

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

**POSSIBLE IMPROPER INTERFERENCE
WITH A WITNESS BEFORE THE SENATE
SELECT COMMITTEE ON A CERTAIN
MARITIME INCIDENT**

106TH REPORT

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POSSIBLE IMPROPER INTERFERENCE WITH A WITNESS BEFORE THE SENATE SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Introduction

1.1 On 16 May 2002 the Senate referred the following matter to the Committee of Privileges:

Having regard to the matter submitted to the President by the Select Committee on a Certain Maritime Incident, whether there was any attempted or actual interference with a witness before the committee in respect of the witness' evidence, and whether any contempt of the Senate was committed in that regard.¹

1.2 The allegation of witness-tampering was raised by Rear Admiral Raydon Gates in a minute to the Minister for Defence, Senator the Hon. Robert Hill.² While the minute named neither the witness nor the alleged interferer, the witness in question was Commander Stefan King, who gave evidence to the Select Committee on a Certain Maritime Incident (Maritime Incident Committee) on 2 May 2002, and the alleged interferer was Dr Brendon Hammer, then Assistant Secretary, Defence, Intelligence and Security Branch, International Division, Department of the Prime Minister and Cabinet (PM&C).³ The alleged interference related to a meeting Dr Hammer caused to be arranged at short notice with Cmdr King on 11 March 2002 and a letter Dr Hammer wrote to Cmdr King on 30 April,⁴ two days before Cmdr King was scheduled to give evidence before the Maritime Incident Committee.

Background

1.3 On 10 October 2001, in the midst of an election campaign, the then Minister for Defence asserted that he had documentary proof that asylum seekers were throwing their children overboard in their desperation to reach Australian shores. The following day, major newspapers published photographs purporting to show this.⁵ It was subsequently revealed that the photographs published on 11 October related to the rescue on 8 October 2001 of asylum seekers from their sinking vessel, rather than to the alleged 'children overboard' incident on 7 October 2001. The issue of whether the

1 Appendix A, p. 1.

2 Appendix C, p. 9.

3 *ibid.*, p. 7.

4 Appendix D, p. 28.

5 See, e.g. *Herald Sun* (Melbourne), 11 October 2001, p. 3.

government knew at the time that the photographs did not show what they purported to show became the focus of an inquiry by the Maritime Incident Committee, established on 13 February 2002.

The PM&C briefing on 11 October 2001

1.4 On 9 October 2001 Commander Piers Chatterton, Director of Operations - Navy, received from Strategic Command Division an email containing two pictures. He looked at the pictures, assessed they had the makings of a good news story about Royal Australian Navy sailors doing something courageous, namely supporting asylum seekers in the water, and forwarded them to Mr John Clarke, the public affairs adviser to the Chief of Navy. On the following day, he saw on television that the pictures were being used to support the contention of the then Minister for Defence that asylum seeker children had been thrown overboard. He advised Mr Clarke of the error and, on 11 October, also passed the information on to Commander Stefan King, Australian Defence Force (ADF) Liaison Officer in PM&C.⁶

1.5 When questioned as to why he had passed on the information to Cmdr King, Cmdr Chatterton indicated that they both attended daily briefings on Operation Slipper (the war against terrorism in Afghanistan) and that, if he had information he believed Cmdr King should know in his liaison role, he would pass it on to him either before or after the meeting. And so, on 11 October 2001, before the meeting, he told Cmdr King that the two pictures seen in the media purportedly portraying children thrown overboard were in fact pictures of the rescue from the sinking Suspected Illegal Entry Vessel (SIEV) 4 on the following day, 8 October 2001.⁷

1.6 On his return to PM&C, Cmdr King advised his immediate superior in International Division, Ms Harinder Sidhu, Senior Adviser, Defence Intelligence and Security Branch, on the Operation Slipper matters and about the error with the photographs. They agreed that the information regarding the photographs should be passed on to the next most senior member of International Division, Dr Brendon Hammer, Assistant Secretary. They were unable to do so immediately as Dr Hammer was busy but did so mid-afternoon. Cmdr King's account of what he told Dr Hammer was as follows:

[A] fellow Navy officer, attending the Strategic Command brief that morning, had told me that the pictures in the media showing people in the water did not relate to the claims made by the Minister for Defence that unauthorised arrivals were throwing their children overboard but, in fact, related to an event the following day when those same people were being rescued by the Navy from their sinking vessel. I also said that it seemed that the captions accompanying the pictures appeared to have been removed,

6 Select Committee on a Certain Maritime Incident, *Hansard*, 17 April 2002, pp. CMI 1162-3.

7 *ibid.*, p. CMI 1166.

however I did not do so with the same gravity, noting the degree of conjecture I attributed to that information at that time.⁸

1.7 According to Cmdr King, Dr Hammer did not give any indication of what he would do with the information presented. Cmdr King's expectation was that Dr Hammer would contact someone at his level in Defence for confirmation.⁹

1.8 The third party involved, Ms Sidhu, gave the Maritime Incident Committee her somewhat different recollection of Cmdr King's initial briefing to her:

I was informed by Commander Stefan King, who was then a Defence secondee to International Division and a member of my section, that he had just returned from an interdepartmental meeting at Strategic Command in Defence regarding Operation Slipper. He said to me that, in the margins of the meeting, he had overheard a conversation between other Defence officials regarding the SIEV4 incident. He said the nature of the discussion was that the photographs which had been published in the media depicting the 'children overboard' incident were not of the alleged incident; rather they had been taken a day later when the Navy was conducting a rescue of asylum seekers once their boat had sunk ...¹⁰

1.9 She was consistent in her evidence that she clearly recalled being told that the information about the photographs was overheard at the margins of the Defence meeting.¹¹ She confirmed that she and Cmdr King had agreed that it was necessary to raise the matter of the photographs with Dr Hammer and that Cmdr King had done so, albeit in 'a more abbreviated form'.¹²

1.10 While Dr Hammer insisted he had little recollection of what transpired in his office on that day, after the meeting of 11 March 2002 and after hearing evidence before the Maritime Incident Committee he felt able to recall that 'in my office on 11 October, what was presented to me was presented as a rumour ... what was presented to me was not presented to me as formal advice from Defence'.¹³

1.11 The only issue of substance on which the parties disagree is whether Cmdr King reported the matter of the photographs to Ms Sidhu as a matter he overheard or whether it was part of his formal briefing. Ms Sidhu did indicate that she recalled Cmdr King as 'quite perturbed' by it.¹⁴ In any event, the question whether the matter should have been taken further by Dr Hammer is not a question for the Privileges Committee.

8 *Hansard*, 2 May 2002, pp. CMI 1491-2.

9 *ibid.*, p. CMI 1501

10 *ibid.*, p. CMI 1550.

11 *ibid.*, pp. CMI 1556; 1566; 1567.

12 Appendix F, p. 59.

13 *Hansard*, 13 June 2002, p. CMI 1685.

14 *Hansard*, 2 May 2002, p. CMI 1552.

How the issue came to light

1.12 Apart from passing mentions, the matter of the photographs next came up on the evening of 7 November 2001 when Catherine Wildermuth, from PM&C's Social Policy Division, sought any documentation of the SIEV 4 incident from her colleague Ms Sidhu in International Division. The latter passed on as gossip the misattribution of the photographs, Ms Wildermuth conveyed what she had said to Ms Jennifer Bryant who subsequently conducted an inquiry into the whole matter of the handling of the photographs.¹⁵ This inquiry led at least in part to the establishment of the Maritime Incident Committee on 13 February 2002.

The meeting of 11 March 2002

1.13 Late on Friday, 8 March 2002, Ms Sidhu, at Dr Hammer's request, attempted to contact Cmdr King to set up a meeting of the three of them, initially on Sunday afternoon, 10 March. He gave his apologies. After speaking with Dr Hammer, Ms Sidhu contacted Cmdr King again at work on the Monday morning, and the meeting was rescheduled for 3.00pm that afternoon.

1.14 Ms Sidhu's stated understanding of the reason for the meeting, and the reason she conveyed to Cmdr King, was that Dr Hammer thought it would be useful if they refreshed their memories about the incident in question.¹⁶ Dr Hammer advised the Maritime Incident Committee that his supervisor, Mr Michael Potts, the head of International Division, had twice suggested the meeting, hence Dr Hammer's apparent pushing to ensure that it occurred.¹⁷ He stated that he did not question Mr Potts' motives for encouraging the meeting.¹⁸ In evidence to the Maritime Incident Committee Cmdr King said that he did not need assistance in recollecting the briefing and he described the meeting as 'an opportunity for some gathering of information that perhaps was of interest to Dr Hammer just to see how we collectively review[ed] those [re]collections. It was not for my benefit ...'¹⁹

1.15 According to Cmdr King's account of the meeting, Dr Hammer opened proceedings by suggesting that they share their recollection of the 11 October briefing²⁰ and commenced with his own.²¹ Ms Sidhu volunteered some details of her earlier discussion with Cmdr King before the afternoon briefing of Dr Hammer. She ran through what she recalled, 'which was that Commander King had told me that he had overheard a conversation to this effect ...' and that Cmdr King indicated then that

15 Appendix E, p. 55.

16 *Hansard*, 2 May 2002, p. CMI 1579.

17 *Hansard*, 13 June 2002, p. CMI 1653.

18 *ibid.*, p. CMI 1654.

19 *Hansard*, 2 May 2002, p. CMI 1531.

20 *ibid.*, pp. CMI 1521, 1531.

21 *Hansard*, 13 June 2002, p. CMI 1624.

he had not overheard the story but had heard it directly. He had not named Cmdr Chatterton in order to protect his source.²²

1.16 In her written account of proceedings, Ms Sidhu indicated that Dr Hammer then described his memory of the October briefing, of where the participants had sat, and his recall of Cmdr King's remarks, before seeking Cmdr King's view on whether his recollection was correct. Ms Sidhu recalled Cmdr King responding 'in a non-committal fashion, along the lines of "if that's what you remember, then that's fine"'.²³ She stated that Dr Hammer then pressed Cmdr King for comment, Cmdr King outlined his broad recollection of the meeting, and Dr Hammer appeared concerned and Cmdr King uncomfortable. She added:

Dr Hammer then asked CMDR King what he would say if he were asked about the 11 October meeting. He suggested it might help CMDR King if Dr Hammer were to pose the question as if he were a member of the Committee. I believe the question posed was along the lines of "What happened when you told Dr Hammer about the photographs?" CMDR King clearly appeared uncomfortable at this point and refused politely to answer the question. Dr Hammer accepted CMDR King's refusal and we moved on to another topic of conversation.²⁴

She also added:

At no point in this meeting did Dr Hammer or anyone else suggest that evidence be omitted or concealed ... I do not believe that, in posing a hypothetical question to CMDR King, Dr Hammer was trying to influence his testimony or to coach him in any way. Rather, I interpreted his approach as reflecting some frustration at CMDR King's reluctance to participate in the discussion. It appeared to me that Dr Hammer was trying to coax CMDR King to be more forthcoming about his recollections of the 11 October meeting.²⁵

1.17 Dr Hammer's version of the meeting was as follows:

What I attempted to do in that meeting, as I had been asked, in a sense was to share recollections. The first part of that was to attempt to draw forth recollections, and I think I probably may have tried a few different ways to do that. ... I may have said, 'This issue may or may not come to the attention of the Senate committee through one means or another.' I may have said, 'Let's ask one another some questions about our recollection,' or what have you.²⁶

22 *Hansard*, 2 May 2002, p. CMI 1586.

23 Appendix F, p. 60.

24 *ibid.*

25 *ibid.*, p. 61.

26 *Hansard*, 13 June 2002, pp. CMI 1665-6.

He later expressed it as, ‘I wanted both Commander King and Ms Sidhu to help me remember what had happened in my office. ... It was about remembering, not about rehearsing.’²⁷

1.18 In Ms Sidhu’s opinion, Cmdr King was uncomfortable ‘when Dr Hammer put a hypothetical question to him as if he were in the committee. He appeared very uncomfortable with being put on the spot’.²⁸ And she acknowledged that she felt uncomfortable for Cmdr King, as he was a sensitive person.

1.19 They all agreed that Dr Hammer did not press the issue further, that there was general banter about recollections and they moved on to small talk.²⁹

1.20 When asked specifically by the Chair of the Maritime Incident Committee whether he had said ‘anything to anyone else in PM&C or Defence that would have caused them to think you were unhappy about this meeting with Hammer and the possibility of being influenced by it’, Cmdr King indicated that he ‘never was of the wholehearted opinion I was unhappy about it’ but rather was mildly surprised at how it had come about.³⁰ Later in proceedings he added, ‘I did not feel overtly pressured and I did not sense an overt attempt to influence me.’³¹

1.21 In his statement to Committee of Privileges, Cmdr King elaborated on his reasons for advising the Defence Coordination Team of the invitation to the 11 March meeting:

My own understanding of Defence guidelines on ethical behaviour lead me to conclude that both suggested meetings were not of a nature that was best suited to the situation. (To elaborate on that point the Defence guidelines provide that a perception that an inappropriate activity may have occurred needs to be avoided to the same extent that an actual transgression should be avoided.) I was concerned that inferences could be drawn from such a situation **if it were reported by a third party** [emphasis added].³²

The letter from Dr Hammer

1.22 On 30 April, a letter from Dr Hammer was hand-delivered to Cmdr King. The letter read as follows:

I have been advised by the head of Government Division in PM&C that you have expressed a concern that I may have sought to influence your testimony to the Senate Select Committee on a Certain Maritime Incident.

27 *ibid.*, p. CMI 1668.

28 *Hansard*, 2 May 2002, p. CMI 1584.

29 *Hansard*, 13 June 2002, p. CMI 1667.

30 *Hansard*, 2 May 2002, pp. CMI 1534-5.

31 *ibid.*, p. CMI 1540.

32 Appendix D, p. 17.

I am writing to let you know that I have never in any way purposefully sought to influence you to do anything other than tell the whole truth in appearing before the Senate Select Committee.

In this connection I note that our last contact occurred well before either of us was called to appear before the Senate Select Committee. My recollection is that during that last contact we compared our respective memories of a conversation which took place in my office in October 2001 and which related to the incident which the Senate Select Committee is considering. I recall that our respective memories of the October 2001 conversation differed. I hope that you have not felt that this discovery of a difference in our recollection was in any way intended by me to be an attempt to change your mind about your own recollections.

I would simply strongly encourage you to tell the Senate Select Committee the whole truth as you recall it, which is exactly what I will be doing when I appear before the Committee on 2 May 2002.

I have copied this letter to the Secretary of the Department of the Prime Minister and Cabinet for his information.³³

1.23 It appears that the background to the letter was the following. A task force, headed by Rear Admiral Raydon Gates, had been set up in Defence to coordinate Defence input to the Maritime Incident inquiry. Cmdr King discussed with the task force the statement he was to make, and subsequently a minute from Rear Admiral Gates was sent to the Minister for Defence. That minute stated in part:

The CDF/SEC Taskforce, set up to coordinate Defence aspects of the Senate Select Committee into a Certain Maritime Incident (SSC), has received information that there may have been an attempt to influence the nature and the content of evidence by an ADF member who has been invited to appear before the Committee. The extent of the alleged attempt was not to suggest to the ADF member that he present evidence untruthfully, but to consider that he omit relevant facts from his evidence. The ADF member has stated that he has not been influenced by this approach.³⁴

1.24 Following receipt of the minute, the Defence Minister's office passed it on to the Prime Minister's office, which in turn passed it on to Ms Barbara Belcher, First Assistant Secretary, Government Division in PM&C. She called a meeting with the head of International Division, Mr Michael Potts, and Dr Hammer. Ms Belcher suggested that:

Dr Hammer might wish to consider whether he was able to write to Commander King ahead of his scheduled appearance before the Committee on 2 May to make it clear that Dr Hammer did not consider that Commander King should give anything but honest and full evidence.

33 *ibid.*, p. 28.

34 Appendix C, p. 9.

He did so, and copied it to the Secretary of PM&C.³⁵

1.25 In evidence to the Maritime Incident Committee, Cmdr King expressed his surprise at receiving the letter and at its first sentence:

I had never expressed a concern in that regard. It had been an element of a conversation with the task force that the nature of activities may be construed **by others** [emphasis added] to have constituted an atmosphere of influence. I was simply forewarning the task force that in any questioning there may be a spin - a media spin or whatever - put on that issue.³⁶

He later added, 'I was uncomfortable receiving the letter. It surprised me; it caught me off guard.' But he assured the committee that it did not affect his evidence.³⁷

Basis of raising matter of privilege

1.26 In raising this issue as a matter of privilege, the Chair of the Maritime Incident Committee advised the President in the following terms:

On 29 April 2002, Rear Admiral Gates, head of the Task Force coordinating in the Department of Defence responses to the committee, wrote a memo to the Minister for Defence indicating that, in relation to evidence to be given at the hearing of the committee on 2 May 2002, there may have been an attempt to influence a witness by suggesting to the witness that relevant facts be omitted from evidence. The committee was not told about this memo. Instead, the officer identified as the source of the alleged interference, Dr Brendon Hammer, formerly of the Prime Minister's Department, wrote to the witness, Commander Stefan King, declaring that he did not try to influence Commander King's evidence. The committee discovered the allegation only when examining Commander King on 2 May. Commander King stated that he had been uneasy about a meeting with Dr Hammer and Ms Harinder Sidhu, called by Dr Hammer at the Kurrajong Hotel, but that he had not complained of an attempt to interfere with his evidence. The committee also has questioned Ms Sidhu about the allegation although it broke off its examination of Ms Sidhu when a letter was received from PM & C relating to the matter.

The letter advised, among other things, that the allegation was to be the subject of an investigation by Mr Max Moore-Wilton, the Secretary of the Department of the Prime Minister and Cabinet. Mr Moore-Wilton's report was provided to the committee Monday, 13 May 2002. It reveals that he only took written statements from Dr Hammer, Ms Sidhu and Mr Michael Potts (FAS, International Division, PM & C). Mr Moore-Wilton did not obtain evidence from anyone else involved, particularly Rear Admiral

35 *ibid.*, pp. 7-8.

36 *Hansard*, 2 May 2002, p. CMI 1544.

37 *ibid.*, p. CMI 1546.

Gates, who conveyed the allegation to the Minister for Defence. Mr Moore-Wilton concludes on this inadequate basis that nothing untoward occurred.

The material in his report, however, raises more questions and heightens concern about the matter. The account by Ms Sidhu of the Hotel Kurrajong meeting, for example, strongly suggests that pressure was being brought to bear on Commander King to make his recollections of relevant facts accord with Dr Hammer's. It also reinforces the fact that Commander King was uneasy about the conversation. It needs to be appreciated that Commander King's evidence about what was known and what was communicated concerning the "children overboard" incident is vital to the committee's assessment of what occurred.

The committee considers that it has discharged its obligation under Senate Privilege Resolution 1(18) to take all reasonable steps to ascertain the facts of the matter. Having done so, the committee considers that, in the terms of that resolution, the facts, as known so far, disclose that there may have been an attempt to influence a witness. It would be extremely difficult for the committee to investigate the matter further while simultaneously investigating the matters contained in its terms of reference, particularly as the same witnesses are involved. Such a course could also give rise to a suggestion that the committee is not an impartial investigator of the alleged interference. It would therefore be more satisfactory for the alleged interference now to be investigated by the Privileges Committee.³⁸

Conduct of inquiry

1.27 Following receipt of the reference, the Committee of Privileges wrote to the primary persons identified by evidence as having been involved in this element of the Maritime Incident inquiry. These were:

Senator the Hon. Peter Cook, Chair, Select Committee on a Certain Maritime Incident

Dr Brendon Hammer, Assistant Secretary, Department of Foreign Affairs and Trade, formerly Assistant Secretary, Defence, Intelligence and Security Branch, Department of the Prime Minister and Cabinet

Rear Admiral R W Gates CSM RAN, Head CDF/Secretary Taskforce

Mr Max Moore-Wilton AC, Secretary, Department of the Prime Minister and Cabinet

Commander Stefan King, Deputy Director, Capability Resourcing Navy Capability, Performance and Plans Branch, Department of Defence, formerly Australian Defence Force Liaison Officer, International Division, Department of the Prime Minister and Cabinet

38 Appendix B, pp. 3-4.

Ms Harinder Sidhu, Senior Adviser, Defence, Intelligence and Security Branch,
Department of the Prime Minister and Cabinet

Mr Michael Potts, First Assistant Secretary, International Division, Department
of the Prime Minister and Cabinet

1.28 The committee received submissions and comment from all persons. The Chair of the Certain Maritime Incident Committee, Senator Cook, in responding to the Committee of Privileges, expanded on his letter to the President of the Senate as follows:

The first indication to the Committee that an attempt may have been made to influence a witness arose during the Committee's questioning of Commander Stefan King on Thursday 2nd May. It emerged that Commander King had been invited to a meeting by Ms Harinder Sidhu, on behalf of Dr Brendon Hammer – both officials of PM&C and supervisors of Commander King during his period as Defence Liaison Officer in PM&C.

In the early part of his testimony concerning this meeting, Commander King declared that, with respect to the initial invitation to attend a Sunday meeting (at Mr Hammer's home, it later emerged), the timing "would not have been my first choice ... and I thought perhaps a little unusual." (CMI 1509) In the event, the meeting occurred the next day (Monday 11 March 2002) at the Kurrajong Hotel opposite the PM&C offices, apparently for the purpose of discussing "how we recollected individually the briefing we had had." (CMI 1509) Commander King elaborated that:

Cmdr King—Dr Hammer thought it would be helpful, due to my lack of experience in these forums, for him to put a position to me that you might ask and I could have the benefit of answering that as I might answer it to you. (CMI 1510)

Commander King subsequently revealed some discomfort about an aspect of the 'practice run':

Cmdr King—When asked the question about answering questions I might be asked by this committee, I explained that I was prepared to talk only in broad terms because I still had not fully prepared my statement with regard to my full recollections to the extent that, if I were to answer in detail to him, I might actually contradict what I said later when I had had more time to fully prepare myself I was not comfortable to give a detailed answer that might be construed as one that I would give before this committee. (CMI 1511-12)

When Commander King was asked directly whether he felt that Dr Hammer was trying to influence his (King's) testimony, Commander King said "No." (CMI 1513). He later stated that he had told the Defence Task Force that he "never felt that it was Dr Hammer's intention to influence" him (CMI 1535). King was concerned, however, that events could be construed by others in such a way as to suggest that such an attempt had been made. He thought that "as a naval officer appearing before this committee, there may

be ... media reporting or ... other reporting where the perception may be given to that sequence of events.” (CMI 1535)

Matters intensified with the revelation, a little later in proceedings, that Dr Hammer had written to Commander King the day before he was due to give evidence. In that letter, Dr Hammer said that he (Hammer) had been advised that King had “expressed a concern that I may have sought to influence your testimony.” As well, Dr Hammer said that he had never intentionally sought to influence King, and went on to encourage King to simply tell the committee the whole truth as he understood it.

Later in the day the Committee received another letter. It was from the Head of Government Division in PM&C, and it shed further light on what led to Dr Hammer’s writing to Commander King. Attached to that letter was a copy of a Minute (HCST 86/02) from the Head of the Defence Task Force (Rear Admiral Radon Gates) to the Minister for Defence. The Minute included the following:

The CDF/SEC Taskforce, set up to coordinate Defence aspects of the Senate Select Committee into a Certain Maritime Incident (SSC), has received information that there may have been an attempt to influence the nature and the content of evidence by an ADF member who has been invited to appear before the Committee. The extent of the alleged attempt was not to suggest to the ADF member that he present evidence untruthfully, but to consider that he omit relevant facts from his evidence. The ADF member has stated that he has not been influenced by this approach.

For the Committee, this constituted a compelling reason to believe that interference with a witness may have occurred.

The Committee decided to adjourn proceedings immediately to consider how it might deal with the matters that had emerged. These deliberations, and further deliberations at a private meeting, resulted in the Committee’s writing to the President requesting her to facilitate the reference of the matters to the Privileges Committee.³⁹

Senator Cook forwarded relevant documents and evidence to the Committee of Privileges.

1.29 Submissions from Dr Hammer, Ms Sidhu and Mr Potts consisted primarily of statements made to Mr Max Moore-Wilton, who had conducted an internal inquiry into the matters raised by Rear Admiral Gates. Mr Moore-Wilton indicated that he had nothing further to add to his report.

1.30 Cmdr King forwarded to both the Privileges Committee and the Maritime Incident Committee similar submissions with documentary records of exchanges

39 Appendix C, pp. 5-6.

between himself and the two PM&C officers involved, setting out his views on the circumstances surrounding his involvement in the meeting of 11 March 2002.

1.31 Rear Admiral Gates, too, sent to the Committee of Privileges a detailed account of his reasons for considering it necessary to draw the attention of the Minister for Defence to the possible improper interference with Cmdr King as a potential witness before the Maritime Incident Committee.

1.32 The Committee of Privileges includes all relevant responses and submissions as appendices to this report because together they give a complete account of what the committee regards as various persons' perceptions of what occurred at the meeting of 11 March 2002. The committee itself does not intend to canvass issues any further, as its only focus is on whether a contempt should be found.

Comment

1.33 The Committee of Privileges appreciates and accepts the reasons why the Maritime Incident Committee was perturbed by the whole matter, especially because of the manner in which it first became aware of the possible improper interference with the witness, as set out in its letter to this committee. The Committee of Privileges also considers it appropriate that the Maritime Incident Committee suspended its hearings of witnesses until the question whether a matter of privilege should be raised was resolved.

1.34 Having examined all submissions and evidence, particularly the submissions of Rear Admiral Gates and Cmdr King, the Committee of Privileges has little doubt that matters escalated to the point which concerned the Maritime Incident Committee as a result of the discomfiture of the officer working in an environment to which he was not accustomed. Both submissions indicate concerns about the atmosphere surrounding the whole matter. Cmdr King expressed his unease in the following terms:

Since February 2002 I have become increasingly of the view that the Department of PM&C sought to avoid a situation in which my evidence would be presented to the Senate through their Department.

even though he also stated:

I do not have reason to believe that officers of PM&C sought to influence me to omit any material facts from my evidence, nor to cause me to change my evidence.⁴⁰

1.35 The committee also considers that Dr Hammer was genuinely astonished when his attempts, four months after what he regarded at the time as a rumour, to aid his memory in recalling an event which he considered insignificant, might have been

40 Appendix D, p. 10.

misconstrued as improper interference with, at that stage, a possible – perhaps unlikely – witness before a committee which had only recently been established.⁴¹

Conclusions

1.36 The Committee of Privileges appreciates that the different cultures which inform and influence the Department of the Prime Minister and Cabinet, on the one hand, and the Australian Defence Force on the other, have led to this inquiry, and regards it as healthy that all perceptions are available for public evaluation. Its own task, however, is to determine whether contempt has been committed.

1.37 In making its decision, the committee concentrated on a crucial sentence in the very detailed submission to it from Cmdr King as follows:

Notwithstanding that discomfort⁴² I re-affirm that I did not believe that Dr Hammer personally sought me to either change my evidence or to omit any part of my evidence.⁴³

Cmdr King also reaffirmed this assertion in his statement of 20 June 2002 to the Maritime Incident Committee, forwarded under cover of a letter of 25 June to that committee from the Minister for Defence.

1.38 The Committee of Privileges notes from all the evidence before it that the only possible source of any improper attempt to influence Cmdr King is Dr Hammer. Both he and Cmdr King deny strenuously that he attempted to do so. The committee considers that this should end the matter. It is not in a position, and nor should it be required, to second-guess the plain words of these two witnesses, or reach speculative conclusions on the actions or motives of any other person or persons involved.

1.39 The committee has also concluded that Dr Hammer's letter of 30 April to Cmdr King was a reasonable response to a totally unexpected allegation, made only days before Cmdr King was to appear before the Maritime Incident Committee and nearly two months after the 11 March meeting took place, that improper interference might have occurred.

1.40 The committee therefore accepts Dr Hammer's denial of any attempt to influence Cmdr King, asserted in his letter to Cmdr King, and repeated to the Committee of Privileges in the following terms:

I wish to record here, once again, that I categorically deny having made any attempt, or having ever had any intention, to influence Commander Stefan King's testimony before the Select Committee.⁴⁴

41 See especially Appendix E, p. 31.

42 See paragraph 1.28, p. 10, above.

43 Appendix D, p. 17.

44 Appendix E, p. 30.

The committee regards this as the only conclusion that can possibly be drawn, particularly given Cmdr King's own direct evidence as to the role of Dr Hammer personally.

Finding

1.41 On the basis of the evidence it has considered, the Committee of Privileges finds that no contempt was committed in respect of the matter referred to it on 16 May 2002.

Robert Ray
Chair

APPENDICES

APPENDIX	DOCUMENT	PAGES
A	<i>Journals of the Senate</i> No. 13, 16 May 2002, p. 359	1
B	<p>Extract from Senate <i>Hansard</i>, 15 May 2002, p. 1631 Statement by Madam President</p> <p>Tabled paper:</p> <ul style="list-style-type: none"> • Letter, dated 15 May 2002, from Senator the Hon. Peter Cook, Chair, Select Committee on a Certain Maritime Incident, to Senator the Hon. Margaret Reid, President of the Senate 	<p>2</p> <p>3-4</p>
C	<p>Letter, dated 11 June 2002, from Senator the Hon. Peter Cook, Chair, Select Committee on a Certain Maritime Incident, to the Privileges Committee</p> <p>Attachment:</p> <ul style="list-style-type: none"> • Letter, dated 2 May 2002, from Ms Barbara Belcher, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet to Mr Brenton Holmes, Secretary, Select Committee on a Certain Maritime Incident <p>Note: Transcripts of Maritime Incident Committee evidence are not included with Appendix</p>	<p>5-6</p> <p>7-9</p>
D	<p>Submission, dated 18 June 2002, from Commander Stefan King to the Privileges Committee</p> <p>Attachments:</p> <ul style="list-style-type: none"> • Chronology of events in submission • E-mail Sidhu/King dated 25 February 2002 • E-mail King/Whalan dated 28 February 2002 • E-mail Sidhu/King dated 8 March 2002 • Letter Potts/Moore-Wilton dated 8 May 2002 • Letter Hammer/King 30 April 2002 	<p>10-19</p> <p>20-21</p> <p>22</p> <p>23</p> <p>24-25</p> <p>26-27</p> <p>28</p>
E	<p>Letter, dated 18 June 2002, from Dr Brendon Hammer, Assistant Secretary, Americas Branch, Department of Foreign Affairs and Trade, to the Privileges Committee</p> <p>Attachments:</p> <ul style="list-style-type: none"> • Statement to the Senate Committee of Privileges • Report, dated 10 May 2002, prepared by Mr Max Moore-Wilton AC entitled ‘Select Committee on a Certain Maritime Incident — PM&C Officials’ 	<p>29</p> <p>30-31</p> <p>32-56</p>

F	<p>Letter, dated 4 June 2002, from Ms Harinder Sidhu to the Privileges Committee</p> <p>Attachments:</p> <ul style="list-style-type: none"> • Memo, dated 6 May 2002, from Ms Harinder Sidhu to the Secretary, Department of the Prime Minister and Cabinet • Statement, dated 6 May 2002, by Ms Harinder Sidhu 	<p style="text-align: right;">57</p> <p style="text-align: right;">58</p> <p style="text-align: right;">59-61</p>
G	<p>Submission, dated 18 June 2002, from Rear Admiral R.W. Gates to the Privileges Committee</p> <p>Attachments:</p> <ul style="list-style-type: none"> • Copy of Chief of the Defence Force Directive, dated 4 March 2002 • Copy of e-mail Commander King • Copy of e-mail Commander King • Copy of e-mail Commander King • Copy of Minute to Minister dated 29 April 2002 	<p style="text-align: right;">62-68</p> <p style="text-align: right;">69-71</p> <p style="text-align: right;">72-73</p> <p style="text-align: right;">74-75</p> <p style="text-align: right;">76-78</p> <p style="text-align: right;">79</p>
H	<p>Letter, dated 18 June 2002, from Mr Michael Potts, First Assistant Secretary, International Division, Department of the Prime Minister and Cabinet, to the Privileges Committee</p> <p>Attachment:</p> <ul style="list-style-type: none"> • Letter, dated 8 May 2002, from Mr Michael Potts to Mr Max Moore-Wilton, Secretary, Department of the Prime Minister and Cabinet 	<p style="text-align: right;">80</p> <p style="text-align: right;">81-82</p>
I	<p>Letter, dated 27 June 2002, from Mr Max Moore-Wilton to the Privileges Committee</p>	<p style="text-align: right;">83</p>

Appendix A

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Extract from Journals of the Senate

No. 13 dated 16 May 2002

1 PRIVILEGES—STANDING COMMITTEE—REFERENCE

The Chair of the Select Committee on a Certain Maritime Incident (Senator Cook), pursuant to notice of motion not objected to as a formal motion, moved matter of privilege notice of motion no. 1—That the following matter be referred to the Committee of Privileges:

Having regard to the matter submitted to the President by the Select Committee on a Certain Maritime Incident, whether there was any attempted or actual interference with a witness before the committee in respect of the witness' evidence, and whether any contempt of the Senate was committed in that regard.

Question put and passed.

Wednesday, 15 May 2002

SENATE

1631

COMMITTEES

Privileges Committee

Reference

The PRESIDENT (6.55 p.m.)—The Select Committee on a Certain Maritime Incident, by a letter dated 15 May 2002, under the signature of the chair, Senator Cook, has raised a matter of privilege. The committee believes that there may have been interference with a witness before the committee. The committee indicates that it has conducted a preliminary investigation of the matter, as required by Senate privilege resolution 1, part 18, and has concluded that there is sufficient evidence that the witness may have been interfered with. Where a committee, after conducting a preliminary investigation, as required by resolution 1, part 18, comes to such a conclusion, this is regarded as sufficiently indicating that the matter meets the criteria which I am required to consider in making a determination under standing order 81: whether a motion to refer the matter to the Privileges Committee should be given precedence. I therefore determine that such a motion to refer the matter to the Privileges Committee under standing order 81 may have precedence. I table the letter from the committee. A notice of motion to refer the matter to the Privileges Committee may now be given.

NOTICES

Presentation

Senator COOK (Western Australia) (6.59 p.m.)—by leave—I give notice that, on the next day of sitting, I shall move:

That the following matter be referred to the Committee of Privileges:

Having regard to the matter submitted to the President by the Select Committee on a Certain Maritime Incident, whether there was any attempted or actual interference with a witness before the committee in respect of the witness' evidence, and whether any contempt of the Senate was committed in that regard.



RECEIVED
15 MAY 2002
PRESIDENTS OFFICE

AUSTRALIAN SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

THE SENATE
15 MAY 2002
NS
TABLED
PAPER

15 May 2002

Senator the Hon Margaret Reid
President of the Senate
Parliament House
CANBERRA ACT 2600

RECEIVED
15 MAY 2002
CLERK'S OFFICE

Dear Madam President

MATTER OF PRIVILEGE — POSSIBLE INTERFERENCE WITH WITNESS

The Select Committee on a Certain Maritime Incident has resolved to raise a matter of privilege under standing order 81, and to ask that you give precedence to a motion to refer the matter to the Committee of Privileges in accordance with that standing order.

The matter is the possible interference with a witness before the committee.

On 29 April 2002, Rear Admiral Gates, head of the Task Force coordinating in the Department of Defence responses to the committee, wrote a memo to the Minister for Defence indicating that, in relation to evidence to be given at the hearing of the committee on 2 May 2002, there may have been an attempt to influence a witness by suggesting to the witness that relevant facts be omitted from evidence. The committee was not told about this memo. Instead, the officer identified as the source of the alleged interference, Dr Brendon Hammer, formerly of the Prime Minister's Department, wrote to the witness, Commander Stefan King, declaring that he did not try to influence Commander King's evidence. The committee discovered the allegation only when examining Commander King on 2 May. Commander King stated that he had been uneasy about a meeting with Dr Hammer and Ms Harinder Sidhu, called by Dr Hammer at the Kurrajong Hotel, but that he had not complained of an attempt to interfere with his evidence. The committee also has questioned Ms Sidhu about the allegation although it broke off its examination of Ms Sidhu when a letter was received from PM & C relating to the matter.

The letter advised, among other things, that the allegation was to be the subject of an investigation by Mr Max Moore-Wilton, the Secretary of the Department of the Prime Minister and Cabinet. Mr Moore-Wilton's report was provided to the committee Monday, 13 May 2002. It reveals that he only took written statements from Dr Hammer, Ms Sidhu and

2

Mr Michael Potts (FAS, International Division, PM & C). Mr Moore-Wilton did not obtain evidence from anyone else involved, particularly Rear Admiral Gates, who conveyed the allegation to the Minister for Defence. Mr Moore-Wilton concludes on this inadequate basis that nothing untoward occurred.

The material in his report, however, raises more questions and heightens concern about the matter. The account by Ms Sidhu of the Hotel Kurrajong meeting, for example, strongly suggests that pressure was being brought to bear on Commander King to make his recollections of relevant facts accord with Dr Hammer's. It also reinforces the fact that Commander King was uneasy about the conversation. It needs to be appreciated that Commander King's evidence about what was known and what was communicated concerning the "children overboard" incident is vital to the committee's assessment of what occurred.

The committee considers that it has discharged its obligation under Senate Privilege Resolution 1(18) to take all reasonable steps to ascertain the facts of the matter. Having done so, the committee considers that, in the terms of that resolution, the facts, as known so far, disclose that there may have been an attempt to influence a witness. It would be extremely difficult for the committee to investigate the matter further while simultaneously investigating the matters contained in its terms of reference, particularly as the same witnesses are involved. Such a course could also give rise to a suggestion that the committee is not an impartial investigator of the alleged interference. It would therefore be more satisfactory for the alleged interference now to be investigated by the Privileges Committee.

As the Senate will not sit again after tomorrow for four weeks, the committee asks that you make a determination on the matter today or at the latest tomorrow so that it may be referred to the Privileges Committee before the Senate rises.

Yours sincerely



Senator the Hon Peter Cook
Chair



Appendix C

AUSTRALIAN SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

/ June 2002

Senator the Hon Robert Ray
Chair
Committee of Privileges
Australian Senate
Parliament House
Canberra
ACT 2600

RECEIVED

11 JUN 2002

CLERKS OFFICE

Dear Senator Ray

Your letter of 16 May invites me to make comments on behalf of the Select Committee on a Certain Maritime Incident on issues arising from an alleged attempt to interfere with a witness appearing before the Committee.

I have attached relevant documents and extracts from the Committee's Transcript of Evidence.

The first indication to the Committee that an attempt may have been made to influence a witness arose during the Committee's questioning of Commander Stefan King on Thursday 2nd May. It emerged that Commander King had been invited to a meeting by Ms Harinder Sidhu, on behalf of Dr Brendon Hammer – both officials of PM&C and supervisors of Commander King during his period as Defence Liaison Officer in PM&C.

In the early part of his testimony concerning this meeting, Commander King declared that, with respect to the initial invitation to attend a Sunday meeting (at Mr Hammer's home, it later emerged), the timing "would not have been my first choice ... and I thought perhaps a little unusual." (CMI 1509) In the event, the meeting occurred the next day (Monday 11 March 2002) at the Kurrajong Hotel opposite the PM&C offices, apparently for the purpose of discussing "how we recollected individually the briefing we had had." (CMI 1509) Commander King elaborated that:

Cmdr King—Dr Hammer thought it would be helpful, due to my lack of experience in these forums, for him to put a position to me that you might ask and I could have the benefit of answering that as I might answer it to you. (CMI 1510)

Commander King subsequently revealed some discomfort about an aspect of the 'practice run':

Cmdr King—When asked the question about answering questions I might be asked by this committee, I explained that I was prepared to talk only in broad terms because I still had not

fully prepared my statement with regard to my full recollections to the extent that, if I were to answer in detail to him, I might actually contradict what I said later when I had had more time to fully prepare myself I was not comfortable to give a detailed answer that might be construed as one that I would give before this committee. (CMI 1511-12)

When Commander King was asked directly whether he felt that Dr Hammer was trying to influence his (King's) testimony, Commander King said "No." (CMI 1513). He later stated that he had told the Defence Task Force that he "never felt that it was Dr Hammer's intention to influence" him (CMI 1535). King was concerned, however, that events could be construed by others in such a way as to suggest that such an attempt had been made. He thought that "as a naval officer appearing before this committee, there may be ... media reporting or ... other reporting where the perception may be given to that sequence of events." (CMI 1535)

Matters intensified with the revelation, a little later in proceedings, that Dr Hammer had written to Commander King the day before he was due to give evidence. In that letter, Dr Hammer said that he (Hammer) had been advised that King had "expressed a concern that I may have sought to influence your testimony." As well, Dr Hammer said that he had never intentionally sought to influence King, and went on to encourage King to simply tell the committee the whole truth as he understood it.

Later in the day the Committee received another letter. It was from the Head of Government Division in PM&C, and it shed further light on what led to Dr Hammer's writing to Commander King. Attached to that letter was a copy of a Minute (HCST 86/02) from the Head of the Defence Task Force (Rear Admiral Radon Gates) to the Minister for Defence. The Minute included the following:

The CDF/SEC Taskforce, set up to coordinate Defence aspects of the Senate Select Committee into a Certain Maritime Incident (SSC), has received information that there may have been an attempt to influence the nature and the content of evidence by an ADF member who has been invited to appear before the Committee. The extent of the alleged attempt was not to suggest to the ADF member that he present evidence untruthfully, but to consider that he omit relevant facts from his evidence. The ADF member has stated that he has not been influenced by this approach.

For the Committee, this constituted a compelling reason to believe that interference with a witness may have occurred.

The Committee decided to adjourn proceedings immediately to consider how it might deal with the matters that had emerged. These deliberations, and further deliberations at a private meeting, resulted in the Committee's writing to the President requesting her to facilitate the reference of the matters to the Privileges Committee.

Please contact me if I can be of any further assistance.



Senator the Hon Peter Cook
Chair



THE DEPARTMENT OF
THE PRIME MINISTER AND CABINET

TELEPHONE: (02) 6271 5111

FACSIMILE: (02) 6271 5414

3-5 NATIONAL CIRCUIT
CANBERRA, A.C.T. 2600

Mr Brenton Holmes
Secretary
Senate Select Committee on a Certain Maritime Incident
Parliament House
CANBERRA ACT 2600

Dear Mr Holmes

During the taking of evidence this morning by the Senate Select Committee on a Certain Maritime Incident, reference was made to a letter from Dr Brendon Hammer to Commander Stefan King dated 30 April 2002. That letter indicated that I had passed to Dr Hammer information that it had been alleged that he might have sought to influence Commander King's evidence to the Committee. Commander King was asked if he could explain how I was in a position to pass that information to Dr Hammer. The Committee might find the background to my action of relevance.

On the evening of 29 April Mr Tony Nutt, Principal Private Secretary to the Prime Minister, informed me by telephone that Rear Admiral Gates had that day sent a minute to the Minister for Defence informing him that a taskforce within the Department of Defence had received information that there may have been an attempt to influence the evidence of an ADF member who had been invited to appear before the Committee. A copy of that minute, which Mr Nutt provided to me on 30 April, is attached. Mr Nutt subsequently informed me that the Minister for Defence's office had advised that Commander Stefan King was the ADF member concerned and that Dr Brendon Hammer, until very recently an officer of the Department of the Prime Minister and Cabinet, was the person who may have attempted to influence the evidence.

As you will see from the minute, it contains a serious allegation that Dr Hammer had put to Commander King that he consider omitting relevant facts from his evidence. Although the allegation was not accompanied by details of the attempt to influence, the allegation was of such significance that the Department of the Prime Minister and Cabinet considered itself obliged to take some action immediately. The action took two forms.

Given its nature, I considered that Dr Hammer was entitled to know that the allegation had been made against him. I therefore spoke to him early on the afternoon of 30 April. Mr Michael Potts, First Assistant Secretary, International Division was present for most of that discussion. In the course of that discussion I put it to Dr Hammer that it was important that no witness appear before a parliamentary committee while considering himself to be


pressured to give evidence in a less than honest way. I suggested that Dr Hammer might wish to consider whether he was able to write to Commander King ahead of his scheduled appearance before the Committee on 2 May to make it clear that Dr Hammer did not consider that Commander King should give anything but honest and full evidence. Dr Hammer advised me late that afternoon that he had prepared a letter to Commander King. Mr Moore-Wilton received a copy of that letter in the early evening.

The second course of action involved Mr Moore-Wilton's commencing a process to establish the veracity or otherwise of the allegation in order to determine what further action by him might be required. He has asked that Dr Hammer and Ms Harinder Sidhu provide him with relevant information by Monday 6 May, before considering further action.

The actions the Department of the Prime Minister and Cabinet has taken to date on this issue were considered by me to be an appropriate interim response to a serious allegation.

I should be grateful if you would pass this letter to the Committee as soon as possible.

Yours sincerely



Barbara Belcher
First Assistant Secretary
Government Division

2 May 2002

STAFF-IN-CONFIDENCE

Department of Defence

MINUTE

HCST 86 /02

Minister

SENATE SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

RECOMMENDATION

- That you note the evidence that may be given during the Senate Select Committee on a Certain Maritime Incident hearings on 2 May 02.

OVERVIEW

- The CDF / SEC Taskforce, set up to coordinate Defence aspects of the Senate Select Committee into a Certain Maritime Incident (SSC), has received information that there may have been an attempt to influence the nature and the content of evidence by an ADF member who has been invited to appear before the Committee. The extent of the alleged attempt was not to suggest to the ADF member that he present evidence untruthfully, but to consider that he omit relevant facts from his evidence. The ADF member has stated that he has not been influenced by this approach.
- As with its approach to all witnesses appearing before the SSC, Defence has encouraged the ADF member to prepare himself thoroughly to ensure that the evidence he gives is to the best of his recollection and understanding. The ADF member has been offered legal support and he thoroughly understands his rights and obligations as a witness before the SSC, in particular his obligation to provide full, frank and truthful evidence.

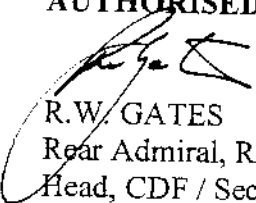
Sensitivity

- Yes. Any allegation of an attempt to influence evidence to be given by a witness who has been requested to appear before a Parliamentary Committee is very sensitive. Should this alleged attempt come to light during the hearing, it would attract considerable media attention.

Resources. Not applicable.

Talking Points. Not applicable.

AUTHORISED:


R.W. GATES
Rear Admiral, RAN
Head, CDF / Secretary Task Force

NOTED

ROBERT HILL
/ /

29 Apr 02

CONTACT: RADM R.W. Gates (02) 6265 4652

STAFF-IN-CONFIDENCE

**Submission by Commander Stefan M. King, RAN
for the Senate Committee of Privileges
of the Parliament of the Commonwealth of Australia**

The Committee of Privileges has invited me to provide written comments to the Committee in the consideration of the matter of attempted or actual interference with a witness appearing before the Senate Select Committee on a Certain Maritime Incident. I make this submission with the same Affirmation I gave to the Senate Select Committee and I simply present the facts as I know them, the truths as I understand them and the context as I believe it to be.

I take the opportunity to make this submission, making the following introductory observations;

- I have not made any direct claims that there were attempts to change my evidence or to 'omit certain facts'.
- I have not claimed that Dr Hammer personally intended that I omit any facts or present any falsehoods to the Senate Select Committee.
- My evidence before the Senate Select Committee was not influenced by any person.

In preparing this submission I find myself in difficult circumstances. I do not wish to be a complainant in this matter however I believe that I must provide my contribution in full and frank honesty. Honesty in this sense comes from my own perceptions of what the actions and in-actions of the Department of Prime Minister and Cabinet meant to me, as an affected person who was remote from that Department. The extent to which these perceptions contribute to the Committee of Privileges findings in this matter in any way, is purely a matter for the Committee.

In endeavouring to provide the Committee with the most helpful account that I can, I have examined the issue of 'influence' as three separate elements, namely;

- Did the Department of Prime Minister and Cabinet (PM&C) or its officers intend to influence me?
- Did I have the perception that PM&C or its officers tried to influence me?
- Did I change, embellish, diminish or omit any evidence as a result of any such influence or perceived influence?

In respect of the first element I do not have reason to believe that officers of PM&C sought to influence me to omit any material facts from my evidence, nor to cause me to change my evidence. Since February 2002 I have become increasingly of the view that the Department of PM&C sought to avoid a situation in which my evidence would be presented to the Senate through their Department.

Personal and Confidential

In respect of the second element I declare that I have not been of the perception that Dr Hammer personally sought to cause me to change or to omit any evidence. I highlight a single comment that he made to me at the Kurrajong Hotel which I did perceive as an attempt to influence my expectation of being required to give any evidence before a Senate committee. This is explained in more detail later.

In respect of the third element I repeat my assertion that I have given all of my evidence to the best of my ability and to the best of my recollections and that I have not omitted or changed any of my evidence as a result of any influence from PM&C.

In turning back to the second element of my approach to this question, it has been my perception, from a series of actions and inactions by PM&C that that Department preferred that my evidence not come before the Senate Select Committee and that perhaps agreements or 'understandings' may have been formed to contribute to that outcome. This perception is directed more broadly to the Department at large, and not to a particular individual, including Dr Hammer, as I have accepted his public assurances to me.

I wish to take the committee through a series of events and recollections which lead to my perception that PM&C did not wish my evidence to come to light. I do not do this in an accusatorial sense, but rather as I would present the answer to a question that I would expect the Committee to want answered.

On 11 October 2001, with Ms Sidhu accompanying, I attend Dr Hammer's office, by appointment to brief him on the significant items of the Operation Slipper briefing I had attended at Russell Offices, and on the issue of the incorrectly attributed photographs that had appeared in the news media that day. I recall that the OP Slipper items of the briefing were not particularly significant that day, but they served to validate the need for me to brief Dr Hammer personally on the photographs. Dr Hammer turned from his computer and faced me square on. I gave him the primary details of the OP Slipper briefing (which were classified) and then I said that I had also been told, outside of the briefing, that the photographs in the media and as described by the Ministers for Defence and Immigration were incorrectly attributed to the event of children being thrown overboard. I clearly recall saying that I thought he would want to know this so that he might let the Secretary know. His facial expressions indicated immediately and clearly to me that he understood the significance of this information. He never asked me any questions about the source of this information or the veracity of it.

Personal and Confidential

I want to add here that in my short time in PM&C there were several occasions where there was concern that something the Prime Minister had said or might say, might be in conflict with something another Cabinet Minister had said or might say. In such cases, transcripts of statements or doorstep interviews would be obtained and used to prevent or correct such inconsistencies. I had expected that this would be the focus of my briefing to Dr Hammer about the photographs, in light of the statements the Ministers for Defence and Immigration had made to the media. It was clearly obvious that the Prime Minister himself could be in a position to align himself with their comments, in which case any concerns about the accuracy of the story and the photographs needed to be managed immediately.

In essence, I expected that Dr Hammer would do one of several things; either task Ms Sidhu or myself to substantiate the information at a higher level in Defence, do that himself (most likely) or pass the information on to the First Assistant Secretary (for his dispersal) or other internal senior officers.

The matter of the photographs and children overboard remained in focus for several months, firstly with the media reporting suggesting a sense that all was not right, and then by the commencement of Ms Bryant's investigation for the Secretary.

On 07 November Ms Sidhu related to an officer of Social Policy Division that a 'rumour' has been heard in respect of the photographs, and a week later the Prime Minister wrote to the Secretary of the Department of Prime Minister and Cabinet to examine the issues relating to the SIEV4 (Suspected Illegal Entry Vessel #4) incident. I therefore fully expected that Ms Bryant will want to clarify the source of the rumour, particularly as it has been relayed by a trusted and respected member of the Department. Having already expressly told Ms Sidhu that there was absolutely no need for her to obscure my identity as the source of this information I fully expected that Ms Bryant will be seeking to interview me.

My secondment to PM&C concludes 18 January 2002 and I take up my new posting in Navy Headquarters at Russell Offices immediately. I maintain social email contact with a few members of International Division.

I observe the Senate Estimates Committee (Finance and Public Administration) questioning of PM&C officers about the children overboard issue. Several key questions and answers lead me to expect that PM&C will declare my briefing to the Senate, noting in particular;

- 18 Feb (F&PA pg 75) Mr Moore Wilton answers a question taken on notice whether any officer in PM&C had any direct contact with ships involved in Operation Relex. That same day Ms Sidhu called me to ask the question that had been asked of Mr Moore-Wilton and I advised that I had

Personal and Confidential

spoken to the Commanding Officer of HMAS *Manoora* on a completely separate subject. Mr Moore-Wilton then advises the Committee that Commander Stephen (sic) King, who is attached to the International Division of PM&C directly contacted the HMAS *Manoora*. For this purpose PM&C were clearly satisfied to incorporate my information (as an officer no longer within that Department) as part of a Departmental response to the Senate (Estimates) Committee.

- 19 Feb (Reps pg 289) the Prime Minister reads part of a letter that refers to an officer from International Division in PM&C, as an officer in Ms Sidhu's section (ie. me), overheard some Defence officials discussing the photographs not being what they were purported to be.

When the Prime Minister and the senior member of the Public Service make reference to the same person on consecutive days about such an important and nationally sensitive matter, I fully expected someone to make the association between the two references to myself (noting there are only two officers who work in Ms Sidhu's section). I expect the Department of PM&C would want to make sure it understood all the facts about the references to this officer, particularly when faced with giving further evidence in the Senate. However, I appreciate that the references to the source of the conveniently termed 'gossip' are only made in committees addressing Finance and Public Affairs and Foreign Affairs and Trade, and expect that at a later time these references will be more thoroughly examined at the Senate Select Committee into a Certain Maritime Incident.

I therefore anticipate that PM&C will seek to obtain material evidence from me in preparing a Departmental submission for the Select Committee.

Sometime that week, and I calculate it to be either the 20th or 21st of February, I receive a phone call from Ms Sidhu who alerts me to the fact that a PM&C inquiry might be taking place, to be headed by Mr Jeff Whalan. I believe she does this to enable me to prepare my own evidence in the event that a submission is to be produced. I do not know if it was suggested by any other person in PM&C, or discussed with Mr Whalan.

Having heard nothing more by the Monday, 25 February, I sent an email to Ms Sidhu that day asking Ms Sidhu if she has heard any more about when a PM&C inquiry might be taking place, and I ask Wing Commander Kevin Murray (my successor in International Division) if he could arrange for the Information Systems people to re-activate my Outlook (diary) account so that I could see it before seeing Mr Whalan. It is my intention to make clear my firm expectation and willingness to contribute to the Inquiry. Ms Sidhu responds by advising that she still doesn't know when an inquiry might take place but that she had expected to be interviewed the day she called me (ie. either 20 or 21 Feb). She

Personal and Confidential

advises that the deadline for submissions to the inquiry is 15 March so it could be anytime prior to then. Ms Sidhu concludes by offering to try to arrange to re-activate the Outlook account for me. (a copy of this email is Enclosure 1).

During this week, I am approached by the Defence Coordination Team which is managing the Defence Submission to the Senate Select Committee. I give them an outline of the substance of my knowledge and recollections and I am asked whether I wish to contribute a statement to Defence's submission. I advise that I would prefer to contribute my statement through the PM&C submission, as a professional courtesy to that department. I do this for the following reasons;

- I was for all intents and purposes a member of PM&C at the time for which my evidence is germane.
- It would be appropriate for PM&C to acknowledge my evidence in their own submission rather than be embarrassed by having it brought to their attention through another Department.
- I fully expected that PM&C would be seeking my evidence in any case, as the appropriate course of action to provide as complete a contribution as possible to the public forum.

The Defence Coordination Team respected my request and took no further action at that time other than to offer me any assistance I might require. As I am becoming concerned that I have not been approached by an officer within PM&C other than Ms Sidhu I advise I intend to send an email direct to Mr Jeff Whalan.

On 28 February I send an email to Mr Whalan to declare my availability to him and my contact details. I suggest to him that he can most easily meet the conventions of formally seeking the services of an officer of the ADF by approaching the Vice Chief of Defence Force, who is the sponsor for the Defence secondment position in PM&C. (Enclosure 2)

Mr Whalan replies later that afternoon by saying "Thank you for the advice. We will work through the system".

Throughout the rest of that week and the next (commencing Monday 4 March) I receive no communications about the contribution of evidence to the PM&C inquiry.

Assuming that Ms Sidhu had indicated to me the prospect of providing a submission to the Senate Committee as early as the 21st of February, and there is now less than two weeks before submissions are due (ie. Friday 15 March) I deduce that PM&C has no intention of including my evidence in their submission.

Personal and Confidential

On Friday 8 March my faith in the 'system' is reignited by an email from Ms Sidhu, forwarding advice from the ISS in PM&C that '...as part of a Senate Committee request, a number of Outlook accounts are being recovered from 22 November to 22 August 2001.' Ms Sidhu appends to the message a comment to confirm that the period is the same period I wanted to review, and also advises that '...Jenny Bryant say's they'll need our information any day now.' (Enclosure 3).

I do not know who approved my access to see the account but I assume it had come from someone in an authoritative position, and had come under the consideration of someone senior and integral to the PM&C Inquiry process. I suspected that maybe the realisation by members of PM&C that I had sought to have this access sparked the interest in my evidence.

I consider that this is a key point in time. Either I will be approached very shortly to contribute my evidence, of which they are surely aware by now, or they will take a decision not to seek my evidence.

I respond to the email clarifying that I wished to review my account out to 21 December 2001, and seek some clarification of the method by which Ms Bryant might want to extract my information. I had thought it would be courteous of Ms Bryant or Mr Whalan or dedicated submission staff to approach me about this directly, instead of working through Ms Sidhu.

I recall that Ms Sidhu telephoned and spoke to me about the email generally. I recall this because I agreed to give her some indications of time when I could be available to come across to PM&C to be interviewed (and at the same time review the Outlook account). In my email response I provide a block of one half day for each day of the week (11-15 March) to be passed to Ms Bryant. I provide such large blocks to provide as much flexibility to Ms Bryant and Mr Whalan as possible, and because after all, I believe this is an extremely important issue. This email is dispatched at 1041 and I expect that it is forwarded to Ms Bryant.

Ms Sidhu replies to this email but I do not receive it before departing that afternoon to go to Sydney for the weekend. In Ms Sidhu's reply (1340) she alludes to discussions with Ms Bryant, and that Ms Bryant didn't say how or if she wanted to talk, but had asked for a copy of Ms Sidhu's statement. Ms Sidhu encloses a copy of her draft statement, again as a courtesy noting that I was mentioned in it.

This suggests two things to me, firstly that Ms Bryant is fully aware of my availability for a contribution, but does not want to have any direct association with me about it. I also now form the view that PM&C are using Ms Sidhu as the sole information conduit to me, perhaps to keep me at arm's length from other relevant officers in PM&C.

Personal and Confidential

Personal and Confidential

Over the Friday night and on Saturday messages are left on my mobile phone from Ms Sidhu, rather keen that I talk to her about a meeting with Dr Hammer that weekend. I am immediately uncomfortable about the purpose of such a meeting. I question myself why it is that after trying for several weeks to clearly impress both my willingness to contribute to the truth behind the incident, and my availability, that I am now being sought to discuss it as a matter of urgency on a weekend, and with Dr Hammer and not an officer conducting the inquiry. I assess that this approach is outside any formal and official information gathering exercise.

I tried returning her call on Saturday afternoon before attending the formal dinner of a (20 year) class reunion but am not successful. I finally get hold of Ms Sidhu on the Sunday morning (around 1100 from memory) and explain that it was not my intention to rush back to Canberra to attend a meeting at around 1700. I didn't want to spoil a significant occasion by leaving Sydney earlier than planned, and I did not want to go into a meeting with Dr Hammer not being fully prepared, particularly not knowing what his agenda was. I give my apologies, which Ms Sidhu graciously accepts and understands, although I sense she did not relish the requirement to call Dr Hammer with the news.

I return to my office on Monday morning (11 March) to receive the email that Ms Sidhu had sent on the Friday afternoon. I respond by email at 0830 and tell her I wouldn't presume to comment on her statement and that it reads fine.

However I personally note with concern that her draft statement doesn't corroborate the key fact of my evidence, that we brief Dr Hammer with the information. I now have a foreboding that Ms Sidhu is feeling under some pressure to provide a statement that will cause the least disharmony in her working relationships within International Division.

Ms Sidhu calls me that morning (Monday 11 March) and asks if I might be available that afternoon to come across to Barton to have the meeting that didn't happen the afternoon before. I accept, pointing out the fact that in my previous email the afternoon was a block that I had already reserved for Ms Bryant. Noting the missing fact from her draft statement I remain very concerned however that this meeting, proposed to take place at the Hotel Kurrajong, and only involving Dr Hammer and Ms Sidhu, remained distinctly outside the normal prescribed process for discussing matters about to go before an appointed authority. I make a considered decision that I will not discuss any detail with Dr Hammer nor will I enter into discussions to adjust my recollections to suit his recollections or the recollections of the majority. Had the meeting been called directly in concert with an official collection of individual submissions I would have been completely forthcoming with my recollections.

Personal and Confidential

Before attending the meeting at the Kurrajong I advise the Defence Coordination Team of the approach on the weekend and the invitation to the Kurrajong that afternoon. My own understanding of Defence guidelines on ethical behaviour lead me to conclude that both suggested meetings were not of a nature that was best suited to the situation. (To elaborate on that point the Defence guidelines provide that a perception that an inappropriate activity may have occurred needs to be avoided to the same extent that an actual transgression should be avoided). I was concerned that inferences could be drawn from such a situation if it were reported by a third party. I therefore decided to declare the situation to an appropriate body.

I assess that for Dr Hammer to take this approach to discussing something with me after so long, and so close to the formal submission dead line (only four days away) that he wanted to know the scope of my recollections and get an assessment of my preparedness to give my evidence. Notwithstanding that discomfort I re-affirm that I did not believe that Dr Hammer personally sought me to either change my evidence or to omit any part of my evidence.

I am surprised at the meeting by the directness of his approach to seeking my recollections, by proposing that he will ask me questions as if put by the committee and I would answer them in the same way. I declined to do that because I considered it was an inappropriate method of conducting the meeting. When I agreed to discuss my recollections in broader terms only it came out that the Ms Sidhu had a different recollection of the manner in which I had briefed her initially. Dr Hammer said words to the effect that it would be a problem if two members presented contradictory views on this issue (I make the point that it would be unreasonable to conclude from that comment that he intended that I should change or omit my evidence). True to my preparation for the meeting, and noting Ms Sidhu's draft statement at that time, I did not get drawn into finding common ground in our recollections, as I considered it reasonable that we might have framed different recollections around a particular set of words, and that these should be put independently to an appropriate adjudicating authority.

Towards the end of the meeting I recall with absolute clarity that Dr Hammer asked me if I had prepared a statement yet. I replied that I had not (which was true, although I had earlier written a narrative of everything I could recall in relation to the matter). It was my intention to draw my statement from the germane elements of that narrative. He replied that I '...wouldn't need to bother...' (drafting a statement), as it was unlikely that the committee would want to talk to me. This set alarm bells ringing as my expectation was precisely to the contrary. Given the sequence of events that I had experienced to that time, and my state of mind at that time I thought perhaps that comment might have been intended to dilute my expectation of providing my evidence at all.

Personal and Confidential

On completion of the session I accompanied Ms Sidhu back to the Department to view the Outlook account that had been re-activated for me. I only needed a few minutes to confirm that the dates I had attended the relevant Op Slipper briefing had been 11 October, and to confirm that the involvement with Ms Bryant's staff in arranging interview for AVM Titheridge was in mid December.

On the Television News broadcasts either that night or the following day I hear that Cabinet has taken the decision that no department shall provide submissions to the Senate Select Committee. PM&C is now formally relieved of any requirement to acknowledge my evidence.

I watch the Senate Select Committee with interest. I wonder what preparations PM&C staff appearing before the Select Committee has made to address the issue of my briefing to International Division on 11 October.

[It is with interest after the event that I note the letter from First Assistant Secretary International Division to Mr Moore-Wilton (in response to the Secretary's Departmental investigation into the accusation of influencing a witness- dated 8 May 2002) in which he says that following Senate Estimates (18 February) that the Department would be preparing a submission to the inquiry and the timing of advice from Commander King could become an issue. He notes the matter as 'potentially important'. (Enclosure 4).

Given all of the references in Hansard to a rumour emanating from International Division and International Division's obvious and known awareness of the issue, I can see no other possibility than that an authority within PM&C had adopted a position to minimise the possibility of drawing the Committee's attention to my contribution of evidence. This is a personal and considered construction based on my exposure to a series of events over several months.

I then turn to consider my options to present a submission either privately or through the Defence Coordination Team. I do not do this through any other motivation than my belief that the Australian public is entitled to hear the truth of a matter that is of such significance to cause the convening of a Senate Select Committee, and that the truth is obtained through the whole of the truth, and not selected parts of it. I was prepared to do this even in the event that I was personally discredited by contradictory accounts of recollections or having my briefing belittled as informal, gossip or unsubstantiated.

Personal and Confidential

I become aware that Commander Piers Chatterton is to give evidence before the Select Committee on 17 April, and from his evidence there comes confirmation that I will be asked to contribute to the committee's understanding of the events relating to the so-called gossip on 11 October. In doing so on 2nd May I present only the facts that I know (in my opening statement) and answer the Senators' questions as directly as I am able.

In closing this lengthy submission, I can think of no other matters of fact or context that the committee should be aware of. I will of course assist the Committee in any furtherance of this matter if required.

I have the honour to be your obedient Servant.



Stefan King
Commander
Royal Australian Navy

18 June 2002

Attachment:

1. Chronology of Events in Submission

Enclosure:

1. Email Sidhu / King dated 25 February 2002
2. Email King / Whalan dated 28 February 2002
3. Email Sidhu / King dated 08 March 2002
4. Letter Potts / Moore-Wilton dated 8 May 2002
5. Letter Hammer / King 30 April 2002

Personal and Confidential

Chronology Of Events In Submission

- 11 Oct 01 Brief Ms Sidhu and Dr Hammer on photographs information
- 8 Nov Advised by Ms Sidhu that she told Ms Wildermuth (Social Policy division) last night about my information on the photographs
- Mid Dec Assist Ms Bryant's staff in arranging interview with AVM Titheridge.
- 18 Jan 02 Secondment at PM&C completes.
- 18 Feb Mr Moore-Wilton (at F&PA Estimates Committee) advises that CMDR King of International Division had contacted the CO HMAS *Manoora*.
- 18 Feb FAS International Division advises Dr Hammer of the 'potential importance' of the timing of advice from Commander King.
- 19 Feb Prime Minister (Reps) reads from a letter that an officer in Ms Sidhu's section passes on information heard from Defence officials about the photographs.
- 20/21 Feb Receive call from Ms Sidhu that a PM&C inquiry might be convened.
- 25 Feb I send email to Ms Sidhu asking for more information about the inquiry. Also ask for Outlook account to be re-activated for my review.
- 25 Feb Receive reply from Ms Sidhu that nothing more known. Due date for Department submission is 15 March.
- 28 Feb I have preliminary discussions with Defence Coordination Team (for Senate Select Committee into a Certain Maritime Incident - CMI).
- 28 Feb I send an email to Mr Whalan of PM&C regards my availability to assist the inquiry/submission.
- 28 Feb Mr Whalan responds to email.
- 8 Mar Email from Ms Sidhu seeking confirmation of period for which I want Outlook account to be re-activated. Advises Ms Bryant had indicated to her that 'our information (required) any day now'.
- 8 Mar Respond to email, advising period of account required. Seek clarification of what Ms Bryant's words might mean for me.
- 8 Mar Have telephone conversation with Ms Sidhu about emails. Discuss my availability for interviews etc.
- 8 Mar Send email to Ms Sidhu providing blocks of time for which I can be available.
- 8 Mar Ms Sidhu replies to email (not read until following Monday 11 March).

Personal and Confidential

- 8 Mar Message left by Ms Sidhu on mobile phone voicemail
- 9 Mar Two messages left by Ms Sidhu. I hear these messages late afternoon and return call. Leave message on Ms Sidhu's home answering machine.
- 10 Mar Call Ms Sidhu. She requests meeting at Dr Hammer's residence that afternoon. I decline.
- 11 Mar I read Ms Sidhu's email from previous Friday evening (in which she refers to Ms Bryant's request for a copy of Ms Sidhu's statement).
- 11 Mar I respond to Ms Sidhu's email.
- 11 Mar Ms Sidhu calls me advising Dr Hammer keen to see me that afternoon. We agree.
- 11 Mar I meet Defence Coordination Team (DCT) to discuss invitation to meetings.
- 11 Mar Meet Ms Sidhu and Dr Hammer outside PM&C and walk across to Hotel Kurrajong.
- 11 Mar On completion of meeting I am allowed into PM&C to review reactivated Outlook account.
- 11/12 Mar I hear through news media of Cabinet's instruction that no Department shall make a submission to the Senate Select Committee.
- 15 Mar Dates that departmental submissions would have been due to the Select Committee into a CMI.
- 25 Mar Senate Select Committee into a Certain Maritime Incident begins.
- 17 Apr Commander Chatterton gives evidence to Senate Select Committee. I am named. Senator Faulkner indicates in Hansard he hopes I will come before the Committee.
- Late Apr Having finalised my opening statement for the Committee I brief the DCT of the potential for my answers (to questions I might receive) to attract headlines.
- 01 May Around 1330 I receive a letter hand delivered from Dr Hammer. I show it to the DCT and am advised of the DCT submission to Senator Hill.
- 02 May I appear before the Senate Select Committee to give my evidence.

King, Stefan

From: Sidhu, Harinder [Harinder.Sidhu@pmc.gov.au]
Sent: Monday, 25 February 2002 10:35
To: King, Stefan
Subject: RE: unclassified - PMC Submission

Stefan

Sorry, I haven't a clue. I was under the impression when I called you last week that they were going to interview me that day, but nobody has contacted me. The deadline for submissions to the inquiry is March 15, so presumably the legwork will have to be complete before then.

Kevin is away sick today. I'll talk to ISS and see what we can do about your account.

H

Harinder Sidhu
International Division
Tel: 6271 5631
Fax: 6271 5558

-----Original Message-----

From: King, Stefan [mailto:Stefan.King@defence.gov.au]
Sent: Monday, 25 February 2002 9:44
To: 'harinder'; 'Kevin Murray'
Subject: sec: unclassified - PMC Submission

Harinder, any clues when this PMC inquiry might be taking place?

Kevin, could I ask you to ask the IS help desk if it is possible to re-activate my account, just so that I can have a look at my electronic diary. It would be good to have a quick look at it before I see Mr Whalan.
regards

Stefan King
Commander RAN
Deputy Director Capability Resourcing
Navy Capability Performance and Plans
R1-4-B061
Ph: 02 6265 6673

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King, Stefan

From: Whalan, Jeff [Jeff.Whalan@pmc.gov.au]
Sent: Thursday, 28 February 2002 16:58
To: King, Stefan
Cc: Webster, David; Bryant, Jenny
Subject: RE: unclassified - Contact details for CMDR Stefan King

Stefan

Thank you for the advice. We will work through the system

Jeff Whalan

-----Original Message-----

From: King, Stefan [mailto:Stefan.King@defence.gov.au]
Sent: Thursday, 28 February 2002 10:08
To: 'jeff.whalan@pmc.gov.au'
Subject: sec: unclassified - Contact details for CMDR Stefan King

Hello Mr Whalan,

You may be aware that I was seconded to PM&C (July 01 - Jan 02) as the Defence Liaison Officer in International Division. Ms Harinder Sidhu has recently indicated to me that you were heading up a Departmental 'submission' in preparation for the Senate Inquiry into matters involving SIEV 4 and some associated photographs. The purpose of this email is twofold.

Firstly, to advise you of my direct contact details (below) if you require them.

Secondly, to advise that I understand that if you did wish to take a statement from me that the normal courtesy would be to seek the Defence Department's concurrence. For this purpose I advise that as LTGEN Mueller (VCDF) was my billet sponsor for the secondment that it may be expeditious for you to seek his concurrence when the time comes.

Grateful if you could confirm receipt of this email.

I remain Sir, your humble servant.

Stefan King
Commander RAN
Deputy Director Capability Resourcing
Navy Capability Performance and Plans
R1-4-B061
Ph: 02 6265 6673

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King, Stefan

From: King, Stefan
Sent: Friday, 8 March 2002 10:41
To: 'Sidhu, Harinder'
Subject: sec: unclassified: Recovery of Outlook Account - Stefan King

Hi Harinder,

Actually I would need to see the period Aug 2001 out to 21 Dec 2001.

What does.. 'need our information any day now' mean? Are they going to ask me over for a chat, call me before an enquiry, request me to submit a statement or what. I believe it would be appropriate for me to be advised of the scope and authority of the taskforce before I get there.

My availability next week, for Jenny's planning purposes are;

Mon 11 afternoon
Tues 12 forenoon
Wed 13 forenoon
Thur 14 afternoon
Fri 15 afternoon

Cheers H

Stefan King

Commander RAN

Deputy Director Capability Resourcing
Navy Capability Performance and Plans
R1-4-B061
Ph: 02 6265 6673

-----Original Message-----

From: Sidhu, Harinder [mailto:Harinder.Sidhu@pmc.gov.au]
Sent: Friday, 8 March 2002 9:32
To: King, Stefan
Subject: FW: Recovery of Outlook Account - Stefan King

Stefan,

see below. Could you pls confirm? Jenny Bryant says they'll need our information any day now. 4

H

Harinder Sidhu
International Division
Tel: 6271 5631
Fax: 6271 5558

> -----Original Message-----

> From: Watts, Geoff
> Sent: Friday, 8 March 2002 8:44
> To: Sidhu, Harinder
> Subject: Recovery of Outlook Account - Stefan King
>
> Harinder,
>
> Ricardo from ISS has advised that as a part of a Senate Committee request,
> a number of Outlook accounts are being recovered from 22 November to 22
> August 2001.
>
> Grateful you confirm this is the same period Stefan King is looking to
> review his Outlook account.

cheers, Geoff.

King, Stefan

From: Sidhu, Harinder [Harinder.Sidhu@pmc.gov.au]
Sent: Friday, 8 March 2002 13:40
To: King, Stefan
Subject: RE: unclassified: Recovery of Outlook Account - Stefan King



Kids.doc

thanks, Stefan. We'll try to get your outlook account. Jenny didn't say how or if she wanted to talk. She asked me for a copy of the statement I drafted to put in the submission. I've attached it here for you to look at, as you are mentioned. I haven't sent it over to her yet, so there's time for you to comment if you wish.

H

Harinder Sidhu
International Division
Tel: 6271 5631
Fax: 6271 5558

-----Original Message-----

From: King, Stefan [mailto:Stefan.King@defence.gov.au]
Sent: Friday, 8 March 2002 10:41
To: 'Sidhu, Harinder'
Subject: sec: unclassified: Recovery of Outlook Account - Stefan King

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My availability next week, for Jenny's planning purposes are;

Mon 11	afternoon
Tues 12	forenoon
Wed 13	forenoon
Thur 14	afternoon
Fri 15	afternoon

Cheers H

Stefan King
Commander RAN
Deputy Director Capability Resourcing
Navy Capability Performance and Plans
R1-4-B061
Ph: 02 6265 6673

-----Original Message-----

From: Sidhu, Harinder [mailto:Harinder.Sidhu@pmc.gov.au]
Sent: Friday, 8 March 2002 9:32
To: King, Stefan
Subject: FW: Recovery of Outlook Account - Stefan

King

Secretary

SENATE SELECT COMMITTEE INQUIRY INTO A CERTAIN MARITIME INCIDENT

In your minute of 7 May 2002, you requested advice from me in relation to three issues.

First, you asked when and how I became aware that Commander King had passed information about the "children overboard" photographs to Dr Hammer. To the best of my recollection, I first became aware of Commander King's role in respect of the photographs when I was informed by Ms Sidhu of her exchange with Ms Wildermuth of Social Policy Division which had occurred on 7 November. I cannot be specific as to when Ms Sidhu informed me of the exchange but it was around the time of PM&C's appearance at Senate Estimates. I recall that Ms Sidhu approached me in my office and advised me in general terms of the sequence of events, including the respective roles of Commander King and Dr Hammer.

My exchange with Ms Sidhu was brief. While I cannot recall the exact conversation, I recollect that she told me that I should know that there had been some involvement by International Division in the matter of the "children overboard" photographs. She advised me that in early November, she had been approached by Ms Wildermuth asking whether sitreps and Defence material which related to the "children overboard" matter were held by the Division. While doing a systems search, she told me that she had said to Ms Wildermuth words to the effect of "But hadn't you heard the rumour from Defence that the photographs are not of what they are supposed to be?". She had said to Ms Wildermuth that some time earlier one of her colleagues had approached her, reporting rumours in Defence that the photos were not in fact of "children overboard" but of a rescue at sea the following day. The exchange was essentially one-way. I thanked her for advising me.

Secondly, you asked whether I suggested that Dr Hammer meet Ms Sidhu and Commander King and, if so, what were the reasons for this. I recall that following Senate Estimates, Ms Bryant approached me concerning Ms Sidhu's exchange with Ms Wildermuth. She noted that PM&C's evidence to Estimates included her referring to the fact that International Division had advised of rumours from the Department of Defence that the photographs related to events on 8 October and not to 7 October. She advised me that Ms Sidhu's advice was unspecific about the timing of the advice to Ms Wildermuth and said that the planned Select Committee inquiry might want to know when this had occurred. The Department would be preparing a submission to the Committee and the timing of the advice from Commander King could become an issue. She asked me to follow this up. I agreed to do so and subsequently approached both Dr Hammer and Ms Sidhu. I was conscious that this was a potentially important issue and that the Division should aim to be as helpful to the Select Committee as possible.

I can recall pressing each of the two officers separately on the matter on at least two occasions. Ms Sidhu indicated she had conscientiously tried to recall the rough timing of Commander King's approach but that the more she pressed her memory, the more hesitant she became about its reliability. Dr Hammer also indicated that he was unable to recall when the exchange had taken place. I suggested to him that the question of timing was important and pressed him to provide at least a rough approximation of the timing (e.g. early November, mid-November etc.). I also said that, if necessary, he should consult both Ms Sidhu and Commander King in order to get a better sense of the timing of Commander King's advice. He said he thought he would do so. From recollection, this second and more specific conversation with Dr Hammer would probably have occurred in the period between Senate Estimates (18 February) and the beginning of CHOGM (28 February).

Your final question relates to the substance of any report that either Dr Hammer or Ms Sidhu gave to me following their meeting with Commander King. I do not recall any report from Ms Sidhu concerning the meeting. I do recall that Dr Hammer confirmed to me one or two days later that he had engaged his two colleagues on the timing and sequence of events and that he now had a better sense of the timing. By that stage, the Government had decided that departments should not lodge written submissions with the Committee and I did not press Dr Hammer further as the nature of any potential evidence to the Select Committee was a matter for him, as a likely witness.

As requested, in preparing this report I have not consulted Dr Hammer, Ms Sidhu or Commander King.




Michael Potts
First Assistant Secretary
International Division

8 May 2002

Commander Stefan King
Deputy Director Capability Resourcing
Navy Capability Performance and Plans

30 April 2002


Dear Commander King,

I have been advised by the head of Government Division in PM&C that you have expressed a concern that I may have sought to influence your testimony to the Senate Select Committee on a Certain Maritime Incident.

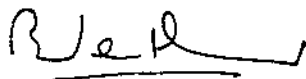
I am writing to let you know that I have never in any way purposefully sought to influence you to do anything other than tell the whole truth in appearing before the Senate Select Committee.

In this connection I note that our last contact occurred well before either of us was called to appear before the Senate Select Committee. My recollection is that during that last contact we compared our respective memories of a conversation which took place in my office in October 2001 and which related to the incident which the Senate Select Committee is considering. I recall that our respective memories of the October 2001 conversation differed. I hope that you have not felt that this discovery of a difference in our recollections was in any way intended by me to be an attempt to change your mind about your own recollections.

I would simply strongly encourage you to tell the Senate Select Committee the whole truth as you recall it, which is exactly what I will be doing when I appear before the Committee on 2 May 2002.

I have copied this letter to the Secretary of the Department of the Prime Minister and Cabinet for his information.

Yours sincerely



Dr Brendon Hammer

Appendix E

Ms Anne Lynch
Secretary to the Senate Committee of Privileges
Parliament House
Canberra

18 June 2002

Dear Ms Lynch

I am writing in response to Senator Robert Ray's letter of 16 May 2002 inviting me to provide to the Committee of Privileges with any written comments I may have in relation to a matter the Senate referred to the Committee on 16 May 2002.

Specifically, I understand that the Committee has been asked to consider the possibility, raised in the Select Committee on a Certain Maritime Incident, that there may have been attempted or actual interference with a witness before the Select Committee.

I enclose a written statement which I hope will assist the Committee of Privileges as it considers the above matter. I understand that the Committee may choose to make this statement public.

Yours sincerely



Dr Brendon Hammer
Assistant Secretary – Americas Branch
Department of Foreign Affairs and Trade

Statement to the Senate Committee of Privileges

Dr Brendon Hammer

I understand that the Committee has been asked to consider the possibility, raised through the Select Committee on a Certain Maritime Incident (the Select Committee), that there may have been attempted or actual interference with a witness before the Select Committee.

Specifically, my understanding is that there are concerns that I may have sought to influence Commander Stefan King, who has been a witness before the Select Committee.

I wish to record here, once again, that I categorically deny having made any attempt, or having ever had any intention, to influence Commander Stefan King's testimony before the Select Committee. I would also like to record my concern at the extent to which my reputation has come into question, and my very strong desire that the Committee of Privileges gets to the bottom of this matter.

To assist this process I attach material released by the Prime Minister on 13 May 2002 which contains a report to the Prime Minister from the Secretary of the Department of the Prime Minister and Cabinet on an enquiry conducted into the matters referred to above. That report contains material of direct relevance to the Committee's work, in particular:

- a letter I sent on 6 May 2002 to the Secretary of PM&C, which provides a comprehensive account of my involvement in key matters before the Committee;
- a signed statement provided on 6 May 2002 by Ms Harinder Sidhu to the Secretary of PM&C which contains important material in relation to some points I wish to make below;
- a minute of 29 April 2002 to the Minister for Defence from Rear Admiral R. W. Gates (the Gates Minute) which suggests that an attempt may have been made to influence the nature and content of evidence to be given to the Select Committee by a member of the Australian Defence Force; and
- a letter I sent on 30 April 2002 to Commander King, after I had seen the Gates Minute, strongly encouraging him to tell the Select Committee the whole truth.

The material which has come before the Select Committee, together with the attachments to the report referred to above, indicates that a key meeting took place on 11 March 2002 at the Kurrajong Hotel. Specifically, it has been suggested that in the course of that meeting I may have attempted to influence Commander King's testimony to the Select Committee. In this respect, however, I would draw the Committees attention to the following:

- There were only three people present at the 11 March meeting at the Kurrajong Hotel, myself, Commander King and Ms Harinder Sidhu.

- On 2 May 2002 Commander King testified repeatedly to the Select Committee that the 11 March meeting at the Kurrajong Hotel had not influenced his testimony and that he did not consider that any attempt to influence his testimony had been made at that meeting. The relevant pages in *Hansard* are CMI 1513, CMI 1539 to 1542, and CMI 1544.
- In her 6 May 2002 signed statement to the Secretary of PM&C, Ms Sidhu wrote of the 11 March 2002 meeting at the Kurrajong Hotel that, “At no point in this meeting did Dr Hammer or anyone else suggest that evidence be omitted or concealed. Specifically, I do not believe ... Dr Hammer was trying to influence his (Commander King’s) testimony or to coach him in any way”.

Since no one who was present at the 11 March meeting at the Kurrajong Hotel believes any attempt to influence Commander King took place, a question arises as to the reasons why the Gates Minute was generated by the “Defence Liaison Team” headed by Rear Admiral Gates.

In this respect it seems remarkable to me that the Gates Minute appears to have been prepared, signed and sent without it ever having been discussed with Commander King, the person who is supposed to have been subject to improper influence.

- I believe it noteworthy that when the Select Committee asked Commander King to comment on the opening statement of my 30 April letter to him, which was, “I have been advised by the head of Government Division in PM&C that you have expressed a concern that I may have sought to influence your testimony”, Commander King’s response was, “One of the reasons I was so surprised to get that letter was of that first statement. I have never expressed a concern in that regard.” (*Hansard* CMI 1544).

I also seems to me remarkable that the Gates Minute does not name either myself or Commander King, although other material made available to the Select Committee and to the Secretary of PM&C makes it clear that Commander King and myself were identified by other means to the office of the Minister for Defence.

Frankly, I am confused as to the role and purpose of the Defence Liaison Team. I have not sought or received any legal advice in relation to how I should prepare for testimony before the Select Committee or any other Senate committee. This is because I believe that telling the truth is not a difficult or complicated matter. In this connection I am mystified by the activities of Rear Admiral Gates and his team of lawyers and others, and I believe I have a right to be concerned about those activities on the basis that the Gates Minute – which has been responsible for causing me considerable personal hurt – appears to have been prepared in the absence of any appropriate consultation or supporting evidence.



Dr Brendon Hammer
Assistant Secretary – Americas Branch
Department of Foreign Affairs and Trade



PRIME MINISTER

SENATE SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT – P M & C OFFICIALS

The Secretary of the Department of Prime Minister and Cabinet, Mr Max Moore-Wilton AC, has completed a review of the actions of a number of officials following suggestions that there may have been an attempt to influence evidence given by an ADF member invited to appear before the Senate Select Committee.

Mr Moore-Wilton has reported to me on his findings.

A copy of Mr Moore-Wilton's report has been forwarded to the Chairman of the Senate Select Committee on a Certain Maritime Incident.

I release the report.

13 May 2002

DEPARTMENT OF THE PRIME MINISTER AND CABINET

Prime Minister

SENATE SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Background

On 29 April 2002 Rear Admiral Gates, Head of the CDF/SEC Task Force within the Department of Defence, sent a minute to the Minister for Defence (Attachment A) in which he advised the Minister that he had received information that there may have been an attempt to influence the nature and the content of evidence by an ADF member who had been invited to appear before the Senate Select Committee. The minute further stated that it had been suggested to the ADF member that he consider omitting relevant facts from his evidence.

The Minister for Defence's office provided Mr Nutt in your office with a copy of that minute on the afternoon of 29 April. Mr Nutt subsequently contacted Ms Barbara Belcher, First Assistant Secretary, Government Division of this Department, and informed her of the Gates' minute. On 30 April Mr Nutt wrote to Ms Belcher enclosing a copy of the Gates' minute and seeking, on your behalf, her advice as to the proper handling of this matter (Attachment B). As you are aware I was absent on leave in transit on 29 April and returned to the Department on 30 April. Ms Belcher brought this matter to my attention during the afternoon of 30 April.

Ms Belcher provided a minute to you on 1 May outlining actions that had been taken within the Department on 30 April and 1 May in relation to this matter (Attachment C). In particular Ms Belcher was conscious that Commander Stefan King, the ADF member alluded to in the Gates' minute, was scheduled to appear before the Senate Select Committee on 2 May. Dr Brendon Hammer, the person who allegedly attempted to influence Commander King's evidence and formerly of the International Division of this Department, and Ms Harinder Sidhu, who reported to Dr Hammer, were also scheduled to appear before the Committee on 2 May.

Ms Belcher immediately alerted Dr Hammer to the allegation made against him. Dr Hammer told her that he did not accept that the allegation was correct. In view of the potential for a serious contempt of the Senate and a possible breach of the Parliamentary Privileges Act 1987, Ms Belcher suggested to Dr Hammer that he should consider whether he should write to Commander King prior to his scheduled appearance before the Committee on 2 May to make it clear that Dr Hammer did not consider that Commander King should give anything but honest and full evidence. Dr Hammer decided that he should write to Commander King immediately on 30 April. A copy of Dr Hammer's letter was provided to me on 30 April (Attachment D). I annotated my copy of the letter indicating that I would need to review

whether any disciplinary action needed to be considered in the light of sworn testimony to the Committee on 2 May and subsequently. I also informed Dr Ashton Calvert, Secretary of the Department of Foreign Affairs and Trade, in view of Dr Hammer's current placement within that Department.

I wrote to Dr Hammer and Ms Sidhu on 1 May seeking a full account of any discussions or communications relevant to the Senate Select Committee's Terms of Reference that they might have had with Commander King. I required that they provide those statements to me by close of business on Monday 6 May, which I had been advised was a reasonable period to enable officers to prepare their statements (Attachment E).

Commander King gave evidence to the Senate Select Committee on Thursday 2 May. Commander King stated that he had never expressed a concern that Dr Hammer sought to influence his testimony to the Senate Select Committee. However, he indicated that he had discussed with the CDF/SEC Task Force the possibility that the meeting at the Kurrajong Hotel may be construed by others as unusual behaviour. In response to questioning by Senator Faulkner, Commander King indicated that he did not consider that Dr Hammer was trying to suborn his evidence or suborn him as a witness.

The Committee adjourned on 2 May after commencing the taking of evidence from Ms Sidhu with the intention that she and Dr Hammer will be called to give evidence when the Committee re-convenes later this month.

On 6 May I received statements from both Dr Hammer and Ms Sidhu in response to my request of 1 May. Dr Hammer's statement (Attachment F) includes the following quote 'at the outset I wish categorically to deny having ever made any attempt or having ever had any intention to influence Commander King's testimony before the Senate Select Committee'. Ms Sidhu's statement (Attachment G) indicates 'at no point in this meeting (i.e. the meeting with Commander King at the Kurrajong Hotel) did Dr Hammer or anyone else suggest that evidence be omitted or concealed. Specifically, I do not believe that in posing a hypothetical question to Commander King, Dr Hammer was trying to influence his testimony or coach him in any way'.

As regards Dr Hammer's initiative to convene an informal meeting away from the Department of the Prime Minister and Cabinet between Commander King, Ms Sidhu and Dr Hammer, Dr Hammer stated that the meeting had been called at the suggestion of Mr Michael Potts, First Assistant Secretary, International Division. This is consistent with Ms Sidhu's statement and evidence that she thought the meeting had been suggested by someone else. Consequently I sought advice from Mr Potts (Attachment H) as to whether he had been involved in any prior discussions with Dr Hammer in regard to this particular matter. Mr Potts has provided me with a statement dated 8 May (Attachment I) outlining his recollections. Mr Potts confirms that following Senate Estimates in February he advised Dr Hammer that he should, if

necessary, consult Ms Sidhu and Commander King in order to clarify issues relating to the timing of Commander King's alleged advice regarding 'children overboard' photographs. Mr Potts indicates that Dr Hammer subsequently advised him that he had met Commander King and Ms Sidhu and had engaged them on the timing and sequence of events and that he now had a better sense of the timing. Mr Potts advised that he did not press Dr Hammer further as the nature of any potential evidence to the Select Committee was a matter for him, as a likely witness.

In relation to the source of the information being described as 'tea room gossip', Ms Sidhu states that Commander King advised her that he 'had overheard a conversation between other Defence officials' regarding the veracity of the 'children overboard' photographs. Dr Hammer states that Commander King 'told me that he had heard of a rumour within ADF circles that photographs in the press relating to children overboard had been taken at a different time to the time everyone thought they had been taken'. Commander King, in evidence to the Committee, stated that he advised Dr Hammer 'that a fellow Navy officer' had told him that the pictures in the media did not relate to the claims made by the Minister for Defence that unauthorised arrivals were throwing their children in the water.

Comment

I wish to record that I have found Mr Potts, Dr Hammer and Ms Sidhu to be competent officers who are conscientious in carrying out their official duties.

I can confirm that at no stage during the relevant periods in 2001/2002 have Mr Potts, Dr Hammer or Ms Sidhu consulted me or advised me in regard to any of these matters.

I can also confirm that operational responsibility within the Department of the Prime Minister and Cabinet in relation to the 'Operation Relex' Task Force lay, not with International Division, but with Ms Halton and the Social Policy Division. It is my understanding from Dr Hammer's statement that because 'Operation Relex' matters were being coordinated by the Task Force headed by Ms Halton which included senior level ADF representation, he had no reason to believe that communications between the ADF and the Task Force were anything less than highly effective. Moreover, since the advices Dr Hammer and Ms Sidhu received were oral and from a junior officer outside the ADF chain of command, it would have been a reasonable assumption that any ADF reports to the Government on 'children overboard' issues were being provided through the chain of command – that is, through the CDF to the Minister for Defence – or through the Task Force headed by Ms Halton.

Furthermore, it would appear that Commander Chatterton, the officer who informed Commander King of concerns about the photographs, did not have any direct responsibility within the ADF chain of command relating to

'Operation Relex'. Indeed the reported conversation between Commander Chatterton and Commander King took place in the margins of a meeting relating to 'Operation Slipper' (Afghanistan). I note that within the Australian Public Service conversations of this type involving junior officers on the periphery of major operations would not constitute formal advice between Departments.

The Department of the Prime Minister and Cabinet has not encouraged officers to consult on the content of the evidence that might be given to the Select Committee. Having regard to natural justice and the requirement to provide accurate information to the Select Committee, officers are permitted to use discretion in relation to their own responsibility to check factual elements of their recollections. I have emphasised to relevant departmental staff on several occasions their clear obligation to respond truthfully to any Senate enquiries.

I can confirm that the Department was unaware of any Defence Department concerns about an attempt to influence evidence to the Select Committee until receipt of the Gates' minute to the Minister for Defence.

Finally, I consider that it is worth restating that at no time did I seek to raise issues relating to 'children overboard' with you prior to the November 2001 election. It remains my view that issues relating to 'children overboard' were not central to this Department's responsibilities in coordinating the Government's policy and operational responses in regard to illegal immigration by sea. At no stage did any officer within the Department of Defence or the ADF contact me to express concerns regarding 'children overboard' prior to the election. For my part, I would not regard it as usual for Defence management to raise with me issues relating to the advice that they provide to the Minister for Defence or his Office.

Conclusions

1. There are no written records or recollections that have come to light within the Department of the Prime Minister and Cabinet to substantiate Commander King's evidence to the Senate Select Committee that he sought to *formally* advise officers in the Department of the Prime Minister and Cabinet that information given to the Government in regard to 'children overboard' photographs was incorrect.
2. Discussions did take place between Commander King and Dr Hammer and Ms Sidhu. The recollections of Dr Hammer and Ms Sidhu vary from the recollection of Commander King in relation to the source of Commander King's information. Accordingly, I cannot accept the proposition that concerns were brought officially to the attention of PM&C management. There is no scope for me to judge the veracity of

the differing recollections of the parties concerned. I understand, however, that the recollections of each of the three parties will be the subject of sworn evidence to the Senate Select Committee.

3. Apart from the allegation in the Gates' minute, there is no evidence from any of the parties involved that Dr Hammer sought to influence the nature and content of evidence likely to be given by Commander King. Commander King suggested in evidence to the Senate Select Committee that this proposition might have emerged from within the CDF/SEC Task Force rather than from him. It is noteworthy that Commander King directly refuted the proposition in his sworn testimony before the Select Committee.
4. There is no information before me that supports the specific allegation in the Gates' minute that it was suggested to an ADF member that he consider omitting relevant facts from his evidence. I am unable to explain that statement on the basis of any information before me.
5. On the basis of the material available to me to date I am of the view that there are no grounds for taking disciplinary action under the Public Service Act against Dr Hammer or any other officer of this Department. However, I am conscious that sworn evidence remains to be given to the Senate Select Committee by Dr Hammer and possibly other parties. Consequently, I do not propose to consider any further action in relation to these matters until they have been dealt with by the Senate Select Committee.

In view of the high degree of public interest in these matters I believe it would be appropriate for this minute and its attached supporting material to be provided to the Senate Select Committee as soon as possible. In this regard I have received a request from the Secretary of the Senate Committee for me to provide advice as to the processes that I have followed to satisfy myself concerning the facts of these matters and any conclusions that I might draw as a result.

For your consideration.



M W Moore-Wilton
Secretary

10 May 2002

Department of Defence

MINUTE

HCST 86/02

Minister

SENATE SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT**RECOMMENDATION**

- That you note the evidence that may be given during the Senate Select Committee on a Certain Maritime Incident hearings on 2 May 02.

OVERVIEW

- The CDF / SEC Taskforce, set up to coordinate Defence aspects of the Senate Select Committee into a Certain Maritime Incident (SSC), has received information that there may have been an attempt to influence the nature and the content of evidence by an ADF member who has been invited to appear before the Committee. The extent of the alleged attempt was not to suggest to the ADF member that he present evidence untruthfully, but to consider that he omit relevant facts from his evidence. The ADF member has stated that he has not been influenced by this approach.
- As with its approach to all witnesses appearing before the SSC, Defence has encouraged the ADF member to prepare himself thoroughly to ensure that the evidence he gives is to the best of his recollection and understanding. The ADF member has been offered legal support and he thoroughly understands his rights and obligations as a witness before the SSC, in particular his obligation to provide full, frank and truthful evidence.

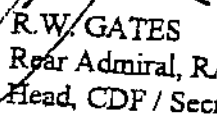
Sensitivity

- Yes. Any allegation of an attempt to influence evidence to be given by a witness who has been requested to appear before a Parliamentary Committee is very sensitive. Should this alleged attempt come to light during the hearing, it would attract considerable media attention.

Resources. Not applicable.

Talking Points. Not applicable.

AUTHORISED:


R.W. GATES
Rear Admiral, RAN
Head, CDF / Secretary Task Force

NOTEDROBERT HILL
/ /

29 Apr 02

CONTACT: RADM R.W. Gates (02) 6265 4652

STAFF-IN-CONFIDENCE



OFFICE OF THE PRIME MINISTER
CANBERRA

30 April 2002

Ms Barbara Belcher
First Assistant Secretary
Government Division
Department of Prime Minister & Cabinet
CANBERRA ACT 2600

Dear Barbara

Further to our earlier discussion I attach a copy of a minute from Rear Admiral R W Gates of the ADF to Senator the Hon Robert Hill, Minister for Defence.

The minute is dated 29 April 2002.

The minute is self-explanatory.

I am verbally advised by Senator Hill's office that the two officers concerned are Commander S King and Dr Brendon Hammer.

I should note for the record that no member of the Prime Minister's staff has spoken to Dr Hammer or Commander King about the issue canvassed in Rear Admiral Gates' minute.

The Prime Minister would appreciate your advice as to the proper handling of this matter.

At Mr Howard's request I have copied this letter to Mr Max Moore-Wilton AC, Secretary of the Department of Prime Minister and Cabinet and to Senator the Hon Robert Hill, Minister for Defence.

Yours sincerely

Tony Nutt
Principal Private Secretary

Prime Minister

ATTACHMENT C

Mr Nutt
Secretary

EVIDENCE TO THE SENATE SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Issue: You sought advice on the handling of a minute from Rear Admiral R W Gates to the Minister for Defence.

Background: On 29 April 2002, Rear Admiral Gates sent a minute to the Minister for Defence in which he advised the minister that he had received information that there may have been an attempt to influence the nature and the content of evidence by an ADF member who had been invited to appear before the Senate Select Committee on a Certain Maritime Incident (the Committee). The Minister for Defence's office provided Mr Nutt in your office with a copy of the minute on the afternoon of 29 April and advised Mr Nutt orally that the ADF member concerned was Commander Stefan King and that Dr Brendon Hammer was the person who, allegedly, attempted to influence him. Dr Hammer was, until 24 April 2002, an officer of the Department of the Prime Minister and Cabinet.

Mr Nutt spoke to me early in the evening of 29 April and informed me of the information he had received. At approximately 1.00pm on 30 April, he provided me with a copy of Rear Admiral Gates' minute to the minister.

Action taken: The subsequent actions of this department were taken in the knowledge that if there had been an attempt to influence the evidence of a witness before the Committee that would be a serious contempt of the Senate and possibly a breach of the *Parliamentary Privileges Act 1987*.

I considered that natural justice required that Dr Hammer be informed of the allegation made against him. Early on the afternoon of 30 April I therefore met Dr Hammer and told him of the allegation and how I had learnt of it. I also showed him a copy of Rear Admiral Gates' minute. I had arranged for Mr Potts, Head of International Division, to be present during my meeting with Dr Hammer. He was delayed, but attended most of the meeting. Dr Hammer expressed surprise and dismay at the allegation and told me that he had not spoken to Commander King "for some months". I did not see the purpose of our meeting as being for me to seek an account of communications between Dr Hammer and Commander King, beyond determining that Dr Hammer did not accept the allegation as correct.

I put it to Dr Hammer that, despite the statement in Rear Admiral Gates' minute that Commander King had not been influenced by the approach made to him, it was important that no witness appear before a parliamentary committee while considering himself to have been pressured to give evidence in a less than honest way. I suggested that Dr Hammer might wish to consider whether he was able to write to Commander King ahead of his scheduled appearance before the Committee on 2 May to make it clear that Dr Hammer did not consider that Commander King should give anything but honest and full evidence.

Dr Hammer advised me late on the afternoon of 30 April that he had prepared a letter to Commander King and that he would be copying it to the Secretary, Mr Moore-Wilton.

After discussions with the Secretary during the afternoon of 30 April I prepared, in conjunction with two colleagues within Government Division, a draft letter for the Secretary to send to Dr Hammer asking him to provide by close of business on Monday 6 May a full account to the best of his recollection of any discussions or communications relevant to the Committee's terms of reference that he had had with Commander King. The draft was shown to an officer of the AGS to ensure it offended against neither parliamentary privilege nor natural justice. A copy of the letter, subsequently signed by the Secretary, is attached.

We also prepared a minute for the Secretary to sign to Ms Harinder Sidhu asking her to provide by close of business on 6 May a statement detailing the content of any meetings or communications of which she was aware between Dr Hammer and Commander King that were relevant to the Committee's terms of reference. A copy of that minute is also attached.

As you will see, Dr Hammer and Ms Sidhu have been asked to prepare their statements without reference to each other or Commander King.

In the light of the content of the statements and any relevant evidence given before the Committee on 2 May, the Secretary will determine what further action, if any, will be needed.

For completeness I am also attaching a copy of Dr Hammer's letter to Commander King.

Recommendation: That you note the contents of this minute and that the Secretary or I will inform you of further developments.



Barbara Belcher
First Assistant Secretary
Government Division

Noted

(John Howard)

1 May 2002

Ms. Bilcher

ATTACHMENT D

Commander Stefan King
Deputy Director Capability Resourcing
Navy Capability Performance and Plans

1. Noted
2. I will need to review whether any disciplinary action needs to be considered in light of sworn testimony
30 April 2002 on 2 May.
3. I will inform Dr Colwell that this issue has arisen

Dear ~~Commander King~~ Stefan,

[Signature] 30/4/02

I have been advised by the head of Government Division in PM&C that you have expressed a concern that I may have sought to influence your testimony to the Senate Select Committee on a Certain Maritime Incident.

I am writing to let you know that I have never in any way purposefully sought to influence you to do anything other than tell the whole truth in appearing before the Senate Select Committee.

In this connection I note that our last contact occurred well before either of us was called to appear before the Senate Select Committee. My recollection is that during that last contact we compared our respective memories of a conversation which took place in my office in October 2001 and which related to the incident which the Senate Select Committee is considering. I recall that our respective memories of the October 2001 conversation differed. I hope that you have not felt that this discovery of a difference in our recollections was in any way intended by me to be an attempt to change your mind about your own recollections.

I would simply strongly encourage you to tell the Senate Select Committee the whole truth as you recall it, which is exactly what I will be doing when I appear before the Committee on 2 May 2002.

I have copied this letter to the Secretary of the Department of the Prime Minister and Cabinet for his information.

[Signature] 30/4/02

Yours sincerely

[Signature]

Dr Brendon Hammer



THE DEPARTMENT OF
THE PRIME MINISTER AND CABINET

TELEPHONE: (02) 6271 5111
FACSIMILE: (02) 6271 5414

3-5 NATIONAL CIRCUIT
CANBERRA, A.C.T. 2600

Dr Brendon Hammer
Assistant Secretary
Americas Branch
Department of Foreign Affairs and Trade
RG Casey Building
BARTON ACT- 0221

Dear Dr Hammer

It has been brought to my attention by the Prime Minister's office that a member of the Australian Defence Force has informed his superiors that he believes that an attempt has been made to influence the evidence he might give to the Senate Select Committee on a Certain Maritime Incident. The allegation is contained in a minute from Rear Admiral Gates to the Minister for Defence dated 29 April 2002 which I understand you have seen.

As you would be aware, the Senate regards any attempt to influence a witness as a serious contempt. I would be most concerned if an officer of this department made such an attempt.

While the minute does not identify the ADF member involved nor the person who he believes attempted to influence his evidence, I am informed that the two people concerned are Commander Stefan King and you. While there are no details of the allegation in the minute to the Minister for Defence, it appears that Commander King believes that you may have suggested that he consider omitting relevant facts from his evidence.

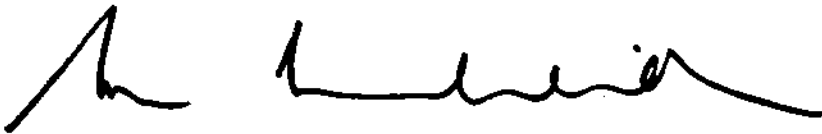
The substance of the allegation, to the extent we know it, has been brought to your attention by appropriate officers of this department. I have received a copy of your letter dated 30 April to Commander King in which you state that you have never purposefully sought to influence him to do anything other than tell the whole truth in appearing before the Senate Select Committee.

I am not, however, in a position at the moment to form any opinion about the veracity of the allegation or whether it arose out of a misunderstanding of something that you might have said or written to Commander King. Before deciding what further action to take in relation to this matter, therefore, I would like you to give me a full account, to the best of your recollection, of any discussions or communications relevant to the Select Committee's terms of reference you have had with Commander King. I would like you to provide that statement by close of business on Monday, 6 May, and to prepare it without consulting Commander King or Ms Harinder Sidhu.

I have written to Ms Sidhu to ask her to provide an account of any meetings you may have had with Commander King at which she was present.

I have advised Dr Calvert of these matters on a strictly confidential basis.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M W Moore-Wilton'. The signature is fluid and cursive, with a large initial 'M' and a long, sweeping underline.

M W Moore-Wilton
Secretary

1 May 2002

DEPARTMENT OF THE PRIME MINISTER AND CABINET

Ms Harinder Sidhu

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

It has been brought to my attention by the Prime Minister that Commander Stefan King has alleged that he believes that an attempt has been made to influence the evidence he might give to the Senate Select Committee on a Certain Maritime Incident. Commander King alleges that the person who made the attempt was Dr Brendon Hammer.

As you would be aware, the Senate regards any attempt to influence a witness as a serious contempt.

While the specifics of the allegation are not available at the present time, it appears that Commander King believes that Dr Hammer suggested that Commander King consider omitting relevant facts from his evidence. I am not in a position at the moment to form any opinion about the veracity of the allegation or whether it arose out of a misunderstanding of something that Dr Hammer might have said or written to Commander King.

Before deciding what further action to take in relation to this matter, I have asked Dr Hammer to give me a full account, to the best of his recollection, of any discussions or communications relevant to the Committee's terms of reference he may have had with Commander King. I have asked him to provide that statement by close of business on Monday, 6 May, and to prepare it without consulting Commander King or you.

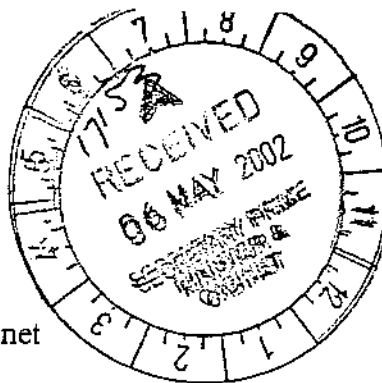
I stress that there is no suggestion of impropriety on your part. However, given your involvement in matters relating to the Committee's terms of reference, it is possible that you may be able to shed some light on the circumstances that have given rise to the allegation. I would therefore like you to prepare a statement detailing any meetings or communications you are aware of between Dr Hammer and Commander King which are relevant to the Committee's terms of reference. Your statement should be provided by close of business on Monday, 6 May, and should be prepared without consulting Commander King or Dr Hammer. You may, however, discuss the matter with Mr Potts or Ms Belcher.



M W Moore-Wilton
Secretary

1 May 2002

Mr M W Moore-Wilton
Secretary
Department of the Prime Minister and Cabinet



6 May 2002

Dear Mr Moore-Wilton

I am writing in response to your letter of 1 May 2002 asking that I provide you with a full account, to the best of my recollection, of any discussions or communications between myself and Commander Stefan King relevant to the terms of reference of the current Senate Select Committee on a Certain Maritime Incident.

I understand that your request relates to a Minute dated 29 April 2002 to the Minister for Defence from Rear Admiral R. W. Gates alleging that an attempt may have been made to influence the nature and content of evidence to be provided by a member of the Australian Defence Force (ADF) to the Senate Select Committee. I also understand, on your advice, that the member of the ADF referred to by Rear Admiral Gates is Commander Stefan King and that I am the person who is alleged to have attempted to influence Commander King.

At the outset I wish categorically to deny having ever made any attempt, or having ever had any intention, to influence Commander King's testimony before the Senate Select Committee.

I am pleased fully to comply with your request, and provide below a chronology of relevant discussions and communications between myself and Commander King. In the interests of best assisting your investigation I have also provided as much relevant context as I can, including an account of my own thoughts and reactions at the time of the relevant discussions and communications and of my subsequent reactions.

Chronology of Relevant Discussions and Communications

October 2001

On or around 11 October 2001 a meeting between myself, Commander Stefan King and Ms Harinder Sidhu took place in my office in the Department of the Prime Minister and Cabinet (PM&C).

The meeting was one of a series of meetings, sometimes involving Ms Sidhu and sometimes not, where Commander King would pass on to me key information he had gathered at regular formal briefings he attended at Strategic Command in Defence on developments in relation to Operation SLIPPER. Operation SLIPPER covers ADF engagement in aspects of the war against terrorism involving Afghanistan and the Middle East.

My memory is that the meeting in question lasted about 10 minutes, with the first six or seven minutes taken up with Commander King's account of key information from the Operation SLIPPER brief. Ms Sidhu and Commander King then said there was another matter they wished to raise. Commander King then told me that he had heard of a rumour within ADF circles that photographs in the press relating to children being thrown overboard had been taken a different time to the time everyone thought they had been taken. I cannot more clearly recall how Commander King put this information to me.

Nor do I clearly recall what I then said to Commander King and Ms Sidhu. I do, however, fairly clearly recall the way in which I understood what Commander King had told me and

how I formed a judgement on what to do with that information. My primary considerations upon receiving the information from Commander King were conditioned by the following:

1. I did not have any real grasp of what, if any, significance attached to the timing of the photographs. I had barely been following illegal immigration and people smuggling issues. These were issues which had never been within my area of responsibility.
2. I was preoccupied with a massive additional workload within my direct area of responsibility flowing from the need to upgrade and adjust Australia's security preparedness after the terrorist attacks made against the United States on 11 September 2001. I was barely reading the newspapers except on issues directly involving my responsibilities.
3. I understood that illegal immigration and people smuggling were being handled across government by Ms Jane Halton's Task Force, and within PM&C by Social Policy Division, and that the ADF was well represented at senior level and highly engaged in that Task Force. At that time I had no reason to believe that communications between the ADF and the Task Force were anything less highly effective.
4. I understood that Commander King was alerting me to a rumour.

Based on the above, my reaction to Commander King's information was that if there was any strength to the rumour the senior ADF representatives dealing with Ms Jane Halton, and with the Task Force, would communicate the relevant information clearly and directly to PM&C by that pathway. I judged that I need not take any action.

Essentially, I did not see a need to pass on a rumour about something which I did not fully understand when there was a whole Task Force on the job, and one which had senior ADF officers briefing it on a daily basis. I did not think that injecting a rumour from the sidelines would add value to the work of the Task Force. With this judgement in mind, I put the information provided by Commander King to one side.

Subsequently, despite numerous contacts with Commander King on other matters, and numerous contacts with a wide range of other senior ADF officers, including with Air Vice Marshal Titheridge (head of Strategic Command), no-one ever raised the matter with me again until well after the time in early November 2001 when Ms Sidhu told Ms Catherine Wildermuth of the existence of the relevant rumour.

My next contact with Commander King on the matter was much later, in early March 2002, after Commander King's secondment to PM&C had ended.

March 2002

On or around 11 March 2002 a meeting between myself, Commander King and Ms Sidhu took place at the Kurrajong Hotel at my request.

My reason for requesting the meeting was that, in the wake of Senate Estimates interest in the issue of the photographs relating to the "children overboard" claims, Mr Michael Potts (First Assistant Secretary, International Division, PM&C - my direct supervisor) had suggested it would be useful if I brought Commander King and Ms Sidhu together to refresh their respective memories of the contacts they had had in relation to the matter. When asked whether such a meeting was appropriate, Mr Potts advised me that it was normal for people to talk to one another to refresh their recollections in relation to matters which could be of interest in relation to Senate Estimates processes.

Although I do not recall any further, explicit reasons being given to me by Mr Potts, my impression was that he wanted me to use the proposed meeting with Ms Sidhu and Commander King to develop a good understanding of what had happened within his Division on the "children overboard" matter. I inferred that he would be interested to hear how we recalled any relevant events which had taken place within his Division. It seemed entirely natural to me that he would have such an interest.

I recall that it was mid-to-late February 2002 when Mr Potts first asked that I bring Ms Sidhu and Commander King together. I recall asking Ms Sidhu to set the meeting up, but that some difficulty arose in finding a time. Some time later Mr Potts asked whether there had yet been a meeting and I explained that I had been trying to set one up. My plans were then interrupted by my travel to Brisbane from 28 February 2002 to 6 March 2002 for CHOGM security purposes. Upon return I was mildly anxious about the matter because Mr Potts had by then been asking me to meet with Ms Sidhu and Commander King for some time. I decided to press for a meeting, even if it meant fitting it in by having the meeting at my home on a weekend.

As it happened, it was possible to meet with Commander King and Ms Sidhu during office hours. Because of the nature of the meeting, where I was interested in having the participants – including myself – relaxed for the purpose of reminiscing about events reaching back many months, I felt the office environment, where I was constantly subject to interruptions, was inappropriate. It was also a beautiful early autumn day in Canberra and for their trouble I wanted to buy Ms Sidhu and Commander King a coffee.

I wish to reinforce very strongly that I in no way conceived of convening this meeting for any purpose other than that of allowing the parties present to share recollections of any events or meetings relevant to International Division's involvement in the "children overboard" affair. At the time I had a vague expectation that one or more of us might be asked to give evidence in some form to the forthcoming Senate inquiry but none of us had, at that time, been asked to appear or to submit any testimony.

I personally found the meeting very helpful. I found that Commander King and Ms Sidhu had a better recollection than I did of the meeting which had taken place in my office on or about 11 October 2001. By the time we met at the Kurrajong Hotel I had virtually forgotten that the October meeting had taken place. Ms Sidhu's, and in particular Commander King's, memories of that meeting very much helped to trigger my own recollections.

I am unable to recall whether I put one or more questions to Commander King or to Ms Sidhu in a way that to others might have appeared to be an attempt to rehearse any possible future testimony. If I did pose one or more questions, I wish strongly to emphasise that it was never my intention to do so for any purpose other than to trigger memories. I have had no experience with Senate committees prior to this occasion and I accept that it is possible that I may naively have experimented with ways of drawing memories forth. At no point, however, did I attempt – or have any intention to attempt – to influence in any way the testimony that either Commander King or Ms Sidhu might give on a future occasion.

The substantial contents of the early March meeting fell into two areas.

The first area was that of Commander King's, Ms Sidhu's and my own recollections of the meeting that had taken place in my office in early October 2001. My recollection is that our memories of that meeting were quite similar, but that I expressed uncertainties about detail because by March 2002 I had virtually forgotten that that meeting had occurred. I have since

had time to reflect and believe I have now managed fairly accurately to recall what happened at the October meeting.

The second area was that of Commander King's and Ms Sidhu's recollections of a discussion, where I was not present, which had taken place between Commander King and Ms Sidhu in early October 2001 immediately before they sought to meet with me. There is an essential feature of that discussion that I believe to be significant. Ms Sidhu and Commander King were talking about whether or not Commander King had been briefed face-to-face, in the margins of the SLIPPER briefing, that there were concerns in parts of the ADF that the photographs of "children overboard" were not what they were being claimed to be. Commander King said to Ms Sidhu that he had indeed been briefed face-to-face. Ms Sidhu seemed surprised and asked Commander King why, during their early October 2001 contact, he had told her that he had gathered his information by overhearing others having a conversation. Commander King's response was that he had relayed the information to Ms Sidhu in that way because he wished to protect his source. At that time, in early March 2002, Ms Sidhu and I were not surprised by Commander King's explanation because from time to time information came to us in this way, usually information in relation to the inside story on how a particular Defence project – for example the Collins submarines project – was faring.

Following the meeting in early March 2002 between Commander King, Ms Sidhu and myself I provided Mr Potts with a brief oral account of the recollections we had shared. My recollection is that this is the first time Mr Potts became aware of the meeting that had taken place in my office in early October 2001.

I did not come away from the early March meeting with Commander King and Ms Sidhu with any impression or sense that there had been any concern at all on either of their parts that the meeting had been in any way improper, or that Commander King had felt that he had been put under any kind of pressure to adjust his recollections.

I had no subsequent relevant contact with Commander King except for a letter which I wrote to him on 30 April 2002, which is discussed below, and some polite but largely insubstantial conversation on 2 May 2002 in the witness's room adjacent to the Committee's hearing room.

April and May 2002

On 28 March 2002 I received a formal invitation from Mr Brenton Holmes to consider making a written submission to the Senate Select Committee. I declined to do so because I felt at that time that the meeting in my office in early October 2001 had been a small episode which would be of little interest to the Committee.

On 23 April 2002 I received a formal invitation from Mr Brenton Holmes to appear before the Committee on 2 May 2002. About a week earlier I had received informal advice that I would be called to appear.

On 30 April 2002 I met with Ms Barbara Belcher (First Assistant Secretary Government Division, PM&C) and with Mr Potts in her office where Ms Belcher showed me a Minute dated 29 April 2002 to the Minister for Defence from Rear Admiral R. W. Gates proposing that an attempt may have been made to influence the nature and content of evidence to be provided to the Select Committee by a member of the Australian Defence Force (ADF). I asked Ms Belcher to whom the Minute might refer. Ms Belcher told me that she had it on good authority that the member of the ADF referred to by Rear Admiral Gates was

Commander Stefan King and that her sources believed that Commander King had identified me as having tried to influence his testimony.

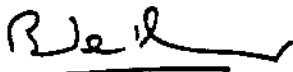
I was deeply shocked and found it difficult to concentrate. I found it difficult to read Rear Admiral Gates' Minute closely even though Ms Belcher told me that she would be unable to let me take a copy of the Minute. Ms Belcher suggested that if I felt strongly about the matter one option would be to consider writing to Commander King to make absolutely sure that he was disabused of any notion he might have that I had attempted to influence him or that he should do anything other than tell the Committee the whole truth. I thought Ms Belcher's suggestion of a letter was a good one, and the letter which I wrote and sent on 30 April 2002 has since been tabled before the Committee.

I have written this letter without consultation with anyone else. I hope that it will assist you with your investigation of the allegations in Rear Admiral Gates' Minute.

I wish to give you my personal assurance that whilst in PM&C, and throughout the rest of my time in the Australian Public Service, I have always striven to maintain the highest standards of behaviour and integrity. I have been, and I remain, very proud of being a public servant, and I remain intent upon upholding the professional standards of the public service. I most sincerely hope that it is possible for you, and for the Senate Select Committee, to track down the source of the allegations contained in Rear Admiral Gates' Minute and to get to the bottom of this matter.

I have no objection to your providing this letter to the Committee or to your showing it to Mr Potts, as a courtesy, since his name is raised.

Yours sincerely



Dr Brendon Hammer
Assistant Secretary - Americas Branch
Department of Foreign Affairs and Trade

DEPARTMENT OF THE PRIME MINISTER AND CABINET

Mrs Belcher

ATTACHMENT G

Secretary

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

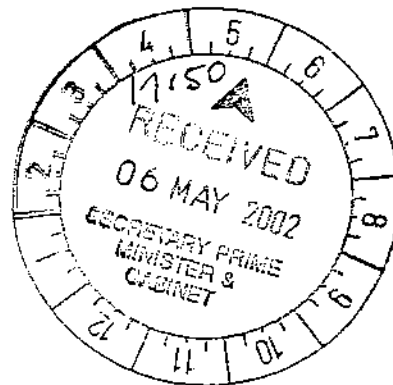
I refer to your request of 1 May 2002 that I prepare a statement detailing any meetings or communications I am aware of between Dr Hammer and Commander King which are relevant to the Committee's terms of reference. My statement is attached.

I have sought the advice of Ms Belcher, FAS Government Division, on whether the statement adequately meets the scope of your request and on other matters surrounding its preparation. For the record, I have not discussed the content of the attached statement with Ms Belcher or anyone else.

Harinder Sidhu

Harinder Sidhu
Senior Adviser
Defence, Intelligence & Security Branch

6 May 2002



**SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT
CONTACTS BETWEEN DR BRENDON HAMMER AND COMMANDER STEFAN KING**

STATEMENT BY HARINDER SIDHU

I am aware of only two occasions on which Dr Brendon Hammer and Commander Stefan King discussed matters relevant to the terms of reference of the Select Committee on a Certain Maritime Incident. These occurred on 11 October 2001 and 11 March 2002 respectively. On each occasion, there were only three people present – Dr Hammer, CMDR King and myself. My recollections of these meetings are detailed below.

1. 11 October 2001 – Meeting in Dr Hammer's Office

As I have testified before the Committee, CMDR King returned from a briefing on progress on Operation Slipper (the ADF deployment to Afghanistan) at Strategic Command in the Department of Defence late in the morning of 11 October. In his debriefing to me of the issues considered at that meeting, he said that, in the margins of the meeting, he had overheard a conversation between other Defence officials regarding the SIEV 04 incident. He said the nature of the discussion was that the photographs which had been published in the media depicting the "children overboard" incident were not of the alleged incident. Rather, they had been taken a day later, when the Navy was conducting a rescue of asylum seekers as their boat was sinking.

It was usual practice for me to advise CMDR King what, if any, relevant matters arising from the OP SLIPPER briefings should be brought to Dr Hammer's attention. On this day, I agreed that the information relating to the photographs should be included in the brief to Dr Hammer. As both CMDR King and I have testified before the Committee, Dr Hammer was not immediately available but we were able to see him later that afternoon.

I accompanied CMDR King to Dr Hammer's office. It was a short meeting – between 5 and 10 minutes. CMDR King advised Dr Hammer of the state of play on an issue, and Dr Hammer would respond in some way (voicing his opinion on the matter, or advising on follow-up action if needed). CMDR King would then move on to the next issue, Dr Hammer would respond, and so on.

At the end of this process, CMDR King outlined for Dr Hammer the story he had heard regarding the SIEV 04 photographs, but in a more abbreviated form. To the best of my recollection, I believe CMDR King told Dr Hammer "there was an issue" surrounding the photographs which had been published. He said he had heard that the photographs did not in fact depict asylum seekers throwing their children overboard, but a Navy rescue of asylum seekers from the water. I do not recall whether CMDR King mentioned to Dr Hammer that the rescue had taken place a day later. I also do not recall precisely CMDR King's description to Dr Hammer of how he obtained this information, only that it was in less detail than he had described to me. He did not make any reference to captions as, I believe, he did when speaking to me earlier in the day.

As I testified before the Committee, I cannot clearly recall Dr Hammer's response. I am certain that he did not ask either CMDR King or I to follow-up or pass on this information further, either on that occasion or at a later time.

2. Meeting at Kurrajong Hotel, 11 March 2002

As far as I am aware, the next occasion at which Dr Hammer and CMDR King discussed this matter was over coffee at the Kurrajong Hotel, on the afternoon of Monday 11 March 2002.

I have already outlined to the Committee the circumstances leading up to this meeting, namely that late on the afternoon of 8 March 2002, Dr Hammer asked me to contact CMDR King and arrange a

meeting so that we might better refresh our memories of the meeting which had taken place in Dr Hammer's office on 11 October 2001. I retain a strong impression that Dr Hammer had been prompted to call this meeting at the suggestion of somebody else.

Dr Hammer suggested the meeting take place on the afternoon of Sunday 10 March, to which I asked whether we should meet at PM&C. Dr Hammer responded that he wished to avoid coming into the office if it were not strictly necessary (as I testified, the sense of this comment was that he already was spending long hours in the office) and he suggested meeting at his home instead.

In the event, CMDR King was unavailable that weekend and, at Dr Hammer's request, I arranged an alternative meeting for the afternoon of Monday 11 March. I believe the meeting was arranged for 3pm. Dr Hammer suggested we hold the meeting over coffee at the Kurrajong Hotel.

I met CMDR King outside the entrance to PM&C at the appointed time but, as Dr Hammer was running late, we were obliged to wait for about 10 minutes until he joined us. When he did, we three walked over to the Kurrajong together. Our conversation chiefly consisted of pleasantries and inquiry to CMDR King about his new role and experiences since leaving PM&C.

We sat at a table on the far left side of the patio facing the courtyard outside the Kurrajong. Dr Hammer opened the discussion and said it might be useful if we were to share our recollections of the meeting in his office on 11 October 2001, noting that his memory of it was fairly vague. Dr Hammer then went on to describe his memory of the meeting – he described where CMDR King and I had sat in his office, recalled CMDR King's remarks in general and said that he had dismissed the information as hearsay and not of relevance to DIS Branch.

Dr Hammer then sought CMDR King's view on whether his recollection was correct. I recall CMDR King responding in a non-committal fashion, along the lines of "if that's what you remember, then that's fine". After Dr Hammer further pressed him for his comment, CMDR King outlined his broad recollection of the meeting, although he cast Dr Hammer's dismissal of the information in stronger terms. I recall that Dr Hammer appeared concerned about CMDR King's narration and made some response. However, I cannot remember precisely what either CMDR King or Dr Hammer said at this point. I nevertheless sensed at this stage that CMDR King was becoming uncomfortable.

Dr Hammer then asked CMDR King what he would say if he were asked about the 11 October meeting. He suggested it might help CMDR King if Dr Hammer were to pose the question as if he were a member of the Committee. I believe the question posed was along the lines of "What happened when you told Dr Hammer about the photographs?" CMDR King clearly appeared uncomfortable at this point and refused politely to answer the question. Dr Hammer accepted CMDR King's refusal and we moved on to another topic of conversation.

I added very little, if anything, to the foregoing discussion chiefly because both Dr Hammer's and CMDR King's accounts went beyond my recollections of the 11 October meeting. When I was invited to share my recollections and I outlined my account of that day, CMDR King "corrected" my assertion that he had overheard the story. He then said it had been told to him directly by a Navy colleague. I am fairly sure he did not mention CMDR Chatterton's name, but he may have referred to his position within the Navy. I expressed my surprise and concern at his statement and asked him why he had not, before now, corrected me on this point. CMDR King responded that he had thought it was my way of being diplomatic and discreet about the matter. I further asked him why he had not mentioned previously where the information had come from, to which he replied that he had been "protecting his source". I recognise that the foregoing account departs a little from my account to the Committee on 2 May 2002 about this conversation. This is because I have now

Handwritten signature
11/10/02

had the time to reflect on the conversation and recall its sequence more precisely. To the best of my recollection, Dr Hammer merely observed this exchange and did not say anything.

At no point in this meeting did Dr Hammer or anyone else suggest that evidence be omitted or concealed. Specifically, I do not believe that, in posing a hypothetical question to CMDR King, Dr Hammer was trying to influence his testimony or to coach him in any way. Rather, I interpreted his approach as reflecting some frustration at CMDR King's reluctance to participate in the discussion. It appeared to me that Dr Hammer was trying to coax CMDR King to be more forthcoming about his recollections of the 11 October meeting. That he did not pursue the issue when CMDR King declined to answer further reinforces my view that posing the question formed a "last ditch" attempt to get CMDR King to share his thoughts.

At the conclusion of the meeting, the three of us walked back together to PM&C. Dr Hammer said goodbye to CMDR King in the foyer and returned to his office. I signed CMDR King into the building and escorted him to Information Services Section (ISS) to view his "Microsoft Outlook" calendar, which had been recovered so that he could check relevant dates and meetings. PM&C's security records indicate that I signed CMDR King into the building at 1601 on 11 March. I stayed with CMDR King while he was in ISS (Ricardo Alberto was also present), and escorted him out of the building again. According to the security records, CMDR King departed the building at 1633.

I am not aware of any other contact between CMDR King and Dr Hammer on this matter.



Harinder Sidhu
6 May 2002

Secretary

SENATE SELECT COMMITTEE INQUIRY INTO A CERTAIN MARITIME INCIDENT

In your minute of 7 May 2002, you requested advice from me in relation to three issues.

First, you asked when and how I became aware that Commander King had passed information about the "children overboard" photographs to Dr Hammer. To the best of my recollection, I first became aware of Commander King's role in respect of the photographs when I was informed by Ms Sidhu of her exchange with Ms Wildermuth of Social Policy Division which had occurred on 7 November. I cannot be specific as to when Ms Sidhu informed me of the exchange but it was around the time of PM&C's appearance at Senate Estimates. I recall that Ms Sidhu approached me in my office and advised me in general terms of the sequence of events, including the respective roles of Commander King and Dr Hammer.

My exchange with Ms Sidhu was brief. While I cannot recall the exact conversation, I recollect that she told me that I should know that there had been some involvement by International Division in the matter of the "children overboard" photographs. She advised me that in early November, she had been approached by Ms Wildermuth asking whether sitreps and Defence material which related to the "children overboard" matter were held by the Division. While doing a systems search, she told me that she had said to Ms Wildermuth words to the effect of "But hadn't you heard the rumour from Defence that the photographs are not of what they are supposed to be?". She had said to Ms Wildermuth that some time earlier one of her colleagues had approached her, reporting rumours in Defence that the photos were not in fact of "children overboard" but of a rescue at sea the following day. The exchange was essentially one-way. I thanked her for advising me.

Secondly, you asked whether I suggested that Dr Hammer meet Ms Sidhu and Commander King and, if so, what were the reasons for this. I recall that following Senate Estimates, Ms Bryant approached me concerning Ms Sidhu's exchange with Ms Wildermuth. She noted that PM&C's evidence to Estimates included her referring to the fact that International Division had advised of rumours from the Department of Defence that the photographs related to events on 8 October and not to 7 October. She advised me that Ms Sidhu's advice was unspecific about the timing of the advice to Ms Wildermuth and said that the planned Select Committee inquiry might want to know when this had occurred. The Department would be preparing a submission to the Committee and the timing of the advice from Commander King could become an issue. She asked me to follow this up. I agreed to do so and subsequently approached both Dr Hammer and Ms Sidhu. I was conscious that this was a potentially important issue and that the Division should aim to be as helpful to the Select Committee as possible.

I can recall pressing each of the two officers separately on the matter on at least two occasions. Ms Sidhu indicated she had conscientiously tried to recall the rough timing of Commander King's approach but that the more she pressed her memory, the more hesitant she became about its reliability. Dr Hammer also indicated that he was unable to recall when the exchange had taken place. I suggested to him that the question of timing was important and pressed him to provide at least a rough approximation of the timing (e.g. early November, mid-November etc.). I also said that, if necessary, he should consult both Ms Sidhu and Commander King in order to get a better sense of the timing of Commander King's advice. He said he thought he would do so. From recollection, this second and more specific conversation with Dr Hammer would probably have occurred in the period between Senate Estimates (18 February) and the beginning of CHOGM (28 February).

Your final question relates to the substance of any report that either Dr Hammer or Ms Sidhu gave to me following their meeting with Commander King. I do not recall any report from Ms Sidhu concerning the meeting. I do recall that Dr Hammer confirmed to me one or two days later that he had engaged his two colleagues on the timing and sequence of events and that he now had a better sense of the timing. By that stage, the Government had decided that departments should not lodge written submissions with the Committee and I did not press Dr Hammer further as the nature of any potential evidence to the Select Committee was a matter for him, as a likely witness.

As requested, in preparing this report I have not consulted Dr Hammer, Ms Sidhu or Commander King.



Michael Potts
First Assistant Secretary
International Division

8 May 2002



Appendix F

THE DEPARTMENT OF
THE PRIME MINISTER AND CABINET

TELEPHONE: (02) 6271 5111
FACSIMILE: (02) 6271 5414

3-5 NATIONAL CIRCUIT
CANBERRA, A.C.T. 2600

4 June 2002

Miss Anne Lynch
Secretary
Senate Committee of Privileges
Parliament House
CANBERRA ACT 2600

RECEIVED
- 5 JUN 2002
CLERKS OFFICE

Dear Miss Lynch

I refer to the letter of 16 May 2002 from Senator Robert Ray, Chair of the Committee of Privileges, inviting me to make written comments to the committee on the matter referred by the Select Committee on a Certain Maritime Incident.

I attach for your information a copy of my statement of 6 May 2002 to the Secretary of the Department of the Prime Minister and Cabinet on the matter. I should note that, in developing the statement, I endeavoured to provide as much detail as I could reliably recollect. Accordingly, I have nothing further to add on this matter.

I hope the attached is of assistance to the Committee.

Yours sincerely

Harinder Sidhu
Senior Adviser
Defence, Intelligence & Security Branch

DEPARTMENT OF THE PRIME MINISTER AND CABINET

Secretary

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

I refer to your request of 1 May 2002 that I prepare a statement detailing any meetings or communications I am aware of between Dr Hammer and Commander King which are relevant to the Committee's terms of reference. My statement is attached.

I have sought the advice of Ms Belcher, FAS Government Division, on whether the statement adequately meets the scope of your request and on other matters surrounding its preparation. For the record, I have not discussed the content of the attached statement with Ms Belcher or anyone else.



Harinder Sidhu
Senior Adviser
Defence, Intelligence & Security Branch

6 May 2002

**SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT
CONTACTS BETWEEN DR BRENDON HAMMER AND COMMANDER STEFAN KING**

STATEMENT BY HARINDER SIDHU

I am aware of only two occasions on which Dr Brendon Hammer and Commander Stefan King discussed matters relevant to the terms of reference of the Select Committee on a Certain Maritime Incident. These occurred on 11 October 2001 and 11 March 2002 respectively. On each occasion, there were only three people present – Dr Hammer, CMDR King and myself. My recollections of these meetings are detailed below.

1. 11 October 2001 – Meeting in Dr Hammer’s Office

As I have testified before the Committee, CMDR King returned from a briefing on progress on Operation Slipper (the ADF deployment to Afghanistan) at Strategic Command in the Department of Defence late in the morning of 11 October. In his debriefing to me of the issues considered at that meeting, he said that, in the margins of the meeting, he had overheard a conversation between other Defence officials regarding the SIEV 04 incident. He said the nature of the discussion was that the photographs which had been published in the media depicting the “children overboard” incident were not of the alleged incident. Rather, they had been taken a day later, when the Navy was conducting a rescue of asylum seekers as their boat was sinking.

It was usual practice for me to advise CMDR King what, if any, relevant matters arising from the OP SLIPPER briefings should be brought to Dr Hammer’s attention. On this day, I agreed that the information relating to the photographs should be included in the brief to Dr Hammer. As both CMDR King and I have testified before the Committee, Dr Hammer was not immediately available but we were able to see him later that afternoon.

I accompanied CMDR King to Dr Hammer’s office. It was a short meeting – between 5 and 10 minutes. CMDR King advised Dr Hammer of the state of play on an issue, and Dr Hammer would respond in some way (voicing his opinion on the matter, or advising on follow-up action if needed). CMDR King would then move on to the next issue, Dr Hammer would respond, and so on.

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As I testified before the Committee, I cannot clearly recall Dr Hammer’s response. I am certain that he did not ask either CMDR King or I to follow-up or pass on this information further, either on that occasion or at a later time.

2. Meeting at Kurrajong Hotel, 11 March 2002

As far as I am aware, the next occasion at which Dr Hammer and CMDR King discussed this matter was over coffee at the Kurrajong Hotel, on the afternoon of Monday 11 March 2002.

I have already outlined to the Committee the circumstances leading up to this meeting, namely that late on the afternoon of 8 March 2002, Dr Hammer asked me to contact CMDR King and arrange a

meeting so that we might better refresh our memories of the meeting which had taken place in Dr Hammer's office on 11 October 2001. I retain a strong impression that Dr Hammer had been prompted to call this meeting at the suggestion of somebody else.

Dr Hammer suggested the meeting take place on the afternoon of Sunday 10 March, to which I asked whether we should meet at PM&C. Dr Hammer responded that he wished to avoid coming into the office if it were not strictly necessary (as I testified, the sense of this comment was that he already was spending long hours in the office) and he suggested meeting at his home instead.

In the event, CMDR King was unavailable that weekend and, at Dr Hammer's request, I arranged an alternative meeting for the afternoon of Monday 11 March. I believe the meeting was arranged for 3pm. Dr Hammer suggested we hold the meeting over coffee at the Kurrajong Hotel.

I met CMDR King outside the entrance to PM&C at the appointed time but, as Dr Hammer was running late, we were obliged to wait for about 10 minutes until he joined us. When he did, we three walked over to the Kurrajong together. Our conversation chiefly consisted of pleasantries and inquiry to CMDR King about his new role and experiences since leaving PM&C.

We sat at a table on the far left side of the patio facing the courtyard outside the Kurrajong. Dr Hammer opened the discussion and said it might be useful if we were to share our recollections of the meeting in his office on 11 October 2001, noting that his memory of it was fairly vague. Dr Hammer then went on to describe his memory of the meeting – he described where CMDR King and I had sat in his office, recalled CMDR King's remarks in general and said that he had dismissed the information as hearsay and not of relevance to DIS Branch.

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Dr Hammer then asked CMDR King what he would say if he were asked about the 11 October meeting. He suggested it might help CMDR King if Dr Hammer were to pose the question as if he were a member of the Committee. I believe the question posed was along the lines of "What happened when you told Dr Hammer about the photographs?" CMDR King clearly appeared uncomfortable at this point and refused politely to answer the question. Dr Hammer accepted CMDR King's refusal and we moved on to another topic of conversation.

I added very little, if anything, to the foregoing discussion chiefly because both Dr Hammer's and CMDR King's accounts went beyond my recollections of the 11 October meeting. When I was invited to share my recollections and I outlined my account of that day, CMDR King "corrected" my assertion that he had overheard the story. He then said it had been told to him directly by a Navy colleague. I am fairly sure he did not mention CMDR Chatterton's name, but he may have referred to his position within the Navy. I expressed my surprise and concern at his statement and asked him why he had not, before now, corrected me on this point. CMDR King responded that he had thought it was my way of being diplomatic and discreet about the matter. I further asked him why he had not mentioned previously where the information had come from, to which he replied that he had been "protecting his source". I recognise that the foregoing account departs a little from my account to the Committee on 2 May 2002 about this conversation. This is because I have now

had the time to reflect on the conversation and recall its sequence more precisely. To the best of my recollection, Dr Hammer merely observed this exchange and did not say anything.

At no point in this meeting did Dr Hammer or anyone else suggest that evidence be omitted or concealed. Specifically, I do not believe that, in posing a hypothetical question to CMDR King, Dr Hammer was trying to influence his testimony or to coach him in any way. Rather, I interpreted his approach as reflecting some frustration at CMDR King's reluctance to participate in the discussion. It appeared to me that Dr Hammer was trying to coax CMDR King to be more forthcoming about his recollections of the 11 October meeting. That he did not pursue the issue when CMDR King declined to answer further reinforces my view that posing the question formed a "last ditch" attempt to get CMDR King to share his thoughts.

At the conclusion of the meeting, the three of us walked back together to PM&C. Dr Hammer said goodbye to CMDR King in the foyer and returned to his office. I signed CMDR King into the building and escorted him to Information Services Section (ISS) to view his "Microsoft Outlook" calendar, which had been recovered so that he could check relevant dates and meetings. PM&C's security records indicate that I signed CMDR King into the building at 1601 on 11 March. I stayed with CMDR King while he was in ISS (Ricardo Alberto was also present), and escorted him out of the building again. According to the security records, CMDR King departed the building at 1633.

I am not aware of any other contact between CMDR King and Dr Hammer on this matter.



Harinder Sidhu
6 May 2002



Appendix G

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18 JUN 2002

CLERK'S OFFICE
2.00PM

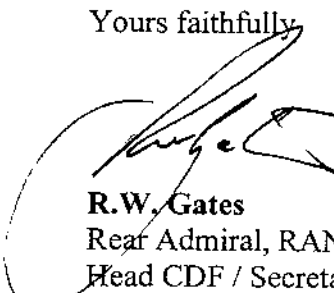
HCST 107/02

Ms Anne Lynch
Secretary
Senate Committee of Privileges
Parliament House
Canberra

SUBMISSION TO SENATE PRIVILEGES COMMITTEE

1. I refer to Senator Ray's letter of 16 May 2002, and enclose for the attention of the Committee, my submission in relation to matters that are of interest to it.

Yours faithfully,



R.W. Gates
Rear Admiral, RAN
Head CDF / Secretary Taskforce
R1-5-SEC/CDF Suite
02-6265 4652
Email: dct@defence.gov.au

18 June 2002

Enclosure:

1. Submission to Senate Committee of Privileges

**SUBMISSION TO SENATE PRIVILEGES COMMITTEE BY
HEAD CDF/SECRETARY TASKFORCE – SENATE SELECT INQUIRY
INTO A CERTAIN MARITIME INCIDENT**

1. I am Rear Admiral Raydon Gates CSM RAN, head of a taskforce established by the CDF and Secretary on 4 March 2002. In preparation of this statement I have partly used my personal knowledge of events. I have also extensively consulted with members of the taskforce who have had contact with Commander King in relation to the Senate Inquiry.
2. In accordance with my directive from the CDF and Secretary (a copy of which is attached to this submission), a Defence Coordination Team (DCT) was established, headed by Colonel Mike Goodyer to support witnesses who may be invited to appear before the Senate Inquiry.
3. During the course of the Senate Inquiry, the DCT identified and contacted all people whom it considered might be in a position to assist the Inquiry. Commander Stefan King was identified as it was assessed that he may be called as a witness to the inquiry because he was the Defence Liaison Officer within PM&C over the relevant period.
4. On 27 Feb 02, Commander King contacted Colonel Goodyer and Major Watson of the DCT as a result of a signal sent to ADF establishments asking for personnel to contact the DCT if they believed that they may be required for the Senate Inquiry. In discussions with Commander King at that meeting, he revealed that he had formally briefed PM&C officials in October 2001 to the effect that he understood there were doubts about the claim surrounding photos which had appeared in the media as showing children being thrown overboard from SIEV 4. As a result of the meeting, it was suggested by Major Watson that Commander King compile a document outlining his involvement with PM&C officials and SIEV 4 to assist him in preparation in the event that he was called to give evidence before the inquiry. It was arranged that he should be assisted by a reserve ADF legal officer with whom he subsequently met in a single consultation. Copies of relevant e-mail correspondence are attached.
5. On 8 March on his own initiative, Commander King forwarded e-mail correspondence to the DCT (Lieutenant Colonel Sutton and Major Watson) concerning a request by PM&C

officials for certain information from Commander King's diary. A copy of that e-mail is attached.

6. On 11 March on his own initiative, Commander King forwarded to the DCT an e-mail concerning a request made by PM&C officials for Commander King to meet with Dr Hammer and Ms Sidhu that day. On 12 March Commander King sent, on his own initiative a follow up e-mail concerning the meeting. This correspondence is attached.

7. On 22 April Major Watson met with Commander King at Russell Offices in relation to his potential appearance before the Senate Inquiry. During the course of that meeting, Commander King volunteered some details of his meeting with PM&C officials at the Hotel Kurrajong on 11 March. Without prompting by Major Watson, Commander King stated that he felt that Dr Hammer had "crossed the line" during this meeting on 11 March but did not elaborate. Major Watson advised him on the seriousness of any allegation that any person might be trying to influence evidence to be given before a Senate Inquiry. Major Watson then explained the relevant Parliamentary Privilege process to Commander King to assist his understanding of the potential gravity of such an allegation if proven. When further asked about the matter on this occasion Commander King stated that he did not want to make a formal complaint. Commander King was again offered the services of a reserve ADF legal officer lawyer to assist him in his preparation and encouraged to take whatever course he thought appropriate in light of his actual recollection. However Commander King declined the offer of further legal assistance. Commander King stated to Major Watson that he would like to meet with me before giving evidence.

8. On the same day (22 April), Major Watson alerted me to the potential evidence that might be given by Commander King on his 11 March meeting with PM&C officials. It was then arranged for Commander King to meet with Air Commodore Blackburn, Colonel Goodyer, Major Watson and me on 23 April.

9. During the 23 April meeting Commander King discussed his role in passing on to his superiors at PM&C the information concerning the correct provenance of the photographs during what he considered to be a formal briefing session in October 2001. He did not refer to the contact with PM&C officials on 11 March as previously discussed with Major Watson. I did not

pursue the information Commander King had volunteered to Major Watson, pertaining to the 11 March meeting. It may be that Commander King was not aware that I had been briefed by Major Watson as to their earlier meeting. From my perspective the purpose of the meeting with the DCT and I was to allow Commander King to discuss any concerns he might have in relation to his appearance before the Senate Inquiry. I did not see it as my role at the meeting on 23 April to conduct my own inquiry into matters which Commander King chose not to raise with me as continuing concerns with me on that occasion. I wanted to set up a situation where Commander King felt that he could freely come forward with relevant information. The fact that he did not come forward, after having received a brief from Major Watson on Parliamentary Privileges, suggested to me that Commander King had made a deliberate choice not to raise the issue of the 11 March meeting.

10. Subsequent to the meeting of 23 April Commander King sought out Major Watson. Commander King stated to Major Watson that he expected the information concerning the 11 March meeting with PM&C officials had been passed on to me. Major Watson confirmed this and again advised Commander King to prepare for his appearance before the Senate Inquiry and to include in his preparation a record of as much detail on the 11 March meeting as he could reasonably recollect. Major Watson also suggested that Commander King should discuss the matter with Colonel Goodyer. Colonel Goodyer, Major Watson and Commander King met later the same day in Air Commodore Blackburn's office. Air Commodore Blackburn arrived in the closing stages of the meeting. During this meeting Commander King stated he felt that there had been an attempt by Dr Hammer on 11 March to influence the evidence that he was to give to the Senate Inquiry. He used the words "crossed the line" and "entirely inappropriate" to describe aspects of the 11 March meeting with Dr Hammer. Commander King revealed to Colonel Goodyer and Major Watson that Dr Hammer asked him a series of questions. When Commander King answered the questions, Dr Hammer suggested that he could answer the questions in a different way. Commander King stated that Dr Hammer used words to the effect "wouldn't it be better to answer the question this way". In reviewing this information I considered that a conclusion that could be drawn that was to suggest Commander King was being asked to omit facts from his answer. At this meeting Colonel Goodyer and Major Watson commented that such a statement, depending upon the intention behind it, was capable in the circumstances of being characterised as an attempt to influence the way in which Commander King should give

evidence to the Senate Inquiry. Commander King appeared to understand what was said by Major Watson.

11. On either 23 or 24 April Commander King of his own volition returned to my office. He was aware that I had been briefed by the taskforce about his concerns of his meeting with PM&C officials on 11 March. Air Commodore Blackburn was present. Commander King then discussed with Air Commodore Blackburn and myself the meeting of 11 March. His comments to me confirmed in my mind those concerns which had already been drawn to my attention by my staff. In particular I asked him what Dr Hammer had said and whether or not the evidence he was proposing to give would in any way be affected by the discussions with Dr Hammer. Commander King responded that Dr Hammer had suggested that his answers need not be as “fulsome” as he (Commander King) had proposed. Commander King indicated that he had not, and would not, change his evidence as a result of his meeting with Dr Hammer. I formed the view that Commander King had taken a robust and professional view of whatever had occurred on 11 March and had properly chosen to ignore it. However he did express that he did feel that the approach to him was “inappropriate”, “crossed the line” and that he felt “considerable pressure” as a result of this. Commander King was also concerned that the evidenced he may give would be to the detriment of the Defence and PM&C relationship. This relationship was in the forefront of his mind and it led to a reservation on his part about whether or not he should raise the meeting of 11 March before the Senate Inquiry. When I asked him if he wished to make a formal complaint about the meeting as a potential breach of privilege matter, he clearly stated to me that he did not. He said to me that he did not consider the meeting on 11 March had influenced the evidence he would give. He further stated that he did not intend to raise the meeting of 11 March with the Senate Inquiry, but would certainly respond if asked.

12. I was mindful of the sensitivity of the information that had just been provided to me by Commander King. I considered that I needed to exercise care not to pollute the process of an inquiry into this matter should it be considered necessary. At that time it was not clear in my mind, despite what had been said by Commander King, whether the meeting on 11 March was friendly advice being offered by a superior on how to best give evidence before a Committee, or something else.

13. Subsequent to my second meeting with Commander King I also met with Colonel Goodyer and Major Watson and discussed our uncertainty of whether or not this was a Senate privileges issue, noting Commander King's reticence to raise the issue. Being in doubt on the issue, in consultation with the others I decided that we should seek legal advice on that matter. The advice was provided by General Counsel of The Defence Legal Service and it was taken to a meeting that I requested with CDF and the Secretary on 29 April. Noting the recommendations of the legal advice and at the direction of CDF and Secretary, I signed a minute to so advise the Minister. A copy of the minute to the Minister is attached.

14. In the minute to the Minister it was stated that "there may have been an attempt to influence the nature and the content of the evidence" to be given by Commander King. I used these words deliberately, as it in my mind accurately summarised the information that had been given to the DCT by Commander King. In effect, the conclusion I drew from the information available to me was that there *may* have been an attempt to influence the evidence to be given by Commander King. It was by no means certain in my mind whether there had actually been an attempt to influence Commander King. Whether or not there had been such an attempt would depend upon a detailed account of the matter being given by Dr Hammer and Commander King from which the matter could be judged objectively. It was further stated in my minute, "...but he consider that he omit relevant facts from his evidence". I wish to stress that these are not Commander King's words, but mine, based on Commander King's statement to me during our second meeting that Dr Hammer suggested that he should not be so "fulsome" in his answers.

15. Late on the afternoon of 29 April, I took my minute to the Chief of Staff to the Minister, Mr Matt Brown. I explained that the purpose of the minute was to advise the Minister of the potential for this evidence to be given and although not conclusively a breach, a potential for an allegation of privilege. I also explained that I thought that this could raise considerable interest at the Senate Inquiry and in the media.

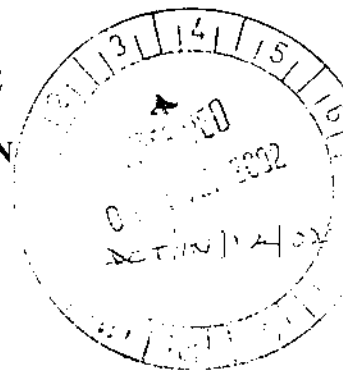


R.W. GATES
Rear Admiral, RAN
18 June 2002

Attachments:

1. Copy of CDF /Sec Directive dated 4 March 02
2. Copy of e mail correspondence Commander King
3. Copy of e mail correspondence Commander King
4. Copy of e mail correspondence Commander King
5. Copy of Minute to Minister dated 6 June 02

**JOINT DIRECTIVE BY
CHIEF OF THE DEFENCE FORCE AND
SECRETARY, DEPARTMENT OF DEFENCE
TO
REAR ADMIRAL RAYDON GATES CSM RAN
HEAD CDF/SEC TASK FORCE**



INTRODUCTION

This Directive supersedes CDF Directive 2/2002.

2. We are committed to ensuring that Defence communicates effectively internally, with other Government agencies and with Government. The events relating to communications that arose during and following the October 2001 SIEV 4 incident (the children overboard issue and sinking of that vessel) have caused us to task you with this Directive.

BACKGROUND

3. To date there have been three inquiries relating to the events involving SIEV 4: two Defence Routine Inquiries and an inquiry conducted by the Department of Prime Minister and Cabinet.

4. The Senate has formed a Select Committee to be known as the Senate 'Select Committee on a Certain Maritime Incident' to inquire into and report by 16 May 2002 on 'the so-called children overboard' incident and a range of issues associated with that incident. The Select Committee is also to inquire into and report in respect of the agreements between the Australian Government and the Governments of Nauru and Papua New Guinea regarding the detention within those countries of person intercepted while travelling to Australia, publicly known as the 'Pacific Solution'. A copy of the Select Committee's terms of reference is attached.

TERMS OF REFERENCE

5. So as to ensure that Defence communicates effectively internally, with other Government agencies and with Government you are to be the head of a CDF/Secretary Taskforce to examine the following operational and related matters and recommend measures for improvement, including those which must be implemented in the short term. The matters you are to focus on are:

- communications within Defence, with other Government agencies and with Government on operational and related matters;
- Public Affairs;
- information handling (especially imagery);
- Command and Control processes;
- reputation management processes;
- crisis management processes and how these fit with Defence's standing ministerial and parliamentary liaison processes;
- training, educational and military discipline factors related to the passage, management and retention of information by electronic means;
- implementation of the approved recommendations from the Powell, Bryant and Ekin-Smyth Reports; and
- liaison with the Select Committee secretariat on behalf of Defence.

6. With regard to the liaison with the Select Committee secretariat, you should note that any person, including those in Defence, is entitled to approach the Select Committee directly at any time, and that it would be improper for there to be any interference in dealings between a witness and a parliamentary committee. With this clearly in mind, you are appointed to manage and co-ordinate across Defence, Defence's involvement with, and activities arising out of, the Committee's inquiry. This role recognises the size and complexity of Defence and Defence's accountability obligations and should assist the Select Committee conduct its inquiry.

7. In particular, in liaising with the Select Committee secretariat, you are responsible for:

- collection of evidence for submission to the Select Committee by the Defence organisation; and
- offering support to Defence people who may be witnesses to the Select Committee in understanding their rights and obligations as witnesses before the Committee.

8. You are to develop and implement a communications strategy for the issues that your Taskforce covers.

9. You are authorised to gather information from all relevant sources within Defence and to liaise as necessary with:

- relevant Ministers and their staffs;
- relevant Government agencies; and
- relevant areas within Defence.

Resources

10. The Task Force will comprise yourself, a Secretary's representative, a media consultant, a legal officer, a representative from Organisational Improvement Division with ministerial and parliamentary liaison expertise, single Service representatives at O-5/6 level, a Defence civilian with relevant international policy expertise and the staff allocated to CDF Directive 2/2002. The Task Force will be funded from CDF's budget.

11. Financial and additional administrative support that you may require is to be coordinated through CDF's Chief Staff Officer.

Reporting

12. You are to report as necessary to the CDF and the Secretary. You are also to report periodically to a committee of CDF, the Secretary, VCDF, CN, CA and CAF but keeping them all individually apprised as the Task Force work progresses.



C.A. BARRIE
Admiral, RAN
Chief of the Defence Force
4 March 2002



ALLAN HAWKE
Secretary
Department of Defence
4 March 2002

Distribution List:

Rear Admiral Raydon Gates CSM RAN
Colonel M S Goodyer

For Information:

Minister for Defence
Minister Assisting the Minister for Defence
Vice Chief of the Defence Force
Chief of Navy
Chief of Army
Chief of Air Force
Deputy Secretary Strategic Policy
Deputy Secretary Corporate Services
Under Secretary Defence Materiel
Chief Defence Scientist
Chief Finance Officer
Commander Australian Theatre
Head Strategic Command
Head Defence Personnel Executive
Head Public Affairs and Corporate Communications
Director General The Legal Staff
CDF/VCDF Executive Shopfront File Copy (R1-5-B002)
Secretary's File Copy

Watson, James

From: King, Stefan
Sent: Friday, 1 March 2002 12:08
To: Watson, James
Cc: 'johng@gateslawyers.com'
Subject: sec: UNCLASSIFIED: Legal support - CMDR King

James,

Thank you for providing the opportunity for me to speak with John Gates today at 1030. He provided me with some useful guidance in the 45 minutes we had together, and the opportunity to meet again if the situation requires it.

For billing purposes I will keep you informed on the occasions I seek his legal advice.

regards

Stefan King

Commander RAN

Deputy Director Capability Resourcing
Navy Capability Performance and Plans
R1-4-B061
Ph: 02 6265 6673

-----Original Message-----

From: **Watson, James**
Sent: Thursday, 28 February 2002 18:57
To: King, Stefan
Cc: 'johng@gateslawyers.com'
Subject: SECURITY UNCLASSIFIED: Legal support - CMDR King

Sir,

I have contacted CMDR John Gates RANR and asked him to assist you with your request.

His contact details are ph 62625440 and fax 62625455. His email address is johng@gateslawyers.com. He will be available tomorrow should this be convenient to you. Please call me if you have any queries.

Regards,

James Watson
MAJ
SO2 DDL
R8-2-013
02 - 62653263
E-mail: James.Watson@cbr.defence.gov.au

Thursday, 28 February 2002

IMPORTANT: This e-mail transmission is intended only for the use of the recipient(s) named above. The information contained in this transmission may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient, you are notified that any use, interference with, disclosure, copying, retention or dissemination of any or all of this communication or any attachments is unauthorised and prohibited.

If you have received this communication in error, please telephone the Defence Legal Office in Canberra, Australia on +61 2 6265 1718. Thank You.

-----Original Message-----

From: **King, Stefan**
Sent: Thursday, 28 February 2002 12:39
To: Watson, James
Cc: Sutton, Lester
Subject: Legal support - CMDR King

Major Watson,

As we discussed yesterday afternoon, I have drafted an outline of the points I think are salient to recall. I now need some assistance in developing this into a statement of facts that I could present to either enquiry.

I would be grateful if you could advise of a legal officer in Russell who could be available to assist me in this regard.

Aside, I have sent the email we discussed to Jeff Whalan PM&C, and forwarded a copy to COL Goodyer.

Regards

Stefan King

Commander RAN

Deputy Director Capability Resourcing

Navy Capability Performance and Plans

R1-4-B061

Ph: 02 6265 6673

Watson, James

From: King, Stefan
Sent: Friday, 1 March 2002 8:09
To: Watson, James
Subject: RE: SECURITY UNCLASSIFIED: Legal support - CMDR King

Thanks James.....

Stefan King

Commander RAN

Deputy Director Capability Resourcing
Navy Capability Performance and Plans
R1-4-B061
Ph: 02 6265 6673

-----Original Message-----

From: **Watson, James**
Sent: Thursday, 28 February 2002 18:57
To: King, Stefan
Cc: 'johng@gateslawyers.com'
Subject: SECURITY UNCLASSIFIED: Legal support - CMDR King

Sir,

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His contact details are ph 62625440 and fax 62625455. His email address is johng@gateslawyers.com. He will be available tomorrow should this be convenient to you. Please call me if you have any queries.

Regards,

James Watson
MAJ
SO2 DDL
R8-2-013
02 - 62653263
E-mail: James.Watson@cbr.defence.gov.au

Thursday, 28 February 2002

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-----Original Message-----

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Sent: Thursday, 28 February 2002 12:39
To: Watson, James
Cc: Sutton, Lester
Subject: Legal support - CMDR King

Major Watson,

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I would be grateful if you could advise of a legal officer in Russell who could be available to assist me in this

regard.

Aside, I have sent the email we discussed to Jeff Whalan PM&C, and forwarded a copy to COL Goodyer.

Regards

Stefan King

Commander RAN

Deputy Director Capability Resourcing

Navy Capability Performance and Plans

R1-4-B061

Ph: 02 6265 6673

Watson, James

From: King, Stefan
Sent: Tuesday, 12 March 2002 15:42
To: Sutton, Lester; Watson, James
Cc: Woodall, Stephen
Subject: RE: CMDR King - Update

A remarkable 'chat' was had.

There are issues.

PM&C decision not to table a submission was not surprising.

Stefan King

Commander RAN

Deputy Director Capability Resourcing
Navy Capability Performance and Plans
R1-4-B061
Ph: 02 6265 6673

-----Original Message-----

From: King, Stefan
Sent: Monday, 11 March 2002 13:43
To: Sutton, Lester; Watson, James
Cc: Woodall, Stephen
Subject: CMDR King - Update

Staff-in-Confidence

Gentlemen,

I received a call on the weekend from PM&C staff trying to see if I would be available to meet with an Assistant Director on Sunday afternoon. You might be able to understand why I made excuses for my non-availability.

Request was repeated today and I have agreed to meet the same officer 'for coffee' 1500 (hrs) this afternoon at the Kurrajong Hotel, which is opposite the PM&C offices. I expect that this chat will be outside of the normal protocols (and that Defence clearance has neither been sought nor obtained) and I will treat it as such.

I have no clues as to the direction this will take. I have some concerns following a personal statement I have seen today from a relevant officer of PM&C in this issue. The statement did not make reference to the two primary issues that are integral to my involvement in the matter.

I do not require any assistance at this stage, I am just keeping you in the picture so that someone else knows what is going on in respect of the interaction between myself and PM&C

Stefan King

Commander RAN

Deputy Director Capability Resourcing
Navy Capability Performance and Plans
R1-4-B061
Ph: 02 6265 6673

Staff-in-Confidence

Watson, James

From: King, Stefan
Sent: Friday, 8 March 2002 10:43
To: Sutton, Lester; Watson, James
Subject: CMDR King - PM&C inquiries

For info, here is an email exchange between PM&C and myself today.

Stefan King

Commander RAN
Deputy Director Capability Resourcing
Navy Capability Performance and Plans
R1-4-B061
Ph: 02 6265 6673

-----Original Message-----

From: King, Stefan
Sent: Friday, 8 March 2002 10:41
To: 'Sidhu, Harinder'
Subject: sec: unclassified: Recovery of Outlook Account - Stefan King

Hi Harinder,

Actually I would need to see the period Aug 2001 out to 21 Dec 2001.

What does.. '*need our information any day now*' mean? Are they going to ask me over for a chat, call me before an enquiry, request me to submit a statement or what. I believe it would be appropriate for me to be advised of the scope and authority of the taskforce before I get there.

My availability next week, for Jenny's planning purposes are;

Mon 11	afternoon
Tues 12	forenoon
Wed 13	forenoon
Thur 14	afternoon
Fri 15	afternoon

Cheers H

Stefan King

Commander RAN
Deputy Director Capability Resourcing
Navy Capability Performance and Plans
R1-4-B061
Ph: 02 6265 6673

-----Original Message-----

From: Sidhu, Harinder [<mailto:Harinder.Sidhu@pmc.gov.au>] <<mailto:Harinder.Sidhu@pmc.gov.au>>
Sent: Friday, 8 March 2002 9:32
To: King, Stefan
Subject: FW: Recovery of Outlook Account - Stefan King

Stefan,

see below. Could you pls confirm? Jenny Bryant says they'll need our information any day now.

H

Harinder Sidhu

International Division
Tel: 6271 5631
Fax:6271 5558

> -----Original Message-----
> From: Watts, Geoff
> Sent: Friday, 8 March 2002 8:44
> To: Sidhu, Harinder
> Subject: Recovery of Outlook Account - Stefan King
>
> Harinder,
>
> Ricardo from ISS has advised that as a part of a Senate Committee request,
> a number of Outlook accounts are being recovered from 22 November to 22
> August 2001.
>
> Grateful you confirm this is the same period Stefan King is looking to
> review his Outlook account.
>
> cheers, Geoff.
>
>

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MINUTE

FOLIO
15

HCST 86 /02

Minister

SENATE SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

RECOMMENDATION

- That you note the evidence that may be given during the Senate Select Committee on a Certain Maritime Incident hearings on 2 May 02.

OVERVIEW

- The CDF / SEC Taskforce, set up to coordinate Defence aspects of the Senate Select Committee into a Certain Maritime Incident (SSC), has received information that there may have been an attempt to influence the nature and the content of evidence by an ADF member who has been invited to appear before the Committee. The extent of the alleged attempt was not to suggest to the ADF member that he present evidence untruthfully, but to consider that he omit relevant facts from his evidence. The ADF member has stated that he has not been influenced by this approach.
- As with its approach to all witnesses appearing before the SSC, Defence has encouraged the ADF member to prepare himself thoroughly to ensure that the evidence he gives is to the best of his recollection and understanding. The ADF member has been offered legal support and he thoroughly understands his rights and obligations as a witness before the SSC, in particular his obligation to provide full, frank and truthful evidence.

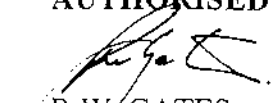
Sensitivity

- Yes. Any allegation of an attempt to influence evidence to be given by a witness who has been requested to appear before a Parliamentary Committee is very sensitive. Should this alleged attempt come to light during the hearing, it would attract considerable media attention.

Resources. Not applicable.

Talking Points. Not applicable.

AUTHORISED:


 R.W. GATES
 Rear Admiral, RAN
 Head, CDF / Secretary Task Force

NOTED

ROBERT HILL

/ /

29 Apr 02

CONTACT: RADM R.W. Gates (02) 6265 4652



THE DEPARTMENT OF
THE PRIME MINISTER AND CABINET

TELEPHONE: (02) 6271 5111
FACSIMILE: (02) 6271 5414

3-5 NATIONAL CIRCUIT
CANBERRA, A.C.T. 2600

RECEIVED

17 JUN 2002

CLERKS OFFICE
11.00 am

Miss Anne Lynch
Secretary
Committee on Privileges
Australian Senate
Parliament House
CANBERRA ACT 2600

Dear Miss Lynch,

I refer to Senator Ray's letter of 16 May 2002. I apologise for the delay in responding, due to absence overseas on official travel.

I have given the request serious consideration. I think the best advice I can offer the Committee at this stage is that contained in my minute of 8 May 2002 to the Secretary of this Department, a copy of which is attached.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Michael Potts'.

Michael Potts
First Assistant Secretary
International Division

18 June 2002

Secretary

SENATE SELECT COMMITTEE INQUIRY INTO A CERTAIN MARITIME INCIDENT

In your minute of 7 May 2002, you requested advice from me in relation to three issues.

First, you asked when and how I became aware that Commander King had passed information about the "children overboard" photographs to Dr Hammer. To the best of my recollection, I first became aware of Commander King's role in respect of the photographs when I was informed by Ms Sidhu of her exchange with Ms Wildermuth of Social Policy Division which had occurred on 7 November. I cannot be specific as to when Ms Sidhu informed me of the exchange but it was around the time of PM&C's appearance at Senate Estimates. I recall that Ms Sidhu approached me in my office and advised me in general terms of the sequence of events, including the respective roles of Commander King and Dr Hammer.

My exchange with Ms Sidhu was brief. While I cannot recall the exact conversation, I recollect that she told me that I should know that there had been some involvement by International Division in the matter of the "children overboard" photographs. She advised me that in early November, she had been approached by Ms Wildermuth asking whether sitreps and Defence material which related to the "children overboard" matter were held by the Division. While doing a systems search, she told me that she had said to Ms Wildermuth words to the effect of "But hadn't you heard the rumour from Defence that the photographs are not of what they are supposed to be?". She had said to Ms Wildermuth that some time earlier one of her colleagues had approached her, reporting rumours in Defence that the photos were not in fact of "children overboard" but of a rescue at sea the following day. The exchange was essentially one-way. I thanked her for advising me.

Secondly, you asked whether I suggested that Dr Hammer meet Ms Sidhu and Commander King and, if so, what were the reasons for this. I recall that following Senate Estimates, Ms Bryant approached me concerning Ms Sidhu's exchange with Ms Wildermuth. She noted that PM&C's evidence to Estimates included her referring to the fact that International Division had advised of rumours from the Department of Defence that the photographs related to events on 8 October and not to 7 October. She advised me that Ms Sidhu's advice was unspecific about the timing of the advice to Ms Wildermuth and said that the planned Select Committee inquiry might want to know when this had occurred. The Department would be preparing a submission to the Committee and the timing of the advice from Commander King could become an issue. She asked me to follow this up. I agreed to do so and subsequently approached both Dr Hammer and Ms Sidhu. I was conscious that this was a potentially important issue and that the Division should aim to be as helpful to the Select Committee as possible.

I can recall pressing each of the two officers separately on the matter on at least two occasions. Ms Sidhu indicated she had conscientiously tried to recall the rough timing of Commander King's approach but that the more she pressed her memory, the more hesitant she became about its reliability. Dr Hammer also indicated that he was unable to recall when the exchange had taken place. I suggested to him that the question of timing was important and pressed him to provide at least a rough approximation of the timing (e.g. early November, mid-November etc.). I also said that, if necessary, he should consult both Ms Sidhu and Commander King in order to get a better sense of the timing of Commander King's advice. He said he thought he would do so. From recollection, this second and more specific conversation with Dr Hammer would probably have occurred in the period between Senate Estimates (18 February) and the beginning of CHOGM (28 February).

Your final question relates to the substance of any report that either Dr Hammer or Ms Sidhu gave to me following their meeting with Commander King. I do not recall any report from Ms Sidhu concerning the meeting. I do recall that Dr Hammer confirmed to me one or two days later that he had engaged his two colleagues on the timing and sequence of events and that he now had a better sense of the timing. By that stage, the Government had decided that departments should not lodge written submissions with the Committee and I did not press Dr Hammer further as the nature of any potential evidence to the Select Committee was a matter for him, as a likely witness.

As requested, in preparing this report I have not consulted Dr Hammer, Ms Sidhu or Commander King.



Michael Potts
First Assistant Secretary
International Division

8 May 2002



Appendix I

THE DEPARTMENT OF THE PRIME MINISTER AND CABINET

SECRETARY

CANBERRA ACT 2600

TELEPHONE: (02) 6271 5200
FACSIMILE: (02) 6271 5935

RECEIVED

- 2 JUL 2002

CLERK'S OFFICE

27 June 2002

Miss Anne Lynch
Secretary
Senate Committee of Privileges
Parliament House
CANBERRA ACT 2600

Dear Miss Lynch

I refer to the letter dated 16 May 2002 from Senator Robert Ray, the Chair of the Committee of Privileges, inviting me to provide written comments on a matter referred to the Committee concerning the Select Committee on A Certain Maritime Incident. I apologise for the delay in responding.

I understand that my report of 10 May 2002 to the Prime Minister, which was forwarded to the Select Committee on 13 May, is available to the Committee of Privileges. I consider that the material in the report reflects my knowledge of the matter referred to the Committee.

Yours sincerely

M W Moore-Wilton