on 8 November you had not read his statement of 11 October and you did not know what he said in that statement.

Vice Adm. Shackleton—That is correct.

Senator BRANDIS—Had you seen or were you aware when you spoke to Banks on 8 November of the statement made by the EOTS operator, Able Seaman Wade Theo Gerrits, on 7 October?

Vice Adm. Shackleton—No, I had not seen any of that statement.

Senator BRANDIS—In it, Able Seaman Gerrits says, among other things:

... I was on the Bridge manning EOTS ... During that time I witnessed and recorded ... SUNCS jumping off the SIEV by their own choice and I believe one child also went overboard.

You were unaware of that on 8 November?

Vice Adm. Shackleton—I was not aware of that particular statement. That is right.

Senator BRANDIS—Finally, by 8 November, had you had a conversation with Brigadier Silverstone about his conversation with Commander Banks of 7 October?

Vice Adm. Shackleton—No, I had no reason to talk to Brigadier Silverstone.

Senator FAULKNER—Vice Admiral, I would like to ask you about the ‘fog of war’, because I, too, am interested in this. I have read with interest what you said and I agree with Senator Brandis that what you said at the estimates committee about the ‘fog of war’ was most eloquent. Does the ‘fog of war’ lead one to a conclusion or suggestion that an initial report that you might receive from a commander—in this case it might be like Commander Banks, but someone at the frontline effectively—might often be incorrect or require further examination? Is that something that the ‘fog of war’ would lead you to be cautious about initial reports?

Vice Adm. Shackleton—Yes. Certainly if you know that the circumstances are very demanding and that the reports are what I would call ‘snapshots in time’, there is a reasonable probability that they will not be factually accurate.

Senator FAULKNER—Yes. So what kind of burden of proof do you think applies to corrections to commanders’ initial reports?

Vice Adm. Shackleton—They have the same burden of proof as to the formation of the original report in the first instance.

Senator FAULKNER—But what sort of evidence would you demand, given that you have stressed to us how cautious one needs to be about initial reports?

Vice Adm. Shackleton—I think you would be looking for correlation: you would be looking for events that make previous assertions, assumptions or statements have an increased degree of veracity. I am not sure where you are trying to get to, Senator.

Senator FAULKNER—I am interested in your view on this, because you raised with senators the issue of the ‘fog of war’. I am reminded about the CDF’s evidence and his statement—in which I think he described it as ‘a principle of war’—that the commander’s

initial report could only be contradicted by compelling evidence. There seems to be a bit of a difference here.

Vice Adm. Shackleton—I think what he means by compelling evidence is a reflection of the events and the synthesis of all of the information that you could provide for those circumstances, and the test would be: was the first statement was correct?

Senator FAULKNER—I have been told by people in Defence—and I am not an expert on this; I would not pretend to know—who basically support the view that you have expressed to this committee that a commander's initial report can only be contradicted by compelling evidence is basically a complete opposite to what every staff and command officer's working assumption might be. I do not know whether that is right or not but I am very interested, given the nature of the CDF's disparate views about the first reports, or what were allegedly the initial reports, from the *Adelaide*.

Vice Adm. Shackleton—We place great faith in our commanding officers to make calls as they see it and for those calls—by which I mean, reports—to be informed by all of their experience in interpreting the circumstances as they see them around them. So, when the report would have arrived with the CDF—and he obviously needs to speak for himself—he would have taken that report to have had great integrity and he would not have been easily persuaded to change that assessment, unless the commander himself was quite emphatic about it. But, even then, in the circumstances it is true to say that often the first call is the right call, even though doubts start to come into your mind later on. So I think CDF was presented with a real dilemma.

Senator BRANDIS—Admiral Shackleton, could I take up that very point, if I may. We speak about the first call being the right call, but the use of the word 'call' implies a judgment.

Vice Adm. Shackleton—Yes.

Senator BRANDIS—But here we are not talking about a judgment; what we are talking about is a description of what somebody saw, so the context which judgment requires is really irrelevant here. What is relevant is: did the man see what he says he saw or didn't he? Context which might affect judgment does not affect mere description. Would you accept that proposition?

Vice Adm. Shackleton—I think in these circumstances, where he would have been watching a boat with people moving around—and he may have seen something out of the corner of his eye or he may have seen something which he then said 'that represents somebody being thrown over the side'—I think that is both an observation and an assessment of what it meant. I think that there is a measure of judgment in that and it would have equally have been a measure of judgment as to whether he should report that at all.

Senator BRANDIS—Accepting what you say, as I do, nevertheless, whether it be an observation or an assessment, it is merely the description of an observed phenomenon—something somebody saw. And even though what he saw he may have seen imperfectly, the proposition I am putting to you is that he will never be in a better position to make that assessment or to say what he saw than he is at the moment he is seeing it.

Vice Adm. Shackleton—Agreed.

Senator BRANDIS—That is the distinction between narration and recollection. Narration does not depend upon memory and it does not depend upon reconstruction or it does not depend upon doubts, or a man working something over and over in his mind, whereas recollection does. Would you agree?

Vice Adm. Shackleton—I would agree with that.

Senator FAULKNER—Anyway, what I was trying to do—

CHAIR—I do not want to cut you off, Senator Faulkner, but we are getting into a situation where this is ping-ponging backwards and forwards, and I now want to clamp down a bit and give a bit of form to it. So let us finish off your questions, Senator Brandis, and let us do it without any interference from anyone else. Then let us go to the next questioner. I think we are getting down to ontological truth—whether you actually saw it or were you really dreaming! Commander Banks is waiting to come on.

Senator BARTLETT—Whether we all exist.

CHAIR—He is the person who was there; maybe these questions are best left to him. I am not saying they cannot be asked but, in weighing the value of them, maybe they are best left to him.

Senator FAULKNER—Mr Chairman, I thought there may well have been a different view about initial reports—and I still think there is—between Vice Admiral Shackleton and Admiral Barrie but the Defence experts can deal with that, and I certainly do not claim to be one of those. Vice Admiral, were any instructions issued by you, or the Navy, to Commander Banks and his crew before the Prime Minister's visit to HMAS *Adelaide*?

Vice Adm. Shackleton—None came from me and, as far as I am aware, there was none from anybody else either. I have interpreted that question in relation to this particular incident rather than any other form of instructions.

Senator FAULKNER—I was not specific because I was not sure what sort of instructions, if any, would have been given.

Vice Adm. Shackleton—The normal instructions would be related to matters of protocol and those kinds of things.

Senator FAULKNER—One of our terms of reference goes to the costs of the Pacific solution. Has the Navy been able to do a costing of Operation Relax?

Vice Adm. Shackleton—The Navy has been able to provide some estimates of the cost differential between what we had budgeted for under so-called normal circumstances and what we are finding our costs are in terms of the execution of the operation. So I cannot give you an

absolute cost of Operation Relex in a box per se. I am not quite sure where the estimates process is in terms of looking at what the difference is between now and then.

Senator FAULKNER—Are you able to provide that differential for the benefit of the committee?

Vice Adm. Shackleton—I would have to take advice on that.

Senator FAULKNER—If you wouldn't mind.

Vice Adm. Shackleton—By advice I mean I would have to seek the minister's agreement to table that.

Senator BARTLETT—Before I start my questions—I could have raised this point at the time but I did not want to be seen to be trying to interrupt the line of questioning—you mentioned before that people named adversely would be given the opportunity to respond. Can I clarify that that means the people on the various boats will get an opportunity to answer the allegations that were outlined today and the assertions that were made about their being evil people who engage in child abuse, moral blackmail and the like? It is a bit difficult when they are all locked away in a foreign land somewhere.

CHAIR—Outside of our jurisdiction—it is a bit difficult but, as I interpret the terms of reference, that is a relevant line of inquiry and we should apply our minds to how we conduct it.

Senator FERGUSON—Mr Chairman, I do not recall anybody referring to them as 'evil people'. Do you?

Senator BARTLETT—I do.

Senator JACINTA COLLINS—Yes, I do, Senator.

Senator BRANDIS—I think I did say that the conduct reported was evil.

Senator FERGUSON—If you heard them talk about evil people then perhaps you can repeat it.

Senator BARTLETT—Certainly I know the words 'moral blackmail' were used. Perhaps you can make a judgment and report about whether they should be condemned to hell, if that fits our terms of reference.

Senator JACINTA COLLINS—Such judgements are a positive, actually.

Senator BARTLETT—Can I ask briefly in terms of the other document that was brought forward by Senator Mason about the concern that was raised—quoting one of the people who survived the ship that sank—that there were Australian vessels in the vicinity that did nothing. Were you aware of that concern before we raised it today?

Vice Adm. Shackleton—Are you talking about the letter of 18 February from Mr Tony Kevin?

Senator BARTLETT—Yes.

Vice Adm. Shackleton—While I was aware that assertions had been made, that that event took place or that an Australian warship was close by, all of our records point to all of our ships being elsewhere doing other things.

Senator BARTLETT—So you had been aware of it previously and investigated it?

Vice Adm. Shackleton—When this allegation was made we checked all of our available information. There is nothing that indicates that we were closer than about 230 miles away.

Senator BARTLETT—Thank you. I appreciate that. It is handy to clarify that it had already been examined. We have heard, in the questions that have been put to you to date, about the impact on the crew's morale—I think 'morale' was the word used; you used another phrase like 'state of wellbeing' or 'psychological happiness'. Navy personnel had to witness children being dangled overboard and the like. This is a general question: I would be interested to know whether you have any comment on the impact on the satisfaction, if you like, of Navy personnel on the overall role they have now been given? As you said, it is a new style of operation; it is not something that Navy personnel are used to being involved in. I am not implying that Navy personnel collapse into a heap of tears every time they are faced with a difficult situation, but I presume that having to engage boats that are significantly overcrowded and marginally seaworthy with distressed people on board—women and children, and babies, in the case of SIEV4—would be difficult for them. Engaging with them generally, I presume, is something that would be fairly stressful for people.

Vice Adm. Shackleton—It is stressful and difficult. We have had to introduce new training to help equip our people to deal with it. We have not been used to this kind of close quarters work in the way that it is for quite some time. When the operation commenced we had not made sufficient preparations to deal with it. We were in catch-up mode insofar as the training of our people was concerned. We have now reached a point where that training is effective and it makes a difference with people being able to deal at such close quarters with people in these circumstances.

Senator BARTLETT—When was that training introduced?

Vice Adm. Shackleton—I would have to check.

Senator BARTLETT—After the SIEV4, for example?

Vice Adm. Shackleton—Can I get some advice on that?

Senator BARTLETT—Certainly. In your role as Chief of Navy, are you aware of dissatisfaction being expressed by Navy personnel, at whatever level, about having to perform this new role?

Vice Adm. Shackleton—There may well be a sense of dissatisfaction by people at the personal level, as other people in Australia themselves are entitled to their personal opinions, but the thing about the people in the Navy is that they have not allowed that to stand in the way of them doing their job.

Senator BARTLETT—I appreciate that probably in the Navy—or in the defence forces anyway—more than pretty much any other role in the country, people will follow orders regardless of how enthusiastic they are about them.

Vice Adm. Shackleton—I do not know whether the Navy follows orders any better than anybody else.

Senator BARTLETT—I will not engage in argument with you about that. Apart from the level of people personally thinking this is a bit rough, has there been concern expressed at a command level about the desirability of Navy being used in this way or the appropriateness of it in terms of that type of operation?

Vice Adm. Shackleton—I would not say at the command level. Obviously we are interested in the welfare of our people—and by ‘welfare’ I mean their wellbeing—and we do provide the opportunity for people to talk about their experiences to find a way to talk out that sense of upset or concern that they might have for the circumstances that they have found themselves in.

Senator BARTLETT—You talked at the start of your statement about your responsibility, including ensuring that the Navy is able to achieve its mission and being able to fight and win—obviously Navy is engaged in some other important tasks at the moment broader than the Pacific solution. How does the fact that the government is requiring the Navy to utilise some of its resources in this type of activity impact on your broader mission of being able to fight and win in other areas? Is it stretching your capacity?

Vice Adm. Shackleton—I would not—

Senator FERGUSON—Mr Chairman, if I can just intervene. I think this is getting very close to asking the admiral to comment on the Australian government’s policy—

ACTING CHAIR (Senator Brandis)—I am sorry, Senator Ferguson. Can we have the question again, Senator Bartlett, because Senator Cook—

Senator BARTLETT—We have lost a chair.

ACTING CHAIR—No, I am the acting chair. The chair is indisposed. Senator Bartlett, can I just hear the question again, so I can rule on it?

Senator BARTLETT—Sure. My question went to the admiral’s own comment about his responsibilities including ensuring that the Navy is able to achieve its mission of being able to fight and win, and it went to whether the fact that part of the Navy’s operations are being used in the Pacific solution had an impact on that overall mission in a negative way.

ACTING CHAIR—I think that is a permissible question. It is relevant to term of reference (d).

Senator FERGUSON—It has been rephrased slightly.

Senator JACINTA COLLINS—It is like an estimates question.

Senator FERGUSON—It has been rephrased, yes.

Vice Adm. Shackleton—The Navy has ways and means of working out how best to apply the resources against the tasks that we are given. In this instance, we have applied ships, people and helicopters to meet this task, and we are also meeting our obligations for ships in the Gulf and on occasion ships to go and arrest poachers down off Heard Island. It is fair to say that Navy is working quite hard, but so far we are able to meet our requirements, meet our obligations.

Senator BARTLETT—As I understand it, Navy vessels are still engaged in patrolling the waters in this region, even if the boats are not appearing at the moment.

Vice Adm. Shackleton—Yes, that is correct.

Senator BARTLETT—If this policy is to continue, this requirement for Navy to continue to do that, there have been comments, I think including from the current Minister for Defence, that you will need more resources. Is that the case? Part of what we are meant to look at is the costs across the board of the Pacific solution and, whilst I do not believe there has been any additional funding provided to Navy, obviously there are different definitions of the word ‘cost’ other than extra dollars and cents. If it is a long-term policy, is it—

Vice Adm. Shackleton—It depends on whether it becomes such a long-term activity. Obviously, we do provide ongoing advice to the minister about the cost of operations and the implications thereof—not just for the Navy but also for the Army, the Air Force and other elements of Defence. I think that that is done on a continuous basis. Right now, we have provided information to the minister on budget requirements, and that is being worked through the budget process.

Senator BARTLETT—I do not know if that came out in any of the estimates hearings, because I was not able to be at all of them. Mr Chair, would it be appropriate to ask the committee to request information from the minister on that point? I do not think it is appropriate to ask the vice admiral for it.

CHAIR—I missed the early part of what information you are asking for.

Senator BARTLETT—The advice that has been provided about costs and ongoing impacts in a budgetary sense.

CHAIR—I am sure that is within our purview.

Senator FERGUSON—It would have to be put to the minister.

Senator BARTLETT—Yes, that is why I am asking for us to do that. We have obviously seen an enormous amount of material about reports on the SIEV4 incident. Do all of the various SIEV incidents include that level of detail in reports of what happened at the time—that sort of minute-by-minute description?

Vice Adm. Shackleton—By and large, yes. The area where we might be different is in the amount of photography that we take.

Senator BARTLETT—That goes to my next question: are photos usually taken on these sorts of occasions, or was it because there was a rescue involved that there was extra—

Vice Adm. Shackleton—No. It depends on the availability of photography equipment, but our practice is to take pictures wherever we can.

Senator BARTLETT—You may not be the appropriate person to ask this—in which case, I am sure, you will let me know. Would that normally include assessment of the conditions of the boats and the conditions of the inhabitants—those sorts of details—as well?

Vice Adm. Shackleton—Yes.

Senator BARTLETT—In your opening statement, you talked about the line of command. In terms of the actual authority to make decisions, my understanding is that Commander Banks, in the SIEV4 example, would have needed authority to take people on board the *Adelaide*. If the vessel sank, he would obviously be required to rescue people if they were in the water. But, prior to that, did he need authority from somebody else before taking people on board the Navy vessel?

Vice Adm. Shackleton—No. His instructions would have been to turn the SIEV around and try to get it to leave Australian waters. Only if the boat had sunk or become uninhabitable, or for lifesaving reasons, would he then have taken them on board the ship—which is what he did, in the end.

Senator BARTLETT—If there had been a desire to vary those instructions, what would the process have been then? Would he have made a request back through—

Vice Adm. Shackleton—He would have called the commander of the joint task force, Brigadier Silverstone, who, depending on what he thought was the nature of the request, might then have asked Rear Admiral Smith, and there would have been a progressive working up the line, depending on the level and the magnitude of the change that was being sought.

Senator BARTLETT—Are you aware of the submissions the committee has received from the Iraqi detainees on Manus Island who were on SIEV4, about their descriptions?

Vice Adm. Shackleton—No.

Senator BARTLETT—I do not think that we have published that yet, so it is a bit hard to ask you questions about what is in it. I should assure you that the detainees are full of praise of the actions of the Navy personnel. I will just briefly refer to their statements here. Obviously I do not expect them to have a full understanding of Navy processes, but they say that the people from the *Adelaide* told them that they had to get permission from the Prime Minister's office before they could take them on board. That would be a misunderstanding, I presume; the Prime Minister's office would not be involved in any operational decision like that.

Vice Adm. Shackleton—There were times when the decision processes went all the way to the interdepartmental committee as to what action could be taken in regard to each particular incident. Each incident was treated separately and differently, and not necessarily as one that would become a precedent.

Senator BARTLETT—I might ask other officers about that in a bit more detail when we get to them. You have mentioned—and you had some questions from Senator Faulkner, so I will not go over that—the media statement or interview you did on 8 November.

Vice Adm. Shackleton—Yes.

Senator BARTLETT—We had earlier questioning today, which you may or may not have heard, of the secretary of the department about the media policy or communications policy that was in place at the time.

Vice Adm. Shackleton—Yes.

Senator BARTLETT—Was that statement you made in accordance with those administrative guidelines?

Vice Adm. Shackleton—Yes, it was. I asked that question myself. The minister was in Stirling—the naval base—at the time, and I checked to ensure that the authority to conduct the doorstep interview had in fact come the right way. I was told through my PACC adviser that that had been done properly.

Senator BARTLETT—Right. Again, you would not be aware of this because it has been received but not published yet, but we have had a submission from the parliamentary press gallery about this. I will not read the whole thing into the record and require us to table it now. There is concern expressed there about what they call a form of censorship—their words; I will not go into that. They talk about things like the refusal to allow reporters on to Navy vessels. Is that a normal practice? Obviously, you do not let them wander on and off as they desire but in a circumstance where the ship stopped in that case in November and they were prevented access would that normally be the case?

Vice Adm. Shackleton—I guess the answer is that it is fundamentally at the minister's direction. The DI(G) that Dr Hawke spoke about today—the Defence Instruction (General)—has been rewritten to accord with Minister Hill's preferences in regard to public affairs and communications generally, which are different from what they were when Minister Reith was the minister. Our preference, wherever we can, is to be open with the public, but the

circumstances are that you would not want to put information into a public place which placed you at risk with security, operational performance and suchlike.

Senator BARTLETT—Do you think there was a risk there in relation to security issues or operational performance?

Vice Adm. Shackleton—In relation to what, sorry?

Senator BARTLETT—In relation to the media wanting to get access to the vessel in November.

Vice Adm. Shackleton—Our practice would be that when we are conducting operations it would not be typical that the media be given live coverage of what we were doing.

Senator BARTLETT—Right. I understand that these instructions have now changed, so to some extent it is a redundant question but I think it is germane because of the terms of reference of our inquiry. Again, within this submission there is an allegation made—and it does not quote people, so there are the usual issues of unnamed sources—that suggests that people within Defence responsible for doctrine and training report frustration at getting accurate internal accounts of what was involved in the Navy blockade in the Indian Ocean because of the very strict communications requirements that had been put in place. They say that ‘the culture of secrecy’—and these are their words—‘has gone too far when it harms the force’s own ability to find out what its members are doing and disseminate information so lessons can be drawn’. Do you accept or reject the assessment that because of the tight control of the minister’s office it did actually get to the level of impeding accurate internal information flows?

Vice Adm. Shackleton—With every operation there is a degree of operational security. The minister’s instruction in relation to public dissemination of information, as I saw it, was not getting in the way of internal communication for the conduct of operations. You had one question earlier about the Operation Relex and its costings. What I can tell you is that we have estimated it will cost an additional \$19 million this financial year. The full cost will not be known, obviously, until the end of the financial year. These figures are in the portfolio budget statement.

Senator BARTLETT—On the final page of your statement you talk about your visits to the people on board the *Adelaide* and you state that they were concerned about the way in which their efforts with SIEV4 had been portrayed in the media. Could you elaborate a bit further on the nature or extent of those concerns? I put it all in one question to save time, but you go on to talk about Able Seaman Whittle, who I think was the woman in the photo, if that is correct.

Vice Adm. Shackleton—She was the sailor in the—yes.

Senator BARTLETT—I remember reading, on the front page of some newspaper, about her annoyance. My recollection is that her annoyance was more at the government than at the Navy, but I may be remembering it incorrectly. Could you outline in a bit more detail the nature of those concerns that people had?

Vice Adm. Shackleton—They felt that they were doing a good job—which they were—and I think they were somewhat taken aback by the rather high-profile media position that the ship

had assumed over this particular incident. From their perspective, they were doing their job—no more, no less—and they wondered whether the Navy was coming in for any kind of criticism because of any lack of their performance. My advice to them was that that was not the case and that *Adelaide's* reputation as a ship was in as good a shape as it had been. I spoke to Able Seaman Whittle about these matters. She has no complaint with the way that the Navy has been doing business in relation to her and, indeed, frankly was somewhat embarrassed to find the stories in the paper.

CHAIR—Able Seaman Whittle distinguished herself on the occasion. Is she being recommended for any award?

Vice Adm. Shackleton—I would have to wait and see what the commanding officer of the ship wants to do. We treat those things on a case-by-case basis and we treat them with quite a high degree of confidentiality because, as you can imagine, quite a number of people get put up for awards that do not actually come about for one reason or another. So we do not want individuals to be disappointed.

Senator BARTLETT—Could you outline a bit more broadly the nature of Operation Relex, just to clarify it for me? It basically started from the time of the *Tampa*, when the Navy was engaged in this new type of operation?

Vice Adm. Shackleton—It emerged out of the government policy which itself emerged as a consequence of *Tampa*, and it has been continuing since.

Senator BARTLETT—I do not have an expertise in these sorts of specifics in the Defence area at all, but, when you establish an operation, do you develop a brief with guidelines and command structures and relationships to various bodies like the people-smuggling task force and that sort of thing?

Vice Adm. Shackleton—All of that.

Senator BARTLETT—And that is all put together in a single—

Vice Adm. Shackleton—It is done at several levels. There is the Canberra strategic level, where the government's objectives and policy issues are factored into what degree of freedom the Defence Force has and how it might relate also to Customs and other people. At the operational level, where Rear Admiral Ritchie is responsible, he would plan the operation in considerably more detail than we would here in Canberra. Then the Maritime Commander, being the lead component commander, would plan out his part of this and issue instructions in relation to everything from which ships are to be on station and when to providing directions in terms of where to patrol—which might be based on some intelligence or not—and the day-to-day management of the issues as they emerge.

Senator BARTLETT—Are there any particularly unique features of Operation Relex compared with other interception incidents, like the example you have given of the illegal fishing, for instance?

Vice Adm. Shackleton—The high degree of close contact with other people is what typifies this particular operation, but the Navy has not been in that business for quite some time.

Senator BARTLETT—This is the final area that I want to touch on briefly. Again, this is in another submission we have got that we have not published yet, but it talks about a media report from last year, so it probably does not matter. It refers to a media report purporting to quote sailors who were on the *Manoora*, detailing a range of alleged incidents—fairly strong allegations of misbehaviour on the part of various boat people on board. It talked about a total of 36 hours of video footage showing riots, fights and ship damage taken by maritime command for review and evidence. Are you aware of that footage and whether there has been an investigation into that within the Navy?

Vice Adm. Shackleton—What kind of investigation do you mean, Senator?

Senator BARTLETT—According to this:

The *Daily Telegraph* on 15 October last year reported that the Navy would investigate claims sailors on board the *Manoora* were assaulted by asylum seekers and, according to Mr Reith's spokesperson, the Navy would report to the minister when an inquiry was completed.

Are you aware of an inquiry?

Vice Adm. Shackleton—I do not remember the specifics of that. We certainly were keeping records, obviously, as the event unfolded and would have provided advice to the minister, although I cannot remember the specifics of what we said. There was some minor damage to the ship and it was quite difficult in terms of dealing with the people, which you would have seen on the media in the same way that a lot of other people did. Other than that, the ship was doing its job and did it well.

Senator BARTLETT—The term 'inquiry' was used by the minister's spokesperson but, whether it is an inquiry or just a report, was that done and provided to the minister's office? If it has, could we get the details of when that was provided and what sort of form it took?

Vice Adm. Shackleton—It may well have been a verbal report that said that there was nothing else to report, but we can check to see what the minister's office did ask of us and what we provided.

You had a question earlier about boarding party training, which is the training that we had introduce having now become involved in this kind of operation. Without trying to make it too technical, this kind of training was in the sort of training we provided to ships where we tried to work them up to the maximum level of operational capability. There are degrees to which we will work ships up, depending on the nature of the circumstances that they will find themselves in, but I think the person who is better able to describe this to you and give you the detail you want is Admiral Smith, who is the Maritime Commander.

Senator BARTLETT—Thank you, I will do that. Touching on this a little bit further, if statements by Navy personnel—sailors et cetera—were felt to have violated to the prohibition

contained in the administrative instructions about publicity et cetera, who would follow that up? Would that be something that you would ask to be followed up or is that done through—

Vice Adm. Shackleton—If there were sufficient evidence to identify who it was who had transgressed that particular Defence instruction, then I would probably instruct somebody to ask the individual the reasons why they did it. Or, another commander, such as the Maritime Commander, may take that initiative on his own.

Senator BARTLETT—You may need to take this on notice. The submission I was quoting from before talks about an article on 13 October last year on the front page of the *Daily Telegraph* about what was supposedly happening on the *Manoora*. It purports to quote sailors detailing suggestions that boat people had deliberately broken the arm of one of the girls on board, that there was covert surveillance of someone believed to be an agent with connections to Osama bin Laden and that a woman had tried to throw her daughter over the side of a landing craft. It then talked about the 36 hours of video footage of riots and fights and ship damage. Firstly, that sort of thing would, I think, contravene these instructions. Do you know or could you find out if there was any attempt to follow up that sort of release of information to the media?

Vice Adm. Shackleton—It depends on how the media got that information—whether it was just simply buying a sailor a beer down at the pub in Sydney or whether it was a deliberate statement, with forethought, provided by somebody else. My understanding of that particular incident was that it was journalists buying sailors a few beers to ask them what they did.

Senator BARTLETT—Do you follow up those sorts of examples?

Vice Adm. Shackleton—No, I would not.

Senator BARTLETT—Is that because you do not think it is important?

Vice Adm. Shackleton—If I followed up every media story about the Navy, I would never do anything else.

Senator BARTLETT—I know the feeling. Leaving aside the breach of guidelines, in terms of that particular story, are you the best person to ask about whether those allegations about those various events can be confirmed?

Vice Adm. Shackleton—I think you should ask Admiral Smith to describe those circumstances. I am sure he can give you a full description of them.

Senator BARTLETT—My final question goes to COMAST—that is Commander Australian Theatre, isn't it?

Vice Adm. Shackleton—That is Admiral Ritchie.

Senator BARTLETT—So, to some extent, I could ask him. But, given your role as Chief of Navy, I think it is relevant. It is about a brief in relation to requests from the Prime Minister

about the feasibility of the *Adelaide* taking a bunch of boat people—the SIEV4 people specifically—from Christmas Island to Cocos Islands. It details some concerns regarding transportation, not least of which are that you would exceed the life raft capacity of the vessel and a lot of hygiene problems. Obviously, that transportation did not go ahead but, nonetheless, the *Adelaide* had to take on board all of these people.

Those sorts of elements are obviously a potential issue with any vessel that is intercepted. How does the Navy deal with that problem—that with potentially every vessel they intercept they may end up having to exceed their life raft capacity? I understand that was one of the problems with the *Manoora*—it was not really set up for having a lot of people who were not personnel on board for a long period of time in terms of showers, toilets and the like.

Vice Adm. Shackleton—Typically, in terms of our lifesaving equipment, we carry about 110 per cent of what we think we might use, so there is some redundancy in that. In these cases, we would make a calculated risk as to what the size of the group of people was, how far we had to go, what the weather conditions were going to be like, what the material state of the ship was, and then make a decision after we had considered all of that.

Senator BARTLETT—But the fact is that, with potentially every vessel that is out there, every Navy ship that intercepts the vessel may be put in these sorts of circumstances.

Vice Adm. Shackleton—I would have to check, Senator, but it may well be that we are now carrying more life rafts than we had in the past.

Senator BARTLETT—If you could, that would be handy. That will do me.

Senator JACINTA COLLINS—Vice Admiral Shackleton, firstly I would like to go back to some of the issues you covered with Senator Cook. Please correct me if my understanding is not accurate, but Senator Cook asked you whether this operation had involved changes in operational imperatives, and you indicated no. Is that the case?

Vice Adm. Shackleton—Sorry, I was distracted, Senator. Could you run the question past me again?

Senator JACINTA COLLINS—Senator Cook asked whether there had been changes in the operational imperatives in this operation and you indicated, no, that was not the case.

Vice Adm. Shackleton—When you say ‘operational imperatives’—I thought you were asking me whether we had made changes to the way in which we did business.

CHAIR—I think I asked firstly about the rules of engagement and you indicated that you were not the appropriate person. Then I think I asked you if you would be in a position to comment on an element of the rules of engagement, and you said maybe. Then I think I put, in colloquial form, the question that—

Vice Adm. Shackleton—That is right—about people over the side and the like.

CHAIR—Was it in the rules of engagement that the Navy would wait for a vessel to sink before it would collect people from the ocean, or would it collect them—

Senator JACINTA COLLINS—And you indicated no.

CHAIR—if they were in imminent danger of sinking?

Vice Adm. Shackleton—I put the answer in the context of no in that when people are confronting a life-threatening set of circumstances and if the ship were clearly foundering, as did SIEV4 before it finally sank, then we would take people off the ship as it happened.

Senator JACINTA COLLINS—I would like to take you to Commander Banks's statement. He indicates that the decision to retain SUNCs in the SIEV for as long as possible was a deliberate strategy. Until a genuine safety of life at sea situation existed, SUNCs were not to be embarked in the *Adelaide*.

Vice Adm. Shackleton—That is right.

Senator JACINTA COLLINS—How longstanding is that deliberate strategy?

Vice Adm. Shackleton—I cannot give you the exact detail on that, but Air Vice Marshal Titheridge, Rear Admiral Ritchie or Rear Admiral Smith could. It probably came about right at the beginning of this operation.

Senator JACINTA COLLINS—Earlier today—and I will come to this a bit later as well—we were talking about an escalation in the behaviour of SUNCs. Has there also been an escalation in the behaviour of the Australian Navy?

Vice Adm. Shackleton—No. In order to meet the objectives, the intention was always, as far as is possible, to prevent the vessels sinking so that they could then be seaworthy enough to take them back to Indonesia.

Senator JACINTA COLLINS—Yes, but, as Commander Banks describes, there was a deliberate strategy to retain SUNCs in the SIEV for as long as possible. How longstanding was that strategy?

Vice Adm. Shackleton—Like I said, it probably came about as soon as we started doing this, and it would have been one of the rules of engagement, I imagine.

Senator JACINTA COLLINS—Of this mission?

Vice Adm. Shackleton—Yes. I cannot give you the exact answer to the question that you asked, but one of the other witnesses can.

Senator JACINTA COLLINS—I also want to take you to another issue related to this, because I think it draws out the problem between the Navy's role in implementing the government's policy and the Navy's role in dealing with situations of safety of life at sea. In

Brigadier Silverstone's statement, in discussion about the photos in their proper context, namely in involving sailors at sea in the rescue of SUNCs—I wish I could avoid using that word, but we would be here forever and a day if I elaborated each time—Brigadier Silverstone indicates a concern that 'some might say that through the ADF's intervention we have placed the SIEV and its occupants in danger'. Can you think of what Brigadier Silverstone might be referring to when he says that some might be concerned that the SIEV was put in danger by the actions of the ADF?

Vice Adm. Shackleton—I could only think he may be thinking about the public perception. It has never been our intent to put anybody in danger. We will obviously let the circumstances evolve as far as we think is prudent and safe, but, in the end, the majority of these vessels have been burnt or sunk or destroyed by their occupants.

Senator JACINTA COLLINS—In fact, Admiral Barrie himself reinforces this point in his statement. He indicates:

In the discussion with Mr Moore-Wilton who had wanted all the persons in the water to be placed in the HMAS ADELAIDE I made the point emphatically that we could not guarantee that all these people would end up in the ADELAIDE, rather, I insisted, our first priority was to use all available assets including support from Christmas Island to save lives by rescuing people from the sea.

This very high level discussion between Mr Moore-Wilton and Admiral Barrie, I think, highlights that tension, but are you aware of that tension at a number of other levels within the Navy?

Vice Adm. Shackleton—No, but there will obviously be a tension, because the commander at sea—the captain of the ship—is trying to follow through on his mission, which means keeping the SIEV afloat and serviceable for as long as he can, which might mean preventing people setting fire to it, damaging it, or in some other way disabling it, but he knows, ultimately, he may have to pick those people out of the water.

Senator JACINTA COLLINS—You say 'pick them out of the water', why not out of the sinking SIEV?

Vice Adm. Shackleton—That may well be the same thing.

Senator JACINTA COLLINS—This is one of the issues that I think is going to be an ongoing concern for this committee, because it does not seem as though it is one and the same thing. We have some submissions indicating that Navy has instructions to wait until people are in the water; we have Commander Banks's statement that it was a deliberate strategy to keep people on the SIEV for long as possible; and we also have—and this is a further piece of evidence relevant here—a report, which I think is the log of the boarding party on the *Adelaide*, which seems to corroborate the view put by asylum seekers that the Prime Minister's imprimatur was necessary before certain actions could be taken. In this boarding party log, for instance, at the time in which the SIEV was to be taken on tow—it is hard to trace the dates on these documents—we have an indication that the CO advised 'approval from PM of Australia to tow vessel to place to be determined'.

Vice Adm. Shackleton—I do not know that we have been operating under the personal direction of the Prime Minister. The CDF is the guy that gives the orders. He may have been receiving instructions from elsewhere, but—

Senator JACINTA COLLINS—I think that that earlier comment I referred to about the discussion with Mr Moore-Wilton and Admiral Barrie reinforces that point.

Vice Adm. Shackleton—Frankly, I do not think anybody in the boarding party was in any position to know who was giving any orders. They work for the captain of the ship, not the Prime Minister per se.

Senator JACINTA COLLINS—Precisely, but this is an indication that right down at the level of your seamen, there is this impression that the Prime Minister is pulling these levers.

Vice Adm. Shackleton—That may well be their impression, but they have plenty of impressions about who is pulling all kinds of levers. So I really cannot counter what you say.

Senator JACINTA COLLINS—Let us trace it back the other way, then. We have the boarding party which, from this evidence here, indicates that the commanding officer has advised approval from the PM of Australia to tow the vessel. We go to the commanding officer. The commanding officer indicates that it is a deliberate strategy to keep people on the SIEV for as long as possible.

Vice Adm. Shackleton—It was.

Senator JACINTA COLLINS—Then you go right up to Admiral Barrie, who indicates he had what looked like reasonably terse discussions with Mr Max Moore-Wilton—

Senator BRANDIS—Oh, come on Senator Collins!

Senator JACINTA COLLINS—I will read the exact words again for you.

Senator BRANDIS—‘Reasonably terse discussions’—Senator Collins, honestly and truly, don’t you think it is about time to stop improving the evidence?

Senator JACINTA COLLINS—Let us go back to the words:

In the discussion with Mr Moore-Wilton who had wanted all the personnel in the water to be placed in HMAS ADELAIDE. I made the point emphatically that we could not guarantee that all these people would end up in the ADELAIDE, rather, I insisted, our first priority was to use all available assets including support from Christmas Island to save lives by rescuing people from the sea.

If you want me to do the longhand version right through the next several weeks, I am happy to, Senator.

CHAIR—You do not need to reply, Senator.

Senator BRANDIS—I am not proposing to.

Senator JACINTA COLLINS—All of this information seems to indicate that, to my mind, there is a significant tension between those two imperatives: implementing government policy versus safety of life at sea situations.

Vice Adm. Shackleton—No, Senator, it would be quite clear to the individual on the scene, in that he will interpret the circumstances as he sees them but he ultimately knows, when it comes down to a lifesaving set of circumstances, that that is what he will do.

Senator JACINTA COLLINS—Let us go to that point, then, because I wanted to follow up on that point after we had addressed what I would refer to as the Titheridge report—the report that Senator Brandis went through in quite some detail with you. You mentioned in that discussion that you were aware of a report that was organised a bit differently or something—I cannot recall your exact words.

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—What did you mean, then?

Vice Adm. Shackleton—The information that was in the Titheridge report was also contained in a report that had been generated and prepared by the Maritime Commander. It had been slightly restructured, I think, in the Titheridge report to have a chronological sequence to it, rather than the structure of the maritime command report, which was more event by event.

Senator JACINTA COLLINS—What is the difference, in your mind, between ‘chronological’ and ‘event by event’?

Vice Adm. Shackleton—In this document here we are looking at incidents for each ship. For instance, if you go to enclosure 2 of HMAS *Arunta*, it is broken down into incidents: Incident One, Two, Three, Four and Five. I would have to check, but I think the one that came from the maritime command was instead structured in terms of SIEV 1, 2, 3, 4 and 5.

Senator JACINTA COLLINS—Could you provide us with a copy of the report from maritime command that you are referring to?

Vice Adm. Shackleton—I think I can, yes.

Senator JACINTA COLLINS—Did that report deal solely with child incidents or did it deal with other matters as well?

Vice Adm. Shackleton—We asked the Maritime Commander to report on any incident where a child was actually being dropped or thrown and any incident where a child had been threatened to be thrown or dropped.

Senator JACINTA COLLINS—So it also does not go to the broader behaviour of asylum seekers that we were discussing earlier—threats to selfharm, other issues?

Vice Adm. Shackleton—This is children only, but I am sure that when you talk to the Maritime Commander he can give you all the details of each event.

Senator JACINTA COLLINS—Yes, I know. I appreciate that. For instance, the logs of SIEV4 give you fairly good detail once you see all of the incidents together, not just these child only incidents. It gives you a much better feel for what was happening at the time. Admiral, further to the discussion on the Titheridge report, on how many occasions are you aware of a child or children being put over the side?

Vice Adm. Shackleton—Do you mean dangled? Dropped?

Senator JACINTA COLLINS—Into the water.

Vice Adm. Shackleton—You are going to have to be more specific, Senator—whether they jumped, whether they jumped into the water when somebody else was holding them or whether they ended up in the water because the boat sank?

Senator JACINTA COLLINS—That is an interesting point also, but let us deal with it from the asylum seeker end at the moment. On how many occasions did a child end up in the water through actions of either itself, other asylum seekers or crew of a SIEV?

Vice Adm. Shackleton—Senator, I will have to get somebody to go through the report and do some calculations for you.

Senator JACINTA COLLINS—From the Titheridge report it is fairly obvious to me on reading it for just half an hour that it was one.

Senator BRANDIS—Point of order, Mr Chairman: that puts a completely misleading proposition to the witness.

Senator JACINTA COLLINS—Senator Brandis, you have put enough misleading propositions to the witness and you have had ample time to do it.

Senator BRANDIS—Let me state my point of order.

Senator JACINTA COLLINS—No. I didn't interrupt you.

CHAIR—The meeting will come to order.

Senator BRANDIS—Let me state my point of order please, Mr Chairman.

CHAIR—Senator Brandis, you have a point of order.

Senator BRANDIS—Senator Collins directed a question to the witness in what I took to be deliberately vague words. She asked, 'On how many occasions does the Titheridge report indicate a child ended up in the water?' Admiral Shackleton, perfectly properly, said that he would have to go through it and consider it. And then Senator Collins asserted, quite forcefully,

that it indicated one. The Titheridge report, as it is now being called—it is in fact a briefing minute—indicates but one instance where a child, to use Senator Collins's words, 'ended up in the water'.

CHAIR—Can I ask you what your point of order is?

Senator BRANDIS—The point of order is that the assertion that has just been made to the witness for his comment in an interrogative way is simply false—plainly false.

CHAIR—If I have to worry about which questions are false then it opens up an entire Pandora's box. We have rocked along this afternoon and we are getting towards the end of a long and tedious session. I blame no-one for that; it is the nature of these proceedings, I imagine. No doubt everyone is getting a bit edgy, but we are coming to the end—we have an hour and a bit to go before we break for dinner. In these proceedings I have tried to give everybody a fairly loose rein so that there is no inhibition on people asking questions. I have been tolerant about that. I would rather be like that than at the end of the proceedings have someone believe that they had a burning question which I as the chairman did not enable them to ask. I will allow the question and we will proceed.

Vice Adm. Shackleton—I have some other information, if I could interrupt your flow. There was a question earlier on life rafts and capacities. I am advised that we have 150 per cent of life-saving capability on board, and at no time have we exceeded the lifesaving capacity of any of the vessels on which we have had survivors. In relation to the draft press release, which I think Senator Collins or Senator Faulkner asked about, there was no draft per se; it was done on a computer screen. It was changed from a draft to a final and it came out the way it did. It was done in conference with people sitting around a computer and talking to me on the telephone.

Senator FAULKNER—Do we know who was in the conference?

Vice Adm. Shackleton—In the conference I think there were Mr Murray Domney, David Spouse, Brian Humphreys, Jenny McKenry and Captain Wright.

Senator FAULKNER—And are the non-defence personnel all officers of the Department of Defence?

Vice Adm. Shackleton—Certainly the names that I recognise there are all Defence officers, yes.

Senator JACINTA COLLINS—I should have originally put fully on the record the statement made by Ms McKenry so you may need to reconsider the advice you have been given there in the context of what I will read to you now, because it still does not seem consistent with Ms McKenry's evidence, which is the concern. I will try to read all of the appropriate section here.

Vice Adm. Shackleton—Sorry, what page is that, Senator?

Senator JACINTA COLLINS—Do you have Ms McKenry's statement to the Powell report?

Vice Adm. Shackleton—No.

Senator JACINTA COLLINS—It says:

Alan Hawke advised me that the government was advised that children were thrown overboard. Peter Hendy contacted me and said he believed there needed to be a clarifying statement by CN and that he would leave that to us. He asked that a copy of the statement be sent to Arthur Sinodinos in the PM's office. In the interim CAPT Mal Wright brought a statement that had been prepared in Navy Headquarters down to my office.

Vice Adm. Shackleton—I guess we will have to bounce that against the latest advice and get back to you with some third advice.

Senator JACINTA COLLINS—Let me read you the full bit of this relevant section so that we do not need to do this again:

It did not accurately address advice to the Minister re children being thrown overboard. With Mal Wright, Brian Humphreys and David Spouse in a room I contacted CN on his mobile and walked him through a short statement that addressed the issue of previous advice to the Minister.

So it sounds like your advice there pertains to the second component of the situation being referred to by Ms McKenry, but not the first.

Vice Adm. Shackleton—Yes. I guess in that case I never saw the draft. As I say, I do not know if there is one that exists. I think I am reading from the same paper that you are reading from.

Senator JACINTA COLLINS—But did you talk to Captain Wright?

Vice Adm. Shackleton—Captain Wright was certainly part of the conversation I had with Ms McKenry, because it was—

Senator JACINTA COLLINS—But previously to that?

Vice Adm. Shackleton—I may well have done.

Senator JACINTA COLLINS—So there may well have been an initial draft arising from a discussion between yourself and Captain Wright, which he then took to Ms McKenry's office?

Vice Adm. Shackleton—I could ask.

Senator JACINTA COLLINS—Was there additional information—

Vice Adm. Shackleton—No.

Senator JACINTA COLLINS—or are we back to where we were? Perhaps it will make it easier if I rephrase the question. In enclosure 6 there is reference to an incident where a woman dropped a child into the water. Aside from this incident and aside from children ending up in the water once their boat had sunk, are there any other incidents that you are aware of where the child ended up in the water?

Vice Adm. Shackleton—My initial answer is I am not sure, but I would like to check. I am not trying to be difficult but I come back to the point about how they actually got into the water in the first place.

Senator JACINTA COLLINS—Yes. Well, we went through this document in a fairly detailed way earlier.

Senator BRANDIS—SIEV10—

Senator JACINTA COLLINS—That was after their ship had sunk.

Senator BRANDIS—Thirty-three from SIEV10 ended up in the water after they sank the ship.

Senator JACINTA COLLINS—You have had your turn, Senator Brandis, for goodness sake!

CHAIR—Order! Senator Collins has the call. Proceed, Senator Collins.

Senator JACINTA COLLINS—So, Admiral, from having gone through this document in a fair amount of detail earlier today, is there another such incident that I have overlooked?

Vice Adm. Shackleton—Probably not, given that these reports are all pertaining to incidents where these sorts of incidents were specifically asked for—in terms of ‘Tell us about incidents where children were involved?’ and this is the result of that work.

Senator JACINTA COLLINS—We go on to the next issue, which is children in the water as a result of their ship sinking. There is some suggestion in relation to the case of SIEV4 from Commander Banks’s statement that it is not clear that it was actually sabotage that led to that boat sinking. But it is also obvious from the photography involved that those people, including children, were allowed to get to the stage where they ended up in the water before they were saved. Can you respond to the statement by the asylum seekers which is that they are being made to enter the water before the safety of life at sea situation is being addressed by the Navy?

Vice Adm. Shackleton—That does not sound right to me. If there is a safety of life at sea situation, I would expect the commanding officer to deal with whatever he has to deal with. It is his judgment in the end. It is his judgment as to whether a safety of life at sea situation exists or does not. Sometimes that will get you right down to a boat looking pretty shaky, and it may not sink. Some of these things float with a very low freeboard. It is very much his call.

Senator JACINTA COLLINS—Can it get down to the situation of people’s lives still not being at risk if they are in the water and there is a big ship next to them from which people are able to jump in and save them?

Vice Adm. Shackleton—If they are in the water and their boat is still floating, we will pick them up and put them back on their boat.

Senator JACINTA COLLINS—What if their boat is three-fifths submerged?

Vice Adm. Shackleton—If it is still floating and it is not sinking, we will put them back on their boat.

Senator JACINTA COLLINS—So how do you define when a ship is sinking?

Vice Adm. Shackleton—When it is going under the water.

Senator JACINTA COLLINS—To what level?

Vice Adm. Shackleton—It depends entirely upon the circumstances. If there is a swell—if there are waves—and the boat has low freeboard and it is taking water over the side and you can see that it is progressively getting lower in the water, you have a boat that is sinking on you.

Senator JACINTA COLLINS—Was the boat sinking in the SIEV10 incident, when the children were taken with adults into the water?

Vice Adm. Shackleton—What enclosure number are we looking at, please?

Senator JACINTA COLLINS—Because the order of this is not quite clear, I am going to have to struggle to find that too. But Senator Brandis kindly told me it was SIEV10.

Senator BRANDIS—It is in enclosure 5.

Senator JACINTA COLLINS—It is in 5.

Vice Adm. Shackleton—It says here that the people abandoned ship en masse. I would have to go and ask who was there at the time, or whether the Maritime Commander had more evidence as to what the state of the boat was at the time. It says here ‘as a result of the torching and subsequent sinking’, which says to me that they sabotaged it.

Senator JACINTA COLLINS—It says that 33 children under the age of 12 were recovered from the water, but what it is not clear about is when these children actually entered the water—at what stage.

Vice Adm. Shackleton—They may well have jumped off the boat to get away from the fire that they had started.

Senator JACINTA COLLINS—Yes. Alternatively, for instance, in the case of SIEV4, they may well have been taken into the water to get away from a boat that was about to sink. You would not want to drag them under the water, which is why one of the crew from the *Adelaide* jumped into the water, as I recall.

Vice Adm. Shackleton—But you have the same set of circumstances: the boat is sinking.

Senator JACINTA COLLINS—Pardon?

Vice Adm. Shackleton—The boat was uninhabitable; they had started a fire.

Senator JACINTA COLLINS—Yes, but if you are a parent with a child, you do not want that child to drown and you are on a ship that is sinking then would you not try to take that child away from where it is possibly going to be drawn down with the ship?

Vice Adm. Shackleton—Of course.

Senator JACINTA COLLINS—Of course. So you would take that child into the water at a relatively early stage to ensure that the child would not be drawn down with the ship?

Vice Adm. Shackleton—I think that, in the case of these particular sized vessels, the chance of that happening would have been low. But you as a parent would also be making a decision as to when you jumped into the water.

Senator JACINTA COLLINS—That is right; that, too.

Vice Adm. Shackleton—And that is the decision of the individual.

Senator JACINTA COLLINS—As I understand it, one of the crew of the *Adelaide* actually jumped into the water because they were fearful of that occurrence.

Vice Adm. Shackleton—As I understand it, they jumped into the water to rescue people who were already in the water.

Senator JACINTA COLLINS—Yes, but too close to the ship that was becoming submerged.

Vice Adm. Shackleton—I do not have that detail with me.

Senator JACINTA COLLINS—Okay. Do you know on how many occasions children have ended up in the water as a result of this government strategy?

Senator BRANDIS—For goodness' sake, why do you use a deliberately vague expression such as 'ended up in the water', when it is perfectly clear to you, Senator Collins, from your own questions that there are a variety of causal factors here and a variety of methods by which this has happened?

Senator JACINTA COLLINS—There was only one occasion when a child was put in the water by an asylum seeker—one occasion. On the rest of the occasions children ended up in the water when their ship was sinking—

Senator MASON—When they sank their own boats, Senator Collins.

CHAIR—Order! Senator Collins has the call. I do not have a point of order in front of me.

Senator JACINTA COLLINS—And we have the evidence from Commander Banks that the decision to retain SUNCs in a SIEV for as long as possible was a deliberate strategy, and it was a deliberate government strategy.

Senator FERGUSON—Mr Chairman, on a point of order: it is not in order for the senator to ask the vice admiral to comment on government policy. One of the stipulations you made at the start of this hearing was that witnesses are not to be asked questions on government policy.

Senator JACINTA COLLINS—It is not a question on government policy, Senator.

Senator FERGUSON—It is.

Senator JACINTA COLLINS—No, it is not.

CHAIR—It is true, Vice Admiral, that you are not to answer questions on government policy, but you may be asked questions about what led to the government policy. I read out the process at the beginning.

Senator FERGUSON—I think it is a question on government policy, Mr Chairman, with due respect, from the way it was framed.

CHAIR—I note the point of order; I think you can proceed, Senator Collins.

Senator JACINTA COLLINS—Vice Admiral Shackleton, we have covered the point of the tension between Navy's role in implementing government policy and Navy's role in dealing with safety of life at sea issues.

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—To get over Senator Ferguson's point, let me ask this question in another way: as a result of a deliberate strategy to leave asylum seekers on these SIEVs for as long as possible, on how many occasions did that result in children ending up in the water?

Vice Adm. Shackleton—From my notes, there are three SIEVs which sank as a result of the actions by the people on those boats sabotaging them to the point where they burnt and sank.

Senator JACINTA COLLINS—Which were they, Vice Admiral?

Vice Adm. Shackleton—I think they were SIEVs 4, 7 and 10.

Senator JACINTA COLLINS—SIEV4 is questionable, though, isn't it?

Vice Adm. Shackleton—No, not from our perspective.

Senator BRANDIS—Hardly!

Senator JACINTA COLLINS—It is from some of the evidence in the statements. You should read some of it.

Vice Adm. Shackleton—My understanding is that, in the case of SIEV7, a child was dangled and either dropped or thrown—and that is debatable.

Senator JACINTA COLLINS—Yes.

Vice Adm. Shackleton—There is SIEV10, which burned and sank. I think somebody said that 33 children under the age of 12 were recovered from the water by *Wollongong* and the Customs vessel.

Senator JACINTA COLLINS—So there were 33 on SIEV10; there were I cannot recall how many on SIEV4, but I think quite a number of children ended up in the water on that occasion; and was it only the one from the SIEV7 incident or did children end up in the water later?

Vice Adm. Shackleton—I will have to go through and look at the numbers again.

Senator JACINTA COLLINS—Vice Admiral, are you aware of any other incidents where the safety of asylum seekers became an issue in the Navy's dealing with SIEV incidents?

Vice Adm. Shackleton—The safety of these people is always an issue for the Navy.

Senator JACINTA COLLINS—We have the child incidents; are you aware of other incidents where there has been, for want of a better word, a negative result from Navy's handling of these cases in terms of the safety of the asylum seekers?

Vice Adm. Shackleton—Frankly, I do not know what you mean by the question, because at no time have these people been threatened, in a safety sense, by Navy's actions. But your question seems to be saying that they have.

Senator JACINTA COLLINS—No, I am not saying that at all.

Vice Adm. Shackleton—Could you please give me the question again.

Senator JACINTA COLLINS—Have there been any injuries or deaths from these SIEV incidents?

Vice Adm. Shackleton—There were two deaths; I am not sure about injuries.

Senator JACINTA COLLINS—So there have been two deaths. What incident did that relate to?

Vice Adm. Shackleton—SIEV10, which burnt and sank.

Senator JACINTA COLLINS—In the SIEV10 incident, do we know for how long that ship was sinking?

Vice Adm. Shackleton—Senator, I do not have the figures and facts in front of me, but the Maritime Commander, who is sitting behind me, does. Is it appropriate to bring him to the table at this stage?

Senator JACINTA COLLINS—He is a witness a bit later. Are you suggesting that I go through the detail of this with him?

Vice Adm. Shackleton—I am. I can get some written notes from him, if it satisfies your immediate needs.

Senator JACINTA COLLINS—I am happy to wait until I talk to him, because I want to be able to go into some very clear detail. You alluded to something a moment ago, and I want to be very clear that there is no misunderstanding on that point. I am in no way suggesting that the behaviour of the Navy has been anything other than admirable in dealing with these situations. What I may be suggesting is that a policy which involves keeping these people on sinking ships for as long as possible may have a detrimental impact on the safety of the asylum seekers, and that is what I intend to explore when I go to the SIEV10 incident.

Senator BRANDIS—What is the Navy supposed to do if they sink their own ships?

CHAIR—Order! You are out of order; come on, let's get going.

Vice Adm. Shackleton—Perhaps I could answer it in this way; a message was sent in September last year which said:

In the event of UBAs jumping from an otherwise seaworthy SIEV, the UBAs are to be rescued and returned directly to the SIEV. In the event of a SIEV sinking, either by design or by accident, survivors are to be rescued and treated as survivors at sea.

That is the policy.

Senator JACINTA COLLINS—But in the light of, as I have gone through with you, some of the indications of the pressures or the tension there, during this inquiry we need to question what the definition is, for instance, of when a ship is sinking and to what extent commanders such as Commander Banks believe that they must keep people on a ship.

Vice Adm. Shackleton—That is his judgment. He is the man on the spot; he is the person that will decide when it has reached the point from which it moves from one to another.

Senator JACINTA COLLINS—Yes, and until we can get to the detail of the SIEV10 incident, some of that is going to be a bit difficult.

There is only one other area that I wanted to move on to in relation to your comments. In your statement today, you repeated what you have said in earlier statements, and I take you to 1.4.14, where you say:

Banks told me that he reported the incident to COMNORCOM ... via radiotelephone on the 7th when Silverstone called him from his HQ in Darwin.

You do not go into what the nature of that advice was at that point, but at 1.4.17 you say:

Subsequent analysis of the activities undertaken by the crew of *Adelaide* changed the original assessment by Banks.

In my mind, there is still a question about what that original assessment was. Is that not the case in your mind?

Vice Adm. Shackleton—I guess there is a question of what Banks said. I guess I deconstructed it as follows: Banks was under a great deal of stress—and by that I do not mean that he was unable to deal with it, but he had a lot on his mind and he was pretty busy. Silverstone was sitting in an office where it was a lot easier to write down and take notes of a conversation. Silverstone had no reason whatsoever to phone somebody else and say that there had been children thrown in the water unless he had good reason to do so. So there is a correlation between what he heard and what he did in that context. Banks would have wanted to get off the telephone as quickly as he could and get back to doing what he had to do in terms of his ship. A few days after that, he went through the incident in slow time and took witness statements and, I guess, looked at the videotape himself and came to the conclusion—in fact, as I now know it, he can't remember saying to Silverstone that there were children in the water and was not aware of the concern that it had caused until some days later. In my discussion with him, he was a bit ambivalent as to whether he could have told Silverstone one thing or the other.

Senator JACINTA COLLINS—Sorry, when was that conversation?

Vice Adm. Shackleton—He was ambivalent in that he would have told Silverstone that—

Senator JACINTA COLLINS—Sorry, when was that conversation that you are referring to at the moment?

Vice Adm. Shackleton—That was the one that I had with him on 8 November. So I looked at this in terms of the balance of probabilities of the circumstances in which each of those individuals found themselves and I would still say that there is a very high probability that Silverstone's recount of the conversation is more accurate than that of Banks, but it might not be.

Senator JACINTA COLLINS—But it might not be?

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—And after that discussion with Banks on 8 November, you then said to the media, 'Our'—and I presume you mean the Navy—

Vice Adm. Shackleton—Yes.

Senator JACINTA COLLINS—'advice was that there were people being threatened to be thrown in the water. And I don't know what happened to the message after that.'

Vice Adm. Shackleton—That's right.

Senator JACINTA COLLINS—Thank you. That concludes my questions.

CHAIR—I have a few questions to tidy up some things that are still alive in my mind as a consequence of what has been a long session. Somewhere during this hearing—and it may be that unfortunately you have drawn the short straw—we probably need some clarifying advice from an authority on the guidelines about safety of life at sea. What is required of the Navy or any skipper of a vessel in the event that life at sea is at risk? My understanding is that this is encoded—it is in legislation based on the law of the sea to which we are a signatory—and it is easily discoverable. Are you the right person to ask to provide this information to the committee?

Vice Adm. Shackleton—I am certainly one of the people you can ask. Whenever there is a disaster or a circumstance declared whereby a ship declares itself in distress and requires assistance, there is a process of search and rescue arrangements in Australia, and the Navy will participate in that. If we are in sight of a vessel which is in distress then we are bound to provide assistance. In this case, these vessels were declaring themselves to be in distress, but when we took close inspection it was found from a seaman and a mariner perspective that that was not to be the case. So we found ourselves dealing with people who were declaring themselves in distress when it was our professional judgment that the ships were capable of floating and moving, and that the distress call was not in fact a distress call. As I say, that required the professional judgment of each commanding officer to say whether he would treat it as a distress set of circumstances or not. I think, in the end, as you have heard me say, where people were jumping or climbing—however they were getting into the water—from a vessel that we regarded as serviceable and sound, which could float and move, we would put those people back in that boat. Where the boat was incapable of floating and the lives of individuals were clearly at risk, we would rescue them in the normal course of events, which is what we did on every occasion.

CHAIR—The point here is that it is for the judgment of the skipper of the vessel coming to the aid of the distressed, or allegedly distressed, vessel to make that assessment.

Vice Adm. Shackleton—In this set of circumstances it is unique, in that you normally do not expect somebody to release a distress call unless they are truly in distress. In these circumstances, we were finding that that was not the case.

CHAIR—I do not want to put you on the spot but, for example, was it appropriate for the skipper of the *Tampa* to make a decision about whether the people whose call he answered were in distress and then to collect them?

Vice Adm. Shackleton—Yes, it was.

CHAIR—According to the law of the sea or the safety of life at sea regulations, whatever they are—maybe there is a document you could give us for background advice of the committee—what is required then of the rescuing vessel? Is there any requirement? Is it that they are supposed to deliver those people to a safe destination?

Vice Adm. Shackleton—Yes.

CHAIR—Would it be open therefore to the vessel to have delivered them to Indonesia, for example?

Vice Adm. Shackleton—Should that be where the government wanted them to go, yes.

CHAIR—If it is easy to establish what the rules and regulations are of safety of life at sea, it might be of some use to us. I get a feeling that this might be a subject debated during this inquiry.

Vice Adm. Shackleton—I will get from our lawyers the appropriate material.

CHAIR—Thank you. For these vessels—the SIEVs—it is my understanding that they are not flagged, they have no national flag.

Vice Adm. Shackleton—They arrive without a national flag, yes.

CHAIR—So they are not identifiable at sea. You can probably work out by deduction where they are from, but there is no identifying ensign.

Vice Adm. Shackleton—Other than, I think, some of them have names painted on them.

CHAIR—And registrations?

Vice Adm. Shackleton—Not normally.

CHAIR—They are not registered vessels?

Vice Adm. Shackleton—Not normally, no. As often as not, these are derelict ships or derelict vessels which have come into the possession of the people who have essentially provided them for a one-way trip.

CHAIR—Are they crewed?

Vice Adm. Shackleton—Yes.

CHAIR—And there is a skipper?

Vice Adm. Shackleton—It is sometimes hard to define what a skipper is in this context, but there is usually a crew who sometimes stay with the vessel the whole time or sometimes try to get off the vessel.

CHAIR—If there are crew and if there is someone in charge, you would normally expect that the skipper would be in charge of the vessel and the crew would be answerable to the skipper. The cargo—in this case, human cargo—might have a view, but it is for the skipper of the vessel to exercise decisions about the safety of the vessel. They are the normal circumstances.

Vice Adm. Shackleton—They would be the normal circumstances.

CHAIR—Is this analogous to a normal circumstance?

Vice Adm. Shackleton—I think in these circumstances you are dealing with people who have been told to deliver their human cargo to Australia, no matter what. If that includes sinking the vessel then that includes sinking the vessel.

CHAIR—As far as the skipper or crew of the vessel are concerned, if they were in an Australian jurisdiction, they would be committing a breach of Australian law as people-smugglers and would be able to be charged in an Australian court, facing heavy penalties. It would be reasonable to assume, in those circumstances, that they would want to hide their identification and mingle with the rest of the passengers.

Vice Adm. Shackleton—Yes.

CHAIR—When you collect—and I am not referring to any particular incident—passengers from these vessels, are you able to distinguish who are the crew and who are the passengers?

Vice Adm. Shackleton—Generally when you have got Iraqi or Afghani people, the Javanese stand out.

CHAIR—That is a yes; you can identify them.

Vice Adm. Shackleton—Yes, you can.

CHAIR—Going to SIEV4, were you able to identify the crew and skipper of that vessel?

Vice Adm. Shackleton—Let me check for you, Senator. I think we could, but I will check.

CHAIR—It is a relevant question in terms of what the vessel did, how it responded to signals, and who were the responsible people in charge of the vessel.

Vice Adm. Shackleton—Yes.

CHAIR—I think there is a merging between the passengers and the people in charge of the vessel at this stage.

Vice Adm. Shackleton—Yes.

CHAIR—While that is being checked, on taking possession of a SIEV—and SIEV4 was taken under tow—

Vice Adm. Shackleton—Yes.

CHAIR—is any survey, or assessment, done on the seaworthiness or otherwise of a vessel and on what navigational instruments it may have—the state of its engine, or the water facilities and food requirements on the vessel?

Vice Adm. Shackleton—The boarding party, when it goes on board, essentially commandeers the ship—and that, as much as anything else, is to protect the ship from further damage. At that stage of the game, a seaworthiness assessment is made, a mechanical engineering assessment is made, a navigational equipment assessment is made and that will be there as information. Where we take a ship back to Indonesia, we essentially navigate on its behalf, and we leave it within sight of the Indonesian coast. In the case of SIEV4, there would have been repeated efforts to keep the vessel seaworthy. Eventually it was taken under tow and then it sank.

CHAIR—I think the reports that we have in the appendages to the Powell report—and maybe even the other report—go into some detail as to what actually happened—

Vice Adm. Shackleton—Yes.

CHAIR—in putting the boarding party on board, leaving people in charge of the vessel, trying to fix the engine, taking it under tow, trying to pump water from the hold and the bilge of the vessel and so forth.

Vice Adm. Shackleton—Yes.

CHAIR—In relation to that survey of the seaworthiness, or the assessment of its motoring capacity, navigational capacity, food and water facilities, is an on-the-spot assessment done or is there a written report about it in the case of this SIEV or in the case of SIEVs generally?

Vice Adm. Shackleton—I would have to check to see if there was any written report done but certainly an immediate on-the-spot assessment is made.

CHAIR—A competent officer, knowledgeable about these things, would cast a weather eye on these things?

Vice Adm. Shackleton—There would be an engineer inside who would have a look at the engine and others would look at the hull and so forth. These things are not typically in good shape when they sail from Indonesia.

CHAIR—No.

Vice Adm. Shackleton—It also depends on whether they deteriorate en route. But we also find they do smash their own navigation equipment communications, if they have some, and machinery. The intention is not to go back.

CHAIR—You described the ships earlier as ‘derelict vessels’. Is that a description that you would stick with?

Vice Adm. Shackleton—‘Derelict’ might be a bit strong, but I would regard them as well past their economic life.

CHAIR—They are not robust seagoing vessels; they are more like frail craft, are they?

Vice Adm. Shackleton—These things have not been well maintained.

CHAIR—No. You and I would not go to sea in them.

Vice Adm. Shackleton—Absolutely.

CHAIR—In the case of SIEV4, do you know if it was taking water to any extent?

Vice Adm. Shackleton—It started to take water and the pumps could not keep up with it.

CHAIR—So the water gained above the capacity of the pumps to reduce it.

Vice Adm. Shackleton—Yes.

CHAIR—Therefore the vessel was filling with water over a time.

Vice Adm. Shackleton—Yes.

CHAIR—I think it is true at some point, isn’t it, just harking back to the reports—and this is something that Commander Banks can tell us more about—the passengers on board tried to bail their boat, as did the sailors on board from the *Adelaide*; is that right?

Vice Adm. Shackleton—I would have to check the detail of that.

CHAIR—Were they out of sight of land when all this occurred? Were they in the deep blue sea?

Vice Adm. Shackleton—They were out there, yes.

CHAIR—The weather conditions in the photographs we have seen, and the sea state depicted in those photographs, look relatively calm, but there were reports that the sea, at some stages, was rough during the course of this operation. Is that true?

Vice Adm. Shackleton—I would put that question to Commander Banks. The sea in the photographs, as you say, looked reasonably calm, but it can blow up and calm down again quite quickly.

CHAIR—It was right on the edge of the cyclone season, wasn’t it?

Vice Adm. Shackleton—Yes. In relation to the question you had earlier, there was nobody on SIEV4 who claimed to be the crew or the master. Once we were on board, *Adelaide* detected three or four crew who could be identified on racial grounds, only in the context that they

looked different, but you would have no way of proving that they were crew per se. They may have been other 'cargo', as it were, that were picked up in Indonesia. All the others, I am told, did have a master and crew. Some were flagged and a few were registered.

CHAIR—Some were flagged? Under what national flag, do you know?

Vice Adm. Shackleton—Indonesian.

CHAIR—I imagine those that were registered were probably registered as Indonesian vessels.

Vice Adm. Shackleton—Again, I would have to check that for accuracy.

Senator FERGUSON—Was the SIEV4 taking water when the *Adelaide* first made contact with that boat or did that only happen after some acts of sabotage?

Vice Adm. Shackleton—I would like to get to Commander Banks to—

CHAIR—How would the *Adelaide* know what was happening before it—

Senator FERGUSON—I am just saying: did it appear to be taking on water?

Vice Adm. Shackleton—When they went on board, they would have been in a position to make an assessment as to what it was doing, and I think Commander Banks is in the best position to give that detail.

Senator FERGUSON—I am happy to wait.

CHAIR—All I am saying is that I do not know how the *Adelaide* would know what was happening before it took possession, but that is another matter. Where were we, Admiral? You were saying that some of those vessels, or at least one or a couple of them, were flagged and some of them were registered. Do we know whether that registration reflected a current survey certificate?

Vice Adm. Shackleton—You are getting into detail I do not have the answers to, but I can find out for you.

CHAIR—It is just that that may well be relevant. If there is a surveying authority that approved these vessels as seaworthy—one presumes they would be Indonesian—it goes to the condition of the vessel, which may be an issue that we would wish to pursue.

Vice Adm. Shackleton—The condition of the vessel and the status certification of it might be two different things.

CHAIR—Yes, but my understanding is that, before issuing a survey notice, or a licence, a licensed surveyor has to sign off and say that this vessel is, according to him, seaworthy.

Vice Adm. Shackleton—I am not sure of that procedure.

CHAIR—In Indonesia?

Vice Adm. Shackleton—I do not know if that procedure is there.

CHAIR—Anyway, it is a minor detail. It is not one that I want to pursue now. We were talking about the people who, by their racial characteristics, could be identified as possibly crew, as different from those who were identified as asylum seekers. Has anyone from SIEV4 been charged with people-smuggling?

Vice Adm. Shackleton—Not to my knowledge, but I can check for you.

CHAIR—When the racially distinct group—I hope we are not getting into improper ground here—or this group of people that you could distinguish were taken on board the *Adelaide*, were they interrogated to see if they were crew?

Vice Adm. Shackleton—They were all taken, as I understand it, to the forecandle, at the front end, and made to be as comfortable as it is possible to be up in that part of the ship. Whether anybody was interrogated per se or not I do not know. We would obviously want to try and find out who the relevant people were but, in terms of interrogation, we do not generally have that sort of practice as part of our activities.

CHAIR—I see. But it would be normal, wouldn't it, in boarding a vessel, to ask who the skipper is?

Vice Adm. Shackleton—Yes.

CHAIR—It would be normal to find out who was in charge of it. Was that done?

Vice Adm. Shackleton—I do not know.

CHAIR—Our next witness, who I understand is gnawing on a pizza at the moment, may be able to tell us.

Senator JACINTA COLLINS—The log says it was done.

CHAIR—It was done. Right. The Navy personnel had some relatively long exposure to the people on SIEV4, as they did all those things that we talked about earlier. They took it under tow, so you had a tow crew on board the vessel while that was done—

Vice Adm. Shackleton—Yes.

CHAIR—so that the tow could not have been separated, I imagine—a tow watch or something. You had people on board—in the boarding party—to work on the engine, as I understand.

Vice Adm. Shackleton—Yes.

CHAIR—You had people on board to help pump the vessel. I think you had marines on board to keep relative order. Is that true?

Vice Adm. Shackleton—I would have to check whether *Adelaide* had Army people on board. I am not sure. I will get somebody to bring me some information on that in a minute.

CHAIR—Did any of the asylum seekers on board have any weapons? Did they brandish any weapons towards the Australian Navy?

Vice Adm. Shackleton—Not that I am aware of.

CHAIR—Did they seek to harm them in any way?

Vice Adm. Shackleton—Not that I am aware of. It is SIEV4 you are talking about in particular?

CHAIR—Yes, I am. This is the primary focus of our inquiry but our inquiry has, as Senator Brandis has rightly said, under motion from him been broadened and we may have to look at these. I hope we do not, but I get a feeling we may end up looking at all of these damn things separately.

Vice Adm. Shackleton—Okay.

CHAIR—If I can turn for a moment to your statement on 8 November, which in part—

Vice Adm. Shackleton—I am told that there were no Army personnel on board *Adelaide* for that particular incident.

CHAIR—There wasn't? Okay. So a marine would be an Army person, would they? They would not be a Navy person?

Vice Adm. Shackleton—No. We do not have any marines.

CHAIR—Okay. Is that a British phenomena, is it?

Vice Adm. Shackleton—The Americans, the British, the French and a whole bunch of people have marines. In these operations, we are often supported by Army personnel who embark for this particular activity.

CHAIR—Let us not get involved in that or we will be accused of having a discussion. In your statement on 8 November, you said in part, and I have got this part of it in front of me:

The Maritime Commander kept me verbally apprised of the incident as it unfolded until it had stabilised, but at no time can I remember him saying to me that people had not been thrown into the water.

Do you recall that part of your statement?

Vice Adm. Shackleton—Yes.

CHAIR—This was the part of the statement that had been worked over, I think, by the public relations division in consultation with you, isn't it?

Vice Adm. Shackleton—This is the press statement you are talking about of 8 November?

CHAIR—Yes.

Vice Adm. Shackleton—Yes. I spoke to the PACC people to put together the words that were released as a statement in which I said I did not contradict—

CHAIR—I think you have repeated that several times today. We do not need to go there again. My only point in mentioning it is therefore these words were considered words; they were not off the top of the head or volunteered on the spot.

Vice Adm. Shackleton—They were considered in the context of what I thought I knew at the time.

CHAIR—Yes. Why then was it considered to—and I am curious about this—use the expression 'but at no time can I remember him saying to me that people had not been thrown into the water'. That is to state a negative.

Vice Adm. Shackleton—Yes. I guess my point was that the Maritime Commander might have said that people were thrown into the water and I was writing these words in relation to the Powell inquiry and the Powell report.

CHAIR—But this was on 8 November.

Vice Adm. Shackleton—Yes. Sorry, no. On 8 November, I made those remarks that ended up in the media—I do not know what happened to the message after that. I had been talking to the Maritime Commander the day before—in other words, 7 November—during our trip from Adelaide to Perth about what the videotape showed and brought up to date on the events surrounding this particular issue. But at the time, way back in October, the Maritime Commander and I would—sometimes frequently, sometimes not so frequently—talk on the phone about the particular events as they unfolded. I guess what I was trying to portray was that I did not come in my own mind to understand that people had not been thrown in the water until 8 November. Although the Maritime Commander might have told me prior to that, if he did, it did not register in my mind, because in our own way we had become used to this sort of behaviour. It did not surprise us that these sorts of things were being done.

CHAIR—Can you remember the Maritime Commander telling you that people were thrown in the water?

Vice Adm. Shackleton—No.

CHAIR—Therefore he comes forward—

Vice Adm. Shackleton—But nor can I say that I can remember him also saying that they were not.

CHAIR—Well, this was the clarifying statement.

Vice Adm. Shackleton—Sorry, are you talking about my opening statement today?

CHAIR—No, I am talking about what you said on 8 November.

Vice Adm. Shackleton—On 8 November what I said—I do not have the media statement here—was to the effect that I did not contradict the minister.

CHAIR—I want to come to that. Why didn't you contradict the minister?

Vice Adm. Shackleton—Because Defence had told the minister, via that convoluted loop that we described earlier, that children had been thrown into the water, and I was not contradicting that advice.

CHAIR—But you knew—Senator Faulkner took you through this earlier today—that people had not been thrown into the water.

Vice Adm. Shackleton—At that stage of the game, on 8 November, I was of the opinion that people had not been thrown into the water. But I did not know what advice had subsequently been provided to the minister during my absence from Australia. I guess that is in part why I was a bit surprised at what Hendy said. I had to revert back to what I knew the minister had been told, to the best of my ability.

CHAIR—But why? If you are sitting there and you know that what the minister is saying is not true, why do you have to then fall into line and not contradict him?

Vice Adm. Shackleton—It was not a case of what the minister thought was true or not; it was a case of what the minister had been told. I did not know what the minister had been told, other than that children had been thrown into the water.

CHAIR—We are misunderstanding each other, Admiral. You knew that they had not been; why didn't you simply say they had not been?

Vice Adm. Shackleton—My opinion at that stage of the game, on 8 November, was that they probably had not been thrown into the water. What I did not know was what the CDF was talking to the minister about—and it was his position to talk to the minister about it. I had not talked to the CDF since I had returned to the country, so I did not know what the minister had been told in the interim. It was not my place to make public statements about these sorts of issues in this particular instance unless the minister gave me approval to do so.

CHAIR—But you had made a public statement a day or so before.

Vice Adm. Shackleton—That same day I made the comment, which the media picked up on, about what I had said, yes.

CHAIR—So you had made a statement. Whether or not you should have is an interesting issue, but you had in fact made a statement.

Vice Adm. Shackleton—I had been authorised to talk to the media about the departure of the *Kanimbla*, the *Sydney*, the *Adelaide* and the like. I made those comments—which were probably inappropriate at the time—and hence I made a clarifying statement later.

CHAIR—I know it has been a long day, and let us pray it will shortly close, but I thought that on several occasions throughout the day you had said that it is not your place to contradict the minister. Why not? If you know that what the minister is saying is not true then why wouldn't you contradict him?

Vice Adm. Shackleton—But you see, Senator, I did not know that to be not true, because I did not know what the minister had been told. My clear recollection, albeit gleaned from various sources, was that the minister had been told that there were children thrown over the side. When I spoke to Hendy, he was very surprised that I had made the remark that I had, which gave me a clear indication that there had been no change—in fact, he said there had been no change to the advice to the minister—so I was in the position of not knowing what the minister had said and I was not about to make public statements contradicting what either the minister or anybody else had said.

CHAIR—What did you do to find out what the minister knew?

Vice Adm. Shackleton—At that stage of the game, I did no more. The videotape had been released into the public arena. I made the assessment that the minister knew, obviously, what was on that tape. If he were going to ask any more questions then he would direct those questions at the CDF.

CHAIR—This is where I have some problem, Vice Admiral, to be honest with you. You knew, and I think Senator Faulkner brought this out earlier, that the report was that no children had been thrown in the water, that the photographs that had been exhibited in the media which purported to be evidence that children had were not true—they were of another event—and that the video was inconclusive because it was filmed on one side of the vessel when clearly people were leaving the vessel from the other side. So you had in your possession pretty decisive information about what had happened and, while I can understand that you did not know what the minister knew, it seems to me that you were much closer to the source and did know. Is it because of this order that authorises people who can and cannot speak about these things you felt you were outside of those orders?

Vice Adm. Shackleton—At that stage of the game, yes.

CHAIR—Were you motivated more to comply with those orders than you were to say anything that you thought might offend the minister?

Vice Adm. Shackleton—I was in one sense conscious that I needed to correct the public record in terms of what the media were portraying as myself contradicting the minister, which was not what I intended to do nor do I think I did in the overall scheme of things. The other was the clear direction from the minister's office that matters concerning this would be dealt with by his office.

CHAIR—Was that direction from the minister's office a decisive consideration in your mind?

Vice Adm. Shackleton—Only in the context of it not being my place to be making public comments about what I might advise anybody about this particular issue. But it was clear in my mind that, if I had made a statement—whether it was true or not—that was being construed as contradicting what the minister had said then I had an obligation to do something about that.

CHAIR—This order that we referred to earlier—I think I took Dr Hawke through it, because his signature appears on it, which has now apparently been repealed—

Vice Adm. Shackleton—The Defence instruction, you mean?

CHAIR—Yes, that is what I am referring to. It places a pretty strong straitjacket on who can and who cannot comment and puts the minister at the apex of that. When you say you do not feel you can contradict the minister, would you contradict a minister if you believed that that minister was misrepresenting facts that were injurious to the Navy?

Vice Adm. Shackleton—I do not think that I would be doing that publicly: I would want to make sure that the minister had been provided with the full, frank advice of the organisation. Then it would be up to him to decide to correct the public record.

CHAIR—In your discussion with the minister's office, did you take care to make sure that he was provided with the full facts of the circumstances?

Vice Adm. Shackleton—I guess I did not talk to Hendy about what I had seen on the videotape. I was of the view that certainly the media adviser in the minister's office knew of the disconnect between the photographs and what they represented.

CHAIR—You were satisfied that the media adviser in the minister's office knew of the disconnect; that is to say, he knew that the photos as they had appeared in the media were not of the event that they were alleged to be of?

Vice Adm. Shackleton—In my mind, I was satisfied.

CHAIR—You were satisfied about that?

Vice Adm. Shackleton—Yes.

CHAIR—Did you regard, when you were satisfying yourself about that, that, if you had told the minister's staff, that was good enough and that you did not have to then find out what the

minister's number was and tell him? Was telling the minister's staff as good as passing the message to the minister?

Vice Adm. Shackleton—That was, by and large, the impression that I worked on.

CHAIR—I will not spend long on this point, because I think Senator Collins has covered it. I am a bit worried, though, about how you weigh the value of information, how you assess information. We are told that, on the one hand, this is what Commander Banks said and, on the other hand, this is what Air Marshal Silverstone said.

Senator JACINTA COLLINS—Brigadier.

CHAIR—I have to make a blanket apology to the military that I am not all that literate in ranks; I do apologise.

Senator JACINTA COLLINS—It was not the Air Force; it was the Army.

CHAIR—I am doubly criminal.

Vice Adm. Shackleton—No offence taken, Senator.

CHAIR—My honour is offended if I have, in any way, misrepresented Brigadier Silverstone. I must say that I have never met an umpire who, after the event, thought on reflection that he got the call that he made at the time wrong. But you seem to be saying—I do not want to put words in your mouth, and please correct me if you think that this is wrong; I just want to get it clear in my head—that Commander Banks, when he offered the advice that he did to Brigadier Silverstone as to what was happening, may not have been focused on accurately providing that advice but 'may have had half a mind on other matters'—I think they were your words. Why do you hold that view?

Vice Adm. Shackleton—I have a strong sense of how busy he was and I have a strong sense of what he was doing at the time.

CHAIR—He is a competent officer?

Vice Adm. Shackleton—He is a competent officer.

CHAIR—Everything that I have seen about him indicates that he is an extraordinarily competent officer, and I think he has conducted quite a heroic and praiseworthy effort, particularly in doing what he has done with SIEV4. You would have to say that this man is an exemplary officer, wouldn't you?

Vice Adm. Shackleton—What I have to say to you is that there is nothing that I have said, that Silverstone has said or that Banks has said that I find contradictory. I am saying that the circumstances at the time may have resulted in Banks believing that he had seen and therefore said something; Silverstone recorded what he thought he had heard, but Banks in the end may not have said that. Someone is going to have to ask Silverstone why he wrote down what he did.

CHAIR—And we should ask Banks.

Vice Adm. Shackleton—Exactly.

CHAIR—When he is done with his pizza, after dinner, we will. But it is the process that worries me. As an experienced officer running his ship, the guy in the front line, who is eyeballing the action, who is the actual witness, has a range of responsibilities. He has a second in command to relieve him of some of that while he is involved in an incident such as this, where he is required to divide his attention between the maintenance of the ship and the oversight of the actual incident. This is an experienced officer. Why would his oral eyewitness evidence be questioned?

Vice Adm. Shackleton—I do not think it is. What you have here is an extension of what he was seeing and his synthesis of all of that, sent by a phone call to Darwin; from there, it gets into the system and it gets right to the very top very quickly. He may not have realised that he said what he did; in fact, all things point to that being the case. He did not know that the conversation that he had with Silverstone resulted in what it did, which was ultimately public announcements by Minister Ruddock. He was in the position of trying to deal, in real time, with the circumstances that he was in; what the rest of the world was doing was immaterial at that stage.

CHAIR—So, in getting to the way in which this is appraised and weighed by the people at headquarters, if a commander on the spot and governing an incident says certain things, higher up the command chain the weight given to that—I am struggling to try to understand this concept—is less than to what someone interposing themselves between the commander and more senior officers thinks?

Vice Adm. Shackleton—The answer is it depends. At each level through which information passes we try to apply the experience of people who have probably got more experience than Banks to assess: does this look right and feel right in the circumstances we are in or should we wait until we get some more information that might corroborate this? Do we ask some more questions to clarify it before we pass it further up the line? If we pass it further up the line, do we just put some caveats on it that say this has been uncorroborated and is still to be proven to be true?

Senator FAULKNER—Commander Banks clarifies it himself, doesn't he? The ship are aware of the false news reports or the misrepresentation of the photographs and they act to clarify it. This is one of the key points, Vice Admiral: there was a failure at some level in relation to the wrong story emanating from somewhere in Defence at some time—and there are two reports and any amount of evidence we have had on that—and one thing that is absolutely clear is that Commander Banks and a range of other more senior officers in the Navy and Defence try to fix it. They do, don't they? They actually try to fix it, but it does not suit the government for this particular information to get out in the public arena, because the photographs are the evidentiary support that children were thrown overboard—and that is the problem.

Vice Adm. Shackleton—The sequence of events, as I understand it, was that the Maritime Commander called Commander Banks on the telephone, which resulted in that signal that Banks sent from the *Adelaide* on about 10 October, which contained the summary of times and

an assessment that the *Adelaide* made. I said in my opening remarks I do not understand, from my perspective, why that did not go all the way up in a different kind of way. Other people are going to have to answer that question.

Senator FAULKNER—But you do accept that, if the source was Commander Banks—which is a colossal ‘if’ and qualification—there is no doubt Commander Banks takes significant action to correct it as soon as *Adelaide* is aware of the misrepresentation? You would have to accept that, wouldn’t you?

Vice Adm. Shackleton—I think the fact of the matter was that Commander Banks had not realised how his conversation with Brigadier Silverstone had been interpreted and thereby passed on, which had created the effect that it had.

Senator FAULKNER—Sure.

Vice Adm. Shackleton—It was not until the Maritime Commander said to him, ‘I want an assessment of what you have seen and what you now think of it, and send me that assessment’—which was what was done.

Senator FAULKNER—That is right. They are aware of the press reports and also, of course, senior officers have taken some sorts of steps to ensure that the truth comes out.

Vice Adm. Shackleton—Yes, that is right.

Senator FAULKNER—So whatever criticism can be directed to Navy or Defence at the beginning of this story, about the false information, the misunderstood information or the differences of view, as I said to you I think at the estimates committee some weeks ago, at least you have to say that Navy and Defence did what they could within days—literally, within 48 hours—to try to correct this.

Vice Adm. Shackleton—That is correct.

Senator FAULKNER—But of course those photographs were supposed to be supporting evidence for claims that kids were thrown overboard, and it did not suit the minister and it did not suit the government for those corrections to go into the public arena. That is my concern.

Now roll forward one month to November and to the issue that I spoke to you about earlier, when you produced your statement confirming—though you do not know with whom—that the minister was advised that Defence believed children had been thrown overboard. That statement, as I said—and I do not say it lightly—is at best a half-truth, because there is so much more that could have been confirmed. You could have said in your statement, ‘I also confirm that within days of receiving this advice the minister was advised there was no evidence to suggest that children had been thrown overboard.’ You could have added, ‘The minister was also informed that the photographs which were released as evidence that children had been thrown overboard were taken a day after the alleged incident.’ I think that is a reasonable point for me to make to you. And no brief goes from you, as I understand it, at any point to the minister that corrects this.

Vice Adm. Shackleton—The point that I tried to make earlier was that I had been out of the country for nearly three weeks. I spoke to Banks, I saw the video and I knew what I knew about the photographs. It was my expectation that the sit rep that was produced by the *Adelaide* would have found its way into the advice given to government. I do not know why that did not get there.

Senator FAULKNER—It seems to me that Commander Banks realised what had happened, he took action, as did some other senior officers in Navy, and, it seems to me, he was let down somewhere, in the chain of command possibly but certainly in the political interface, the government interface, with Defence. And neither you—and I am not saying you personally; I am thinking of you here as Chief of Navy; I appreciate that for that period you were not in the country—nor anyone else saw fit to communicate information to government that you were aware of from, I think, 7.45 p.m. on the evening of 10 October in relation to the photographs, for example. It is those sorts of issues that do require some level of explanation, going to the questions that Senator Cook asked.

CHAIR—We are over time now, and I had actually hoped to complete this, but if you will bear with me I have just two more questions. First, I started this line of inquiry because I was worried about, or trying to understand, how the Navy—or the armed forces—assesses information and what weight it gives to it. It seems that what is being said here is that a front-line officer's view of what is happening is not necessarily what, at a higher level, would be taken as being the case.

Vice Adm. Shackleton—No, I think, if anything, the CDF's actions place it in context, in that he put great faith in what was said. I think what is being missed here is that the way that Commander Banks's observations reached the outside world was via Brigadier Silverstone. There are comments that Commander Banks did not say that; Brigadier Silverstone obviously thinks he did. That was the way that the message entered the system. It was handled in various ways, and it resulted in the action that it did. Nobody is saying Commander Banks got it wrong. For a long time, people believed that Commander Banks did in fact make that statement, and it may well be that he did. I do not think that anybody is ever going to know whether he did or he did not.

Senator FAULKNER—But you do know he tried to fix it.

Vice Adm. Shackleton—Absolutely. I have got no problem with it.

Senator FAULKNER—Whoever made the mistake, we know this: Commander Banks and some others tried to fix it.

Vice Adm. Shackleton—And I think that is the point.

Senator FAULKNER—That is the point I make.

CHAIR—That is one of the points of this inquiry, that within five hours of this event allegedly occurring the Prime Minister and the minister for immigration made remarks about it to the media but then for another month the fax never got through the network, and that raises

the big question of why not. And—this is where I was going to finish—to use a technical phrase, it looks like there has been a stuff-up of some sort. Is that your view?

Vice Adm. Shackleton—It is probably as good a way of describing it as you will get.

CHAIR—Is the Navy going to fix this? Put it the other way around: what would have been the perfect way of handling this?

Vice Adm. Shackleton—Again, you have to put it into context. It is easy to have 2020 hindsight.

CHAIR—But now we have the luxury of it.

Vice Adm. Shackleton—It would have been better not to have put it into the interdepartmental committee until somebody had had a chance to think it through.

CHAIR—And is there some safeguard now that will not occur?

Vice Adm. Shackleton—There is always a chance that something will slip. It depends on the nature of the operations.

CHAIR—That goes to the question of the alleged information getting out. What do you think should happen in terms of corrections?

Vice Adm. Shackleton—There is already work taking place internally as directed by CDF to look at these issues and how we manage information in Defence. I do not think there was a problem with the command and control per se—that worked. Where we could be criticised in some areas is the management of information associated with this, the way it was handled and the number of loose connections there were surrounding both the photography and the voice transmission between the ship and the shore.

Senator FAULKNER—I would not expect politics to be a top-of-the-mind issue for you—and I am not critical of you or anyone in Defence in that regard. Do you understand that it is a significant issue that the understanding for a month before a federal election was held, the knowledge—firstly, that children were not thrown overboard and, secondly, that the photographs purporting to be the evidentiary support that children had been thrown overboard did not actually relate to that incident—was not corrected in that one-month period? For those of us around this table and in this building who have, if you like, the political processes as a front and centre issue, that is a very significant failure. I wondered whether you would accept that failure of process—failure to correct the public record in the atmosphere of an election campaign—was something that ought never happen in this country.

Vice Adm. Shackleton—Senator, you are asking me to comment on political process and I do not think I want to do that. What you have is the absolute right of a government, and through it the minister, to establish the ground rules by which the department and the organisation are going to work. That is what the minister established. There was no room for me or anybody else for that matter to go out and make public statements which contradicted or in some way took on the government. That is not our business, and I do not think that anybody in this country would

like that either. But what I do not know is what the CDF and the minister were talking about throughout this particular event. My recollection is that the CDF did discuss with the minister the nature of those photographs. What I do not know is why the public record was not changed.

CHAIR—It is possible that you and I might disagree, Admiral, but, if a government says something that is clearly wrong, and you know it is wrong, I would have thought there is an obligation to correct it with the government promptly and to make that clear.

Vice Adm. Shackleton—Senator, that may well have happened.

CHAIR—The other reason behind my questioning is that, for all I know, we may be at a state of war or engaged in a military conflict in the Gulf and, if this can happen on an issue of high readiness for the Navy, what could be done to repair it, to make sure that, with the heightened attention to defence matters in the current global situation, we can all rest in our beds and that this will not happen again in any other respect? That is the basis of my questions. I guess we will just have to leave it there. Are there any further questions?

Senator MASON—I have further questions of Admiral Shackleton but it will take about another 10 or 15 minutes.

CHAIR—Then the question is: do we do to Admiral Shackleton what we did to Dr Hawke?

Senator BRANDIS—We will be here for half an hour. Let's break.

Vice Adm. Shackleton—I am happy to keep going if others are.

CHAIR—What we are debating is whether we all go to dinner and bring you back afterwards, or whether we continue and exhaust you now.

Vice Adm. Shackleton—If it is only 10 minutes—

Senator FAULKNER—I would be minded to go with whatever suggestion the admiral has, because he is the one who has not had an opportunity to leave the table.

Vice Adm. Shackleton—We will all have to send out for pizzas, I think is the answer.

Senator FAULKNER—Admiral, everyone here has had an opportunity to leave the table at times during your evidence. You have not had that courtesy, so I would be minded to fall in behind whatever the admiral says.

Vice Adm. Shackleton—I am happy to keep going.

CHAIR—You are happy to keep going?

Vice Adm. Shackleton—Yes.

Senator MASON—Briefly, you said I think in response to some questions from Senator Collins that the RAN, in relation to these SIEV incidents, in no case were responsible for creating a safety of life at sea situation. Is that right?

Vice Adm. Shackleton—Yes.

Senator MASON—When the boats sank—SIEV4, SIEV7 and SIEV10—who created the safety of life at sea situation in those cases?

Vice Adm. Shackleton—It is my opinion from reading the material that the individuals on board those boats did.

Senator MASON—Senator Bartlett referred to a document from the asylum seekers detained in the Lombrum detention centre, Manus Island, Papua New Guinea. I would like to ask you a couple of questions about that and ask you to comment on some paragraphs in that particular email. I think Senator Collins also made a brief reference to it, but certainly Senator Bartlett did.

CHAIR—What is it?

Senator MASON—It is a submission to us from the Iraqis detained in Lombrum detention centre, Manus Island, who were in effect the people on the SIEV4 boat.

CHAIR—You have handed that to Admiral Shackleton.

Senator MASON—You have before you, Admiral, an email from the Iraqis detained in the Lombrum detention centre, Manus Island, Papua New Guinea, dated 13 March 2002; is that correct?

Vice Adm. Shackleton—Yes.

Senator MASON—I will take you to the third paragraph of that particular email. I might refer you to some parts of this document and then ask you to comment on certain passages.

On the 7th October 2001 at approximately 3.30-4.00 am the Australian frigate Adelaide (01) fired warning shots to try and scare us and to force the captain to stop the boat. They called to us in English and Arabic demanding us to stop the boat so they could give us supplies that we needed.

Then the rest of the paragraph is about the fact that the boarding party boarded the SIEV4. The next paragraph commences:

There was a navigator officer and the wheelman—

from the *Adelaide*—

that forcibly took over from the Indonesian crew and changed course to the opposite direction, then all the passengers knew that they were lying—

that is, the people in the boarding party—

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

Do you think that members of the RAN were lying in that context?

Vice Adm. Shackleton—I would have to get somebody to verify that people from the *Adelaide* said that they were going to stop so that they could give them some supplies. I do not know if that is true or not.

Senator MASON—I will go to the next paragraph which commences:

By using the maximum speed can get from the engine they pushed the speed levers heading toward Indonesia,—

‘they’, of course, refers to the boarding party—

causing a heavy unnatural smoke getting out from the engine to the women’s section, bridge and outside the accommodation causing asphyxia for the passengers, especially the women and children.

The boat kept on moving and after sometime the engines sound start to splutter until it went out completely. We couldn’t hear the engines anymore and there was no more smoke.

It was then that the Australian marines moved out the boat in a rushing way as if they were escaping and we were left by ourselves about 10 to 11 am, 7th October. After that the Indonesian crew told us they think we are in international waters and the engine was broken, water pump and rudder too. The Australian navigator left us a small compass ...

The next paragraph reads:

All the passengers were shocked when remembering the claims of the Navy who firstly offered to help and provide our needs such as food and water and now they had deserted us, left alone in the middle of nowhere and the wide ocean in front of us, with the terrible condition of the engine and water leaking through the boat, because the pumps connected to the main engine were stopped and no more fuel left to operate the portable emergency pump.

Vice Admiral, my question to you is: what would you make of any suggestion that the sailors of the *Adelaide*, the boarding party in particular, were responsible for the failure of the engine, the water pump and the rudder to work?

Vice Adm. Shackleton—I find it a bit surprising because I thought that the people from the *Adelaide* in fact had tried to repair the mechanicals in this particular boat so that it was serviceable and could continue on its way. I cannot answer this; I would have to get assistance from Commander Banks to deal with this.

Senator MASON—I may ask him some questions about that. The last reference is on page 4 of the document—I do not think it is actually marked page 4, but it is the fourth page:

After a while events were happening rapidly, the boat went down and we were dropped into the ocean with all our possessions which included money, jewellery, personal belongings, documents, etc. Whilst many of our personal belongings were simple things, they mean a lot cause they were the most precious we were able to bring. All these were possible to be saved if the decision to abandon ship was taken earlier. With the help from the Navy nothing would have been lost.

Do you accept, as the head of the Navy, the responsibility for the sinking of SIEV4?

Vice Adm. Shackleton—No.

Senator BARTLETT—Mr Chair, firstly I want to say that I do not think that these people are saying that it was the Navy's fault the boat sank. Either way, can I ask, given that you have quoted from it extensively now, that this submission be published and made public as well?

CHAIR—Is there any objection?

Senator FAULKNER—I do not mind, but I think we have to deal with a whole range of submissions and I am just worried about picking submissions off one by one. You know what my general approach is, as all committee members do: I believe in releasing submissions whenever humanly possible. So I have got no problem with Senator Bartlett's proposal. There is a whole raft of material here that we have to deal with, and there is a bit of a weakness in one or two submissions being made public and not others. I am keen to see as much as we can make public put into the public arena. I just say, in relation to this: sure, let us make it public, but let us also deal with the other things as soon as we reasonably can.

CHAIR—I think that is good counsel in the sense that we have a body of submissions which, for all I know, any member of this committee may well want to tender in evidence or quote from extensively. I think it would be much better if we gave holistic thought to what we do about all of them. But, we did set a precedent earlier today and I have a proposition before me from Senator Bartlett. I did not understand you to oppose the proposition.

Senator FAULKNER—Certainly not. I said my general approach is always to say yes, let these things be made public, but there is a lot of other material that we will have to try and deal with quickly. I hope other committee members would agree with that.

CHAIR—I do want to say that it is desirable to make that decision fairly quickly because this is getting to a point where things are trickling out by happenstance rather than by considered decision. Is there any objection to releasing this?

Senator MASON—No.

CHAIR—There is no objection so it is so ordered. Are there any further questions?

Senator BARTLETT—There is a suggestion it might be helpful for Commander Banks to get a copy, because I would certainly be interested in—

CHAIR—It is now released and I think the secretariat could make a copy available to Commander Banks.

Senator FAULKNER—Could we have a very brief private meeting about the release of other submissions?

CHAIR—I wanted to have—I foreshadowed this after afternoon tea—a quick housekeeping meeting before we adjourned for dinner.

Senator FAULKNER—That would be great.

Vice Adm. Shackleton—I have one more piece of information which I would like to give before you close.

CHAIR—This is a very appropriate time to do it.

Vice Adm. Shackleton—In answer to Senator Collins, who was asking about draft media releases by Captain Wright, my advice here is that he took several handwritten notes to the meeting with him and on completion these notes were disposed of. Frankly, this is not something I would expect anybody would have kept a record of.

CHAIR—Thank you very much, Vice Admiral. It has been a long afternoon; we have enjoyed your company.

Proceedings suspended from 6.51 p.m. to 8.17 p.m.