

Chapter 4

The Report of Children Overboard: Dissemination and Early Doubts

Introduction

4.1 As discussed in the previous chapter, the report that a child or children had been thrown overboard from SIEV 4 originated in the telephone conversation between Commander Banks and Brigadier Silverstone on the morning of Sunday 7 October 2001.

4.2 At about 11.15am (AEST) on the same day, that report was made public by Mr Philip Ruddock, Minister for Immigration and Multicultural Affairs, during the course of a press conference.¹ As Ms Jennifer Bryant remarked in her report:

In total, only around four hours elapsed between the commencement of boarding [of SIEV 04 by HMAS *Adelaide*] and reports [of children thrown overboard] being made public in the media.²

4.3 In this chapter, the Committee first discusses how an oral and uncorroborated report made in the midst of a complex tactical operation came to be disseminated so quickly and so widely. The Committee then outlines how doubts concerning the veracity of the report arose in the Defence chain of command, and the point at which different elements in that chain reached the conclusion that the incident had not occurred. Finally, the Committee discusses how photographs taken of the sinking of SIEV 4 on 8 October came to be publicly misrepresented as being photographs of the ‘children overboard’ event.

4.4 In the following chapter, the Committee will consider the role played by a range of agencies and individuals in relation to attempts to correct the original and mistaken report that children had been thrown overboard.

Dissemination

4.5 The mechanics of the public dissemination of the report that a child or children had been thrown overboard from SIEV 4 were as follows:

- report originates from a telephone conversation between Commander Banks and Brigadier Silverstone early in the morning of 7 October 2001;

1 Ms Jennifer Bryant, *Investigation into Advice provided to Ministers on ‘Siev 4’: Report prepared on behalf of the People Smuggling Task Force* [hereafter Bryant Report], 21 January 2002, p.9; and, *Transcript of Evidence*, CMI 888.

2 Bryant Report, p.iii.

- Brigadier Silverstone immediately transmits the report by telephone to Air Vice Marshal Titheridge and to Rear Admiral Smith very shortly afterwards;
- Rear Admiral Smith passes the report by telephone to Rear Admiral Chris Ritchie, Commander Australian Theatre (COMAST) within minutes of Brigadier Silverstone's call to him;
- by 9.30am (AEST),³ Air Vice Marshal Titheridge reports the news by telephone to Ms Jane Halton, then Chair of the People Smuggling Taskforce (PST) in the Department of the Prime Minister and Cabinet (PM & C), and also to Mr Peter Hendy, chief of staff to Mr Peter Reith, then Minister for Defence, and to the Chief of Defence Force, Admiral Chris Barrie;⁴
- Ms Halton conveys the report verbally to members of the PST who were present at a meeting on the morning of Sunday 7 October;⁵
- at 9.51am, Mr Bill Farmer, Secretary of the then Department of Immigration and Multicultural Affairs, is rung by his Minister, Mr Philip Ruddock, at the PST meeting.⁶ Mr Farmer tells Mr Ruddock that members of the PST had just had advice that, among other things, passengers on SIEV 4 were 'throwing children overboard';⁷
- at 11.15am, Mr Ruddock, who was at a public forum speaking about other aspects of the government's policy in relation to asylum seekers, passes on that information to the press;⁸
- Mr Ruddock telephones Mr Reith and the Prime Minister from a car on the way to the airport at 12.30pm, advising them of the report that children had been thrown into the water from SIEV 4;⁹
- later in the day, Rear Admiral Smith mentions the report to Dr Brendan Nelson, Parliamentary Secretary for Defence, in the course of a discussion on board HMAS *Manoora*;¹⁰
- an options paper prepared for the Prime Minister during the day, and authorised by members of the PST at an evening meeting on Sunday 7 October, states that attempts by the HMAS *Adelaide* to deter SIEV 4 have been 'met with attempts

3 Answers to Questions on Notice, Department of Defence, Question W58.

4 *Transcript of Evidence*, CMI 684-686.

5 *Transcript of Evidence*, CMI 900.

6 *Transcript of Evidence*, CMI 886.

7 *Transcript of Evidence*, CMI 888.

8 *Transcript of Evidence*, CMI 888; and Bryant Report, p.9.

9 Bryant Report, p.9.

10 Enclosure 1 to Powell Report, Statement by Rear Admiral Geoffrey Smith; Bryant Report, p.6.

to disable the vessel, passengers jumping into the sea and passengers throwing their children into the sea'.¹¹

4.6 While these facts concerning the dissemination and publication of the initial report that children had been thrown overboard are relatively well established, there are two matters raised by them which have yet to be fully explained. They are, first, the reasons for Brigadier Silverstone's early morning telephone call to Air Vice Marshal Titheridge, and second, the media's prior knowledge of SIEV 4's interception. The Committee will discuss these matters in turn.

Update for Air Vice Marshal Titheridge

4.7 As was noted in the previous chapter, Brigadier Silverstone was instructed by Rear Admiral Smith on the evening of 6 October to telephone Air Vice Marshal Titheridge at 8.00am (AEST) on 7 October 2001 with the very latest information about SIEV 4.¹² This was an unusual or 'special' arrangement, which was not repeated for any other SIEV incident.¹³

4.8 As Brigadier Silverstone said, this requirement caused him to interrupt Commander Banks at a time when he would not otherwise have done so. He told the Committee:

I think that, from my perspective, if it had not been for the requirement to provide this information to Air Vice Marshal Titheridge for the IDC [interdepartmental committee], or whoever was going to use that information, I would not have called Commander Banks or spoken to Commander Banks at 7.20 on that day. It is my pronounced practice, pronounced in terms of my policy, that I do not ring my staff and the various COs working for me - indeed, it is my actual practice - when they are in the middle of boarding operations. I do not ring them when they are dealing with crises. I rely on them sending the op reps [operation reports], and I remain available to them at all hours to answer questions on issues of concern. That is my practice, but on this particular morning, because of the requirement to pass this information to Air Vice Marshal Titheridge and because we had become more imbued with a sense of providing information to government as it requires, we did this.¹⁴

4.9 Brigadier Silverstone noted that, had he relied as he normally did only upon the formal op rep signal traffic, the so-called 'children overboard' issue would never have arisen.¹⁵

11 'Options for Handling Unauthorised Arrivals: Christmas Island Boat', included in Enclosure to Bryant Report, under statement by Ms Jane Halton.

12 *Transcript of Evidence*, CMI 349.

13 *Transcript of Evidence*, CMI 466.

14 *Transcript of Evidence*, CMI 347-348.

15 *Transcript of Evidence*, CMI 349.

4.10 Given both the singularity and the effect of this instruction to Brigadier Silverstone to brief Air Vice Marshal Titheridge directly, the Committee sought to establish what had generated the requirement in the first place. It was, however, unable to satisfy itself fully about the matter.

4.11 Brigadier Silverstone advised the Committee that when Rear Admiral Smith was giving him the directive to ring Air Vice Marshal Titheridge, 'he [Smith] mentioned that it was to do with the Treasurer appearing on current affairs programs that [Sunday] morning'.¹⁶ Brigadier Silverstone also said that he 'formed the view that it flowed from the requirements of the IDC'.¹⁷

4.12 Rear Admiral Smith, however, informed the Committee that he had been told that it was the then Minister for Defence, Mr Reith, who required the latest information from Air Vice Marshal Titheridge. Characterising how the arrangement came about, he said:

I had a call from Admiral Ritchie on the Saturday evening at about 9.30pm, explaining to me that our minister was due to appear on a television show on the Sunday morning, and I just assumed that to be the *Sunday* program or something. He had agreed with Air Vice Marshal Titheridge that he, Titheridge, should be rung at eight o'clock eastern standard time to be updated on the events that had occurred given that we were already in contact with this SIEV, and Brigadier Silverstone was to do that.¹⁸

4.13 This account was corroborated by Rear Admiral Ritchie, who recalled that Air Vice Marshal Titheridge had rung him

and suggested that he had to brief - or had been requested to brief - the minister on the Sunday morning on what was going on with SIEV 4 and asked if it would be okay if he spoke directly to Silverstone in order to cut out the middleman, if you like, on that one - and that one only - particular occasion. I agreed with that and asked Admiral Smith to arrange it.¹⁹

4.14 Air Vice Marshal Titheridge could not recall with certainty who had spoken to him requesting the Sunday morning brief, but told the Committee that the 'request itself I believe emanated from the minister's [ie. Mr Reith's] office'.²⁰

4.15 As noted earlier, Air Vice Marshal Titheridge's telephone records indicate that he spoke to Ms Halton, Mr Peter Hendy, chief of staff to Minister Reith, and Admiral Barrie shortly after speaking to Brigadier Silverstone. There is no record, nor

16 *Transcript of Evidence*, CMI 351.

17 *Transcript of Evidence*, CMI 351.

18 *Transcript of Evidence*, CMI 466.

19 *Transcript of Evidence*, CMI 372.

20 *Transcript of Evidence*, CMI 705.

did the Air Vice Marshal have any recollection, of conveying the update on SIEV 4 to the Treasurer.²¹

4.16 On the basis of this evidence, therefore, the Committee considers that the special arrangement for Brigadier Silverstone to telephone Air Vice Marshal Titheridge on Sunday 7 October was made in order to supply Mr Reith, and possibly the PST, with the latest information on SIEV 4. The Committee was unable, however, to establish exactly why that information was required at that particular time.

4.17 Questioned about this issue, Air Vice Marshal Titheridge said that: ‘My recollection is that it may have had something to do with a media appearance, but I cannot help you any more than that’.²²

4.18 There was, however, no media appearance by the Minister for Defence on that Sunday morning and his records indicate that Air Vice Marshal Titheridge did not contact Mr Reith directly until 1.51pm in the afternoon.²³ The Treasurer did appear on the *Sunday* program on the morning of 7 October, but did not speak about SIEV 4.

Media prior knowledge of SIEV 4

4.19 There is no indication that the report that children had been thrown overboard from SIEV 4 would have been published in the media as an immediate consequence of the telephone calls made by Air Vice Marshal Titheridge early on 7 October 2001.

4.20 The report was in fact passed to the media by the Minister for Immigration and Multicultural Affairs, Mr Ruddock, who learned of it almost accidentally. That is, he learned of it by way of an unscheduled telephone call to his departmental secretary, who passed on the advice he had just been given at the PST meeting.

4.21 Mr Ruddock was in Sydney to address a public meeting on the subject of the government’s ‘border protection’ legislation.²⁴ An unexpectedly large media contingent was present because, as Mr Ruddock and his officers learned, there had been a report on the ABC news early that morning that a vessel had been intercepted the previous night. Anticipating that there would be questions from the media about the interception, Mr Ruddock called Mr Farmer to find out the latest information.²⁵

4.22 In other words, the fact that the media already knew about the interception of SIEV 4 created pressure for further detailed information to be made public. But, as Ms Halton testified, the fact that the media had been told about the interception by this stage was unusual and contrary to previous practice.

21 *Transcript of Evidence*, CMI 706, 719.

22 *Transcript of Evidence*, CMI 719.

23 Answers to Questions on Notice, Department of Defence, Question W58.

24 *Transcript of Evidence*, CMI 886.

25 *Transcript of Evidence*, CMI 886.

4.23 Ms Halton advised the Committee that she knew *that* information about the interception of SIEV 4 had appeared in the public arena on the morning of 7 October, but that she did not know *how* it had. She explained:

I should say that my knowledge at that point of where that information had come from was nonexistent. I knew there was a vessel. I was not aware that that information had been released to anybody. The general habit had been not to comment on operational details while operations were in train. I was a bit surprised that the detail of that vessel seemed to be in the public arena.²⁶

4.24 The Committee received no further information concerning how or why the news of the interception of SIEV 4 was already in the public domain by early in the morning of 7 October 2001.

4.25 The Committee notes a further unusual feature of the handling of SIEV 4. This was the ‘heated’²⁷ conversation between Admiral Barrie and the Secretary of PM & C, Mr Max Moore-Wilton, concerning where the rescued passengers of SIEV 4 were to be taken after their boat had sunk. Admiral Barrie told the Committee that soon after he had been advised, on 8 October, that SIEV 4 was sinking, he had had a telephone conversation with Mr Moore-Wilton. The latter, said Admiral Barrie:

told me to make sure that everyone rescued went on board HMAS *Adelaide*. I said to him that we could not guarantee that and safety of life was to be the paramount consideration. In this emergency, if people had to be rescued and landed at Christmas Island that would have to happen. The CO had already called for urgent assistance from the island from whatever assets were available. It was for the commander of the *Adelaide* to make the call.²⁸

4.26 Admiral Barrie informed the Committee that he had then immediately telephoned Minister Reith and told him of the conversation, and been assured by the Minister that his approach was appropriate. Elaborating on his reasons for informing the Minister of his discussion with the Secretary of PM & C, Admiral Barrie said that:

I did want the minister to understand that there was this view, if you like, that somehow or another we were in absolute control of where people would end up, even though they were all in the water. I just wanted the minister to be quite aware that we were not able to guarantee any of those sorts of results.²⁹

4.27 The sequence of ‘unusual’ features surrounding the treatment of SIEV 4 - the leaking of the fact of SIEV 4’s interception to the media, the ‘special’ arrangement for Air Vice Marshal Titheridge to contact Brigadier Silverstone directly for the latest news, and Mr Moore-Wilton’s ‘heated’ insistence that the SIEV’s passengers not be

26 *Transcript of Evidence*, CMI 948.

27 *Transcript of Evidence*, CMI 786.

28 *Transcript of Evidence*, CMI 741-742.

29 *Transcript of Evidence*, CMI 787.

landed on Christmas Island - all point to the likelihood that the Government had decided to make an example of SIEV 4.

4.28 SIEV 4 was the first boat to be intercepted after the announcement of the Federal Election. Its handling was to be a public show of the Government's strength on the border protection issue, and the behaviour of the unauthorised arrivals a public justification for the policy. It is in this context that one might best understand why the Secretary of PM & C wanted to ensure that the asylum seekers concerned not set foot on Australian territory. It is perhaps also in this context that it is possible to understand why it was so politically difficult for the Government to correct or retract claims made in relation to the passengers aboard SIEV 4 once they were known or suspected to be false.

Conclusion

4.29 A number of witnesses commented unfavourably on the haste with which the report that children had been thrown into the sea from SIEV 4 was passed from Defence personnel, to the broader public service and Ministers, and out into the public domain. Major General Powell's report notes that the mistaken reporting 'was a direct result of the conflicting balance between the provision of timely information *versus* accurate information',³⁰ and that:

The risks of passing information outside established formal lines of communication to achieve the time demands of a given Government imperative must be clearly understood by the provider and the recipient of that information.³¹

4.30 Brigadier Silverstone remarked that the episode 'reinforces the risks of making public the details of developing tactical situations, especially when the operational chain of command and formal reporting processes are bypassed',³² and expressed the view that 'it is inappropriate for those not in the direct military chain of command to make comment or report on the emerging details of current operational events to the media or any other source'.³³

4.31 In a similar if more colourful vein, a former Chief of Navy, Vice Admiral Sir Richard Peek, exclaimed:

[I]n the proper chain of command, the captain of *Adelaide* sent a signal, as I understood it, giving the details of what happened. For somebody to suggest that the initial process of telephone calls, when the radio was available for an official report, and the initial report had been demanded because some

30 Powell Report, p.4.

31 Powell Report, p.5.

32 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, p.5.

33 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 2, p.5.

clot in Canberra wanted to talk on a television station - God, it makes me speechless!³⁴

4.32 Somewhat by way of contrast to these remarks, however, Rear Admiral Ritchie wrote of the issue in the following terms:

It will be argued that this incident demonstrates the danger of putting too much credibility in initial and unsubstantiated reports from the scene of action, and so to an extent it does. This view is not entirely relevant to this sequence of events however because, in this case, the information released in the heat of the moment was thought to be genuine and remained so for three days. There was no reason not to inform Ministers and Senior Officers, as was done. Once that information has been passed, Defence has little control over its further dissemination.³⁵

4.33 Rear Admiral Ritchie's point is that:

Any failing on Defence's part is not in how the information was managed or passed in the first instance [but] rather, in the process for refuting the information when it was found to be false.³⁶

4.34 In the next section, the Committee discusses how doubts concerning the veracity of the report began to surface within the Defence chain of command, and the point at which different elements in that chain reached the conclusion that the incident had not occurred. In the light of that discussion, the next chapter provides a comprehensive account of the adequacy of the 'process for refuting the information'.

Doubts and the Search for Evidence

4.35 The report that children had been thrown overboard from SIEV 4 excited immediate and extensive media coverage and political commentary. Aware of this public interest in the matter, Brigadier Silverstone and Rear Admiral Smith each became concerned when in the days following the initial report they saw no written confirmation of it in the signal traffic.³⁷

4.36 In his statement to the Powell inquiry, Brigadier Silverstone recorded that:

It was not until either 8 or 9 Oct[ober], when viewing the media coverage of the child overboard incident, that I could not recall seeing any written reporting of this incident. On Tue[sday] 9 Oct[ober], following the sinking of SIEV 04, I directed a review of *Adelaide's* Opreps and confirmed that no written advice of the incident existed. Subsequently, I directed CO *Adelaide*

34 *Transcript of Evidence*, CMI 1210.

35 Enclosure 1 to Powell Report, Statement by Rear Admiral Chris Ritchie, p.4.

36 Enclosure 1 to Powell Report, Statement by Rear Admiral Chris Ritchie, p.4.

37 Enclosure to Bryant Report, Statement by Brigadier Mike Silverstone, p.1; Enclosure to Bryant Report, Statement by Rear Admiral Geoffrey Smith, p.1; *Transcript of Evidence*, CMI 360, 584.

to gather statements from those involved in order to confirm whether or not a child had been thrown overboard. At about this time I discussed my concerns and intentions with NCC AST [Naval Component Commander Australian Theatre] and COMAST.³⁸

4.37 On that same day, 9 October 2001, Rear Admiral Smith independently contacted Commander Banks about the same issue. He told the Committee that:

I was very much aware of the media coverage that this incident had been receiving. I was becoming quite concerned that none of the operational reports that had come to me through the JTF commander at any time contained information saying that a child had been thrown overboard. I had been briefed by Brigadier Silverstone that there was a difference of view between himself and Commander Banks. That concerned me. So I took the unusual step of contacting Commander Banks direct on 9 October and I asked him for his account of what had occurred and what evidence he had to support the allegation of a child being thrown in the water. In that telephone call, he advised me that he himself had not seen such an event, that he had heard a number of his ship's company indicate that they had seen the event occur. I told him to get out there, to interview his people and to determine, once and for all, did this incident occur or not. That was on Tuesday morning.³⁹

4.38 Rear Admiral Smith then said that he had rung Rear Admiral Ritchie, telling him that he 'had serious concerns as to our ability to prove that this incident had in fact occurred'.⁴⁰

Potential sources of verification

4.39 On 9 October, it seemed that there were three sources from which evidence to support the report that a child had been thrown overboard might emerge. They were:

- Commander Banks's eyewitness account;
- witness statements from the *Adelaide's* crew; and
- Electro Optical Tracking System (EOTS) recording [the video].

4.40 The Committee questioned naval witnesses extensively about each of these sources. It wished to assure itself, not only that the witnesses themselves considered that there was no evidence to support the initial report, but also of the basis upon which they did so. In other words, the Committee wished to make its own assessment of the evidence on the basis of which the judgement was reached by Commander Banks and subsequently by others in the naval chain of command that children had not been thrown overboard. The Committee considers this evidence below.

38 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 2, p.3; see also, Enclosure to Bryant Report, Statement by Brigadier Mike Silverstone, p.2.

39 *Transcript of Evidence*, CMI 584-585.

40 *Transcript of Evidence*, CMI 585.

Commander Banks's eyewitness account

4.41 Commander Banks testified that it was only when Brigadier Silverstone rang him on 9 October that he realised that they had different recollections of their conversation on 7 October 2001. In particular, he said that it was only then that he realised that Brigadier Silverstone had reported him as saying that a child had been thrown overboard.⁴¹ These differences were rehearsed in detail in the previous chapter.

4.42 Brigadier Silverstone accepted that Commander Banks did not recollect saying that a child had gone over the side of SIEV 4 and was not a witness to such an event.⁴²

4.43 Brigadier Silverstone said, however, that on 9 October and early on 10 October, Commander Banks still considered the report credible. That is, he still considered it possible that the incident had occurred and that other sailors may have witnessed it although he had not.⁴³

4.44 In support of this view, Brigadier Silverstone recalled a conversation with Commander Banks early in the morning on 10 October,

in which he indicated that no one as yet could confirm that a child had been recovered from the water. However, he said that he was still waiting to question someone who had been on the far side of the SIEV, away from *Adelaide's* position at the time of the incident. Neither at this point, nor at any earlier stage, did he suggest that a child had not been thrown in the water.⁴⁴

4.45 The Committee notes that this evidence is consistent with the fact that on 7 October there were reports from at least some crew members that they thought they had seen children in the water.⁴⁵

4.46 Later on the morning of 10 October, however, according to notes in Brigadier Silverstone's notebook, Commander Banks reported 'that it was apparent to him that no children had been thrown in the water'.⁴⁶

41 *Transcript of Evidence*, CMI 255.

42 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 2. Brigadier Silverstone in fact wrote: 'I'm not surprised that CO *Adelaide* cannot clearly recall just what he said on AM 7 Oct 01, given the rapidly changing situation associated with the management of SIEV 04 at the time I phoned'.

43 Enclosure 2 to Powell Report, email JOO-NORCOM dated 11/10/2001 13:45.

44 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 2, p.3.

45 *HMAS Adelaide Boarding Log*; and, Enclosure 2 to Powell Report, HMAS *Adelaide* SIC ADA/I3M dated 110330Z Oct 01, 'Op Relex - Commanding Officers Statement Reference SIEV 4 Manoverboards'.

46 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 2, p.3.

4.47 Commander Banks's own evidence was equivocal as to the time at which he ceased to deem the report credible.

4.48 At one point, Commander Banks suggested that he had been 'adamant' since some time during 7 October 2001 that no children had been thrown in the water.⁴⁷ His certainty, he said, was based on his knowledge that those recovered from the water 'were all male and that none were children'.⁴⁸

4.49 Elsewhere, however, Commander Banks indicated that it took longer for him to be sure of this fact. He said:

I believe that by the 11th, certainly in my mind, the evidence was clear that no children had been thrown overboard. I had provided a statement that said that, and there were other statements, which I subsequently read, that confirmed that.⁴⁹

4.50 The statement that Commander Banks prepared on 11 October reveals the difficulty of attaining certainty under the circumstances. It reads, in part:

I have since been questioned repeatedly about this event (and to a lesser extent others) and I am now so full of conflicting information of what was seen and heard by others and me, and stated by others and me that it is difficult to recall with absolute veracity.⁵⁰

4.51 The Committee notes, however, that Commander Banks has never equivocated about the fact that he himself did not see a child thrown overboard. He continued on from the paragraph quoted above, saying:

Nevertheless I am prepared to attest to what I saw. For the record quote I saw a child held over the side by a man. I did not see any children in the water. I did see 13 UBAs [unauthorised boat arrivals] voluntarily enter the water from the SIEV and watched their subsequent recovery. I advised CJTF 639 that this had happened and that I could see a man threatening to put a child over the side. I advised that there had been no loss of life. I signalled ashore that SUNCs were making threats to jump overboard and some had done so and that some had been thrown overboard unquote.⁵¹

4.52 Any evidence in support of the initial report, then, had to be found in witness statements from the crew or in the EOTS film.

47 *Transcript of Evidence*, CMI 281.

48 *Transcript of Evidence*, CMI 280.

49 *Transcript of Evidence*, CMI 278.

50 Enclosure 2 to Powell Report, HMAS *Adelaide* SIC ADA/I3M dated 110330Z Oct 01, 'Op Relex - Commanding Officers Statement Reference SIEV 4 Manoverboards'.

51 Enclosure 2 to Powell Report, HMAS *Adelaide* SIC ADA/I3M dated 110330Z Oct 01, 'Op Relex - Commanding Officers Statement Reference SIEV 4 Manoverboards'.

Witness statements from crew

4.53 Following his conversations with Brigadier Silverstone and Rear Admiral Smith on 9 October, Commander Banks called on members of his crew involved with, or having a recollection of, the man overboard incidents of 7 October 2001 to contact the ship's coxswain and provide written information.⁵² In response to this call, sixteen crew members made sworn statements on 10 October 2001.

4.54 Of these, one statement, made by Able Seaman Wade Gerrits, provides support for the report that a child entered the water. Able Seaman Gerrits, who was on the bridge operating EOTS at the relevant time, stated that he saw SUNCs jumping from the SIEV and that 'I believe one child also went overboard'.

4.55 He went on to say, however, that:

All persons who dove overboard did so by there [sic] own accord and were all wearing life jackets. All personal [sic] were also recovered by *Adelaide's* seaboats and returned to the SIEV.⁵³

4.56 Thus, even if Able Seaman Gerrits's statement can be said to provide support for the claim that a child was in the water, it does not support the claim that a child was *thrown* into the water.

4.57 Of the remaining fifteen statements, ten state specifically either that no children were witnessed in the water or that no one was witnessed being thrown overboard.⁵⁴ Five statements do not explicitly indicate that children were not in the water, but provide no evidence to support the report.⁵⁵

4.58 The majority of statements report an incident of a child held up to or over the side, but are unanimous in saying that this child was not thrown overboard. Seven of the statements report that one of those who jumped overboard voluntarily was a teenaged boy. It is possible that this is the 'child' referred to by Able Seaman Gerrits, since this would account for him saying both that he believed a child went overboard and that all those who went overboard did so of their own accord.

4.59 In short, the witness statements provided by the crew of HMAS *Adelaide* provide no evidentiary support for the report that children had been thrown overboard.

52 *Transcript of Evidence*, CMI 203.

53 Enclosure 1 to Powell Report, Service Police Statement by Able Seaman Wade Theo Gerrits (10 October 2001), submitted as part of Statement by Commander Norman Banks.

54 These are the statements from Letts, Koller, Chapman, Blennerhassett, Heedes, von Kelaita, Walker, Black, Gullidge, and Skells. Enclosure 1 to Powell Report, submitted as part of Statement by Commander Norman Banks.

55 These are the statements from Hynes, Naree, Nixon, Barker, and Piper. Enclosure 1 to Powell Report, submitted as part of Statement by Commander Norman Banks.

EOTS film

4.60 On 10 October 2001, Commander Banks produced a ‘chronological review of the EOTS video footage’.⁵⁶ The EOTS tapes themselves were despatched to Rear Admiral Smith at Maritime Command on Sunday 14 October. A copy had earlier been transferred to the Australian Federal Police at Christmas Island.⁵⁷

4.61 Commander Banks told Rear Admiral Smith on 10 October that there was no evidence on the EOTS footage ‘that children had been thrown overboard’.⁵⁸

4.62 Although, Rear Admiral Smith’s statement to Ms Bryant indicates that he did not recall having seen the EOTS transcript at that time,⁵⁹ Rear Admiral Ritchie recorded some details about the EOTS footage on 10 October, which he believed had come from a conversation between Rear Admiral Smith and Commander Banks. These details were:

- no children shown being thrown overboard;
- one child held over the side;
- people jumping of their own volition; and
- one 13 year old pushed over.⁶⁰

4.63 By late on 10 October, therefore, it had become apparent that there was to be no evidence forthcoming from Commander Banks, his crew or from the EOTS footage that could support the report that a child had been thrown overboard.

4.64 The following time line summarises how this knowledge progressed up the relevant chain of command between 9 and 11 October 2001.

Knowledge in the chain of command

- 9 October 2001
 - Brigadier Silverstone and Rear Admiral Smith ask Commander Banks to provide any information which would confirm or corroborate the report that a child had been thrown overboard from SIEV 4.
 - Commander Banks calls on those with knowledge of the man overboard incidents on 7 October to make statements to the ship’s coxswain.⁶¹
- 10 October 2001, early

56 *Transcript of Evidence*, CMI 168.

57 *Transcript of Evidence*, CMI 168.

58 Enclosure to Bryant Report, Statement by Rear Admiral Geoffrey Smith, p.1.

59 Enclosure to Bryant Report, Statement by Rear Admiral Geoffrey Smith, p.2.

60 Enclosure 1 to Powell Report, Statement by Rear Admiral Chris Ritchie, p.2.

61 *Transcript of Evidence*, CMI 203.

- Commander Banks tells Brigadier Silverstone that no one could yet confirm that a child had been recovered from the water. According to Brigadier Silverstone, however, Commander Banks notes that he is still waiting to question someone who had been on the far side of the SIEV, away from the *Adelaide's* position, at the time of the incident.⁶²
 - Strategic Command tells Rear Admiral Ritchie that they hold no evidence of children being thrown overboard, prompting the question 'were they?'⁶³
 - Rear Admiral Ritchie speaks to Rear Admiral Smith, who advises him that the Electro Optical film shows no children being thrown overboard,⁶⁴ but that, according to CO *Adelaide*, there may yet be witness statements from sailors on the disengaged side to support the initial report. Rear Admiral Ritchie advises Mr Mike Scrafton, Military Adviser to the Minister for Defence, accordingly.⁶⁵
- 10 October, later
 - Sixteen sworn statements are taken from members of the *Adelaide's* company.⁶⁶ Able Seaman Wade Gerrits states that he saw SUNCs jumping from the SIEV and that 'I believe one child also went overboard'. He goes on to say that: 'All persons who dove overboard did so by there [sic] own accord and were all wearing life jackets. All personal [sic] were also recovered by *Adelaide's* seaboats and returned to the SIEV'.⁶⁷ No other crew member's statement indicates that a child went or was thrown overboard, although a number mention that a teenaged boy jumped of his own accord.
 - Commander Banks tells both Rear Admiral Smith and Brigadier Silverstone that no children had been thrown in the water.⁶⁸
 - Rear Admiral Smith directs Commander Banks to produce a chronology of events and to signal that to him as a personal message.⁶⁹

62 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 2, p.3.

63 Enclosure 1 to Powell Report, Statement by Rear Admiral Chris Ritchie, p.2.

64 Enclosure 1 to Powell Report, Statement by Rear Admiral Chris Ritchie, p.2. Rear Admiral Ritchie states that he believes this information to have come from a conversation between Rear Admiral Smith and Commander Banks. The statement notes that the video shows one child held over the side, people jumping of their own volition, and a 13 year old pushed over.

65 Enclosure 1 to Powell Report, Statement by Rear Admiral Chris Ritchie, p.2; *Transcript of Evidence*, CMI 368-369.

66 *Transcript of Evidence*, CMI 262.

67 Enclosure 1 to Powell Report, Service Police Statement by Able Seaman Wade Theo Gerrits (10 October 2001), submitted as part of Statement by Commander Norman Banks.

68 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 2, p.3; *Transcript of Evidence*, CMI 585.

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- According to Rear Admiral Smith, he rings Rear Admiral Ritchie immediately following his conversation with Commander Banks, telling him that he [Smith] is now convinced that the incident had never occurred.⁷⁰
 - According to Rear Admiral Smith, Rear Admiral Ritchie advises him that he will relay that same information to Admiral Barrie, Chief of Defence Force, and rings back to confirm that he has done so.⁷¹
 - 11 October
 - Commander Banks's signal chronology arrives at Rear Admiral Smith's headquarters.⁷²
 - Commander Banks commences writing his own statement, as directed by Brigadier Silverstone, and subsequently forwards it by signal to Brigadier Silverstone and Rear Admiral Smith.⁷³
 - Commander Banks forwards copies of his crew's statements by email to Rear Admiral Smith and to Brigadier Silverstone.⁷⁴
 - Brigadier Silverstone forwards those crew statements with his own covering remarks to Rear Admirals Smith and Ritchie in an email dated 11 October 01 (13:45). He also discusses the contents of the email with Rear Admiral Ritchie on the same day.⁷⁵
 - Rear Admiral Ritchie sees the statements from the *Adelaide's* crew and concludes that no children were thrown overboard.⁷⁶
 - Rear Admiral Ritchie believes that, in accordance with his usual practice, he would have briefed Air Vice Marshal (AVM) Titheridge that
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69 *Transcript of Evidence*, CMI 585. The chronology is contained at Enclosure 2 to Powell Report, HMAS *Adelaide* SIC I3M/LAB dated 101136Z Oct 01, 'Op Relex - Siev 04 List of Chronological Events for the 07 Oct 01 Boarding'.

70 *Transcript of Evidence*, CMI 585. Note that Rear Admiral Ritchie's testimony is silent on this conversation, and states that he only became fully convinced that there was no evidence supporting the claim on 11 October 2001.

71 *Transcript of Evidence*, CMI 585. See note above.

72 *Transcript of Evidence*, CMI 585.

73 *Transcript of Evidence*, CMI 243, 274. This statement is contained at Enclosure 2 to Powell Report, HMAS *Adelaide* SIC ADA/I3M dated 110330Z Oct 01, 'Op Relex - Commanding Officers Statement Reference SIEV 04 Manoverboards'

74 *Transcript of Evidence*, CMI 274; Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 2, p.3.

75 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 2, p.3. The email is contained at Enclosure 2 to Powell Report, JOO-NORCOM on 11/10/2001 13:45, 'Op Relex - Statements'.

76 *Transcript of Evidence*, CMI 369.

there is no evidence to support the claim that children have been thrown overboard.⁷⁷

- Rear Admiral Ritchie briefs Admiral Barrie, telling him that there is no evidentiary support for claims that children had been thrown overboard.⁷⁸ There is disagreement between Rear Admiral Ritchie and Admiral Barrie over how categorical was the former's advice that it had been established that children were not thrown overboard. This matter is discussed in more detail in following chapters.

Conclusion

4.65 The developing understanding of the absence of evidence which would support the report of a child thrown overboard was well summarised by Rear Admiral Ritchie. In his statement to the Powell inquiry, he said:

My overriding recollection of these events is that up until 10 or 11 Oct[ober] 01, all in the command chain believed that a child had been thrown overboard. By the 10 Oct[ober] 01 we knew it was not supported by the video, but believed other sailors on the disengaged side had seen such events. By the 11 Oct[ober] we knew that no such witnesses were forthcoming.⁷⁹

4.66 In the following chapter, the Committee discusses what happened to that information after 11 October 2001. Before it turns to that matter, however, the Committee discusses the photographs disseminated from HMAS *Adelaide*.

4.67 In particular, the Committee is concerned with the question of how photographs taken during the sinking of SIEV 4 on 8 October came to be publicly misrepresented as evidence of children overboard on 7 October 2001.

Photographs

4.68 During the period of HMAS *Adelaide's* engagement with SIEV 4, from 6 to 10 October 2001, 420 digital photographs were taken.⁸⁰ These photographs were taken

77 Enclosure to Bryant Report, Statement by Rear Admiral Chris Ritchie. His belief is corroborated by Rear Admiral Smith's recollection of a conversation between himself and Air Vice Marshal Titheridge. A week or two after 11 October, Rear Admiral Smith said that he was speaking to AVM Titheridge and asked him 'if he knew that there was no evidence to support the claim that children were thrown overboard. Air Vice Marshal Titheridge confirmed that he knew this'. Enclosure to Bryant Report, Statement by Rear Admiral Geoffrey Smith.

78 *Transcript of Evidence*, CMI 373.

79 Enclosure 1 to Powell Report, Statement by Rear Admiral Chris Ritchie, p.3.

80 *Transcript of Evidence*, CMI 157; Air Commodore P.D. Ekin-Smyth, *The Report of the Routine Inquiry into Operation Relax: Suspected Illegal Entry Vessel (SIEV 4) Handling of Photographic and other Imagery and Implementation of the Public Affairs Plan*, [hereafter Ekin-Smyth Report] 6 March 2002, p.4. Note that it is possible that 'individual members of the company of HMAS *Adelaide* created other images for personal purposes despite instructions by the Commanding Officer that this was not to occur'. Ekin-Smyth Report, p.3.

by two crew members, Petty Officer J.A. Nixon and Leading Seaman D.K. Blanchard, at the direction of Commander Banks.⁸¹

4.69 Of these 420 photographs, two have become notorious. They are the photographs of Able Seaman Laura Whittle and Leading Seaman Cook Jason Barker, taken during the rescue of passengers of SIEV 4 while the boat was sinking on 8 October, but published in the media as evidence of the rescue of children thrown into the water on 7 October 2001.⁸²

4.70 In what follows, the Committee discusses, first, how these two photographs came to be released to the media as evidence that children were thrown overboard on 7 October, and second, when officers in the relevant Defence chain of command knew that the photographs were being misrepresented. The question of the efforts made to correct the record in relation to the photographs is addressed in the next chapter.

Release of photographs

4.71 Early in the morning on 9 October, Commander Banks sent the two photographs by email to ten addressees in Defence.⁸³ The first photograph was saved as ‘laura the hero’ and was attached to the email under the words ‘Whittle “COURAGE”’. The accompanying text stated:

ABBM Laura Whittle was recently photographed as the Navy Value ‘COURAGE’. During the 08 Oct rescue of 223 SUNCs from a sinking Indonesian fishing vessel, Able Seaman Laura Whittle again typified this true quality through her immense courage in leaping 12 metres from the ship’s 02 deck into the water to drag women and children to the safety of a liferaft. Selflessly she entered the water without a lifejacket and without regard for her own safety to help others in need.⁸⁴

4.72 The second photograph was saved as ‘dogs and his family’ and was attached to the email under the words ‘Barker “COURAGE and DETERMINATION”’. The accompanying text said:

LSCK Jason ‘Dogs’ Barker shows dogged determination as he helped rescue women and children by dragging them to safety during the rescue of

81 Ekin-Smyth Report, p.4.

82 *Transcript of Evidence*, CMI 166; see also, Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 3, email JOO-NORCOM dated 9/10/01 18:08 [which attaches Commander Banks’s original email, and the titles given to the photographs].

83 Bryant Report, p.14; Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 3, email JOO-NORCOM dated 9/10/01 18:08 [which attaches Commander Banks’s original email, and the titles given to the photographs].

84 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 3, email JOO-NORCOM dated 9/10/01 18:08.

223 SUNCs from a sinking Indonesian fishing vessel. This big hearted Leading Seaman also demonstrated Navy's core value of COURAGE.⁸⁵

4.73 Knowledge that the photographs existed became public when Commander Banks gave an unauthorised interview to Channel 10 on 9 October.⁸⁶ The Commander spoke of the rescue on 8 October and of his pride in his crew, and mentioned that he had sent photographs of the rescue to Defence headquarters.⁸⁷ Channel 10 then called Mr Tim Bloomfield, Director of Media Liaison (DML) seeking copies of those photographs.⁸⁸

4.74 Mr Bloomfield immediately advised the Minister's media adviser, Mr Ross Hampton, and relevant personnel in Defence that the interview had occurred, and began seeking copies of the photographs.⁸⁹ These he subsequently received from Lieutenant Andrew Herring (Fleet Public Affairs Officer - Sydney), on Defence's secret email system, and from Mr John Clarke, Strategic Communications Adviser to Chief of Navy (CN), on the restricted email system.⁹⁰

4.75 In his Minute of 11 October 2001 to Head Public Affairs and Corporate Communication (HPACC), Mr Bloomfield indicated that both sets of photographs that he received had the accompanying text, or captions, attached.⁹¹ Confirming this evidence, Mr Clarke's statement to the Powell inquiry gave no indication that the photographs he sent to Mr Bloomfield were unaccompanied by captions.⁹² However, Mr Bloomfield's evidence to the Bryant inquiry was less sure on this point. He said that 'he was "pretty sure" both the emails he received with the photographs included the explanatory text. He was clear that Lieutenant Herring's did, but he was a little less certain about the copy from Mr Clarke'.⁹³

4.76 However, Mr Bloomfield was never in doubt about what the photographs depicted and said that he was focusing on the possibility of using them for a 'good news' story about the Navy.⁹⁴ His main concerns related to the quality of the pictures,

85 Enclosure 1 to Powell Report, Statement by Brigadier Mike Silverstone, Attachment 3, email JOO-NORCOM dated 9/10/01 18:08.

86 Bryant Report, p.15; *Transcript of Evidence*, CMI 167.

87 Bryant Report, p.15; *Transcript of Evidence*, CMI 167.

88 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield, Minute to Head Public Affairs and Corporate Communication (HPACC) dated 11 October 2001.

89 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield, Minute to Head Public Affairs and Corporate Communication (HPACC) dated 11 October 2001.

90 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield, Minute to Head Public Affairs and Corporate Communication (HPACC) dated 11 October 2001; Enclosure to Bryant Report, Statement by Mr Tim Bloomfield.

91 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield.

92 Enclosure 1 to Powell Report, Statement by Mr John Clarke.

93 Enclosure to Bryant Report, Statement by Mr Tim Bloomfield.

94 Enclosure to Bryant Report, Statement by Mr Tim Bloomfield.

to the fact that ‘they could have been taken anywhere’, and whether it would be permissible to show the faces of naval personnel and/or of the persons being rescued.⁹⁵

4.77 Mr Bloomfield advised Mr Hampton on the same afternoon, 9 October 2001, that he had received the photographs, describing them, he said, as ‘UBA’s [unauthorised boat arrivals] in the water’, but not ‘very good shots’.⁹⁶

4.78 The key factor in the eventual misrepresentation of the photographs was the detachment of the captions from their respective images. A detailed account of how the photographs were transmitted to the media on 10 October 2001 without their explanatory text is provided in the Bryant Report. The Committee took little new evidence on this question.

4.79 In what follows, therefore, the Committee highlights three main elements which contributed to the public misrepresentation of the photographs. They were:

- technological problems;
- pressure for urgent clearance of photographs; and
- miscommunications.

Technological problems

4.80 The Defence email system has two levels. There is the secret system, to which not all Defence personnel have access, and the restricted system, which is used for unclassified information.⁹⁷

4.81 The photographs were sent from the *Adelaide* on the secret system. They were copied, together with their accompanying text, onto the restricted system by Commander Piers Chatterton, Director Operations at Naval Headquarters. He had assessed that they contained nothing of a classified nature and that they depicted a ‘good news’ story which should be available to public affairs personnel.⁹⁸

4.82 Although it is not entirely clear just who had copies of the photographs on which system and at which time, part of the explanation for the detachment of the text from the photographs lies in the difficulties experienced by various officers in opening the files on their desktops.

95 Enclosure to Bryant Report, Statement by Mr Tim Bloomfield.

96 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield, Minute to Head Public Affairs and Corporate Communication (HPACC) dated 11 October 2001.

97 Enclosure to Bryant Report, Statement by Mr Andrew Stackpool; *Transcript of Evidence*, CMI 1138.

98 Enclosure 1 to Powell Report, Statement by Commander Piers Chatterton; *Transcript of Evidence*, CMI 1162.

4.83 For example, when Mr Hampton asked Mr Bloomfield to send him the photographs on the afternoon of 9 October, Mr Bloomfield could not open the relevant files on his secret system. He asked another PACC officer, Mr Andrew Stackpool, urgently to send across the copies that he had received on the restricted system. But, as it turned out, Mr Stackpool had had to save the photographs onto his desktop in order to open them, which meant that they were saved as 'jpg' files with no explanatory text attached.⁹⁹

4.84 Mr Stackpool stated that he would most likely have created a new email and attached the saved copies of the photographs from his desktop. This would mean that the photographs went to Mr Hampton without explanatory text.¹⁰⁰ Mr Stackpool said that at the time he was not aware of the significance of the explanatory text, and that the 'issue was to ensure that the photographs were provided to the Minister's Office as quickly as possible'.¹⁰¹

4.85 On the following day, Mr Hampton was having his own 'computer problems' and asked Mr Bloomfield to forward copies of the photographs to the Departmental Liaison Officer (DLO), Ms Liesa Davies, in the Minister's Canberra office (Mr Hampton and the Minister were in Melbourne).¹⁰² Again they were sent without the explanatory text.

4.86 This time, according to Mr Bloomfield, the captions were left off at Mr Hampton's request. Mr Hampton does not recall talking about the captions at this time.¹⁰³ As he pointed out, however, he had not seen the explanatory text and would have assumed that, by captions, Mr Bloomfield meant simply the labels or titles which they had mutually decided were inappropriate and could identify the sailors involved.¹⁰⁴

4.87 The same explanation accounts, according to Mr Hampton, for his direction that only the photographs, without captions, be provided to the media on the afternoon of 10 October 2001.¹⁰⁵

99 Enclosure to Bryant Report, Statement by Mr Andrew Stackpool.

100 Enclosure to Bryant Report, Statement by Mr Andrew Stackpool.

101 Enclosure to Bryant Report, Statement by Mr Andrew Stackpool.

102 Bryant Report, p.18; Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield, Minute to Head Public Affairs and Corporate Communication (HPACC) dated 11 October 2001.

103 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield, Minute to Head Public Affairs and Corporate Communication (HPACC) dated 11 October 2001.

104 Enclosure to Bryant Report, Statement by Mr Ross Hampton.

105 Enclosure to Bryant Report, Statement by Mr Ross Hampton.

Pressure for urgent clearance of photographs

4.88 The backdrop to the public release of the photographs on 10 October was the media pressure on the government to produce evidence supporting the claim that children had been thrown overboard. For example, Mr Hampton told Ms Bryant that:

I recall mentioning to Mr Bloomfield that the Prime Minister had been asked a number of questions at his morning media conference about the ‘Throwing overboard incident’ and if we had photos available we’d better move quickly to get them cleared for release.¹⁰⁶

4.89 Indeed, Mr Hampton said that he had only moved to release the photographs following ‘a phone call from Mr O’Leary in the Prime Minister’s office’.¹⁰⁷

4.90 This backdrop appears to have led the Minister to seek immediate authority to release the photographs from the Chief of Defence Force, rather than to go back through the official Defence clearance process.¹⁰⁸ It also appears to have led Mr Hampton to neglect or downplay the concern expressed by Brigadier Bornholt, Military Adviser, PACC, that the photographs might not depict the events of 7 October at all.¹⁰⁹

4.91 The Minister sought CDF’s clearance to release the photographs to the media during the afternoon of 10 October 2001.¹¹⁰ Admiral Barrie asked Air Vice Marshal Titheridge to ‘screen the photographs for operational sensitivities and to advise the Minister’s office’.¹¹¹ Air Vice Marshal Titheridge called the Minister five minutes later and approved the release.¹¹² Neither Admiral Barrie nor Air Vice Marshal Titheridge had copies of the photographs available to them at the time, and were focused on the issues of operational security and the privacy of Defence personnel rather than on the correct attribution of the photographs themselves.¹¹³

4.92 Following that approval, however, Mr Bloomfield was asked to provide the photographs (without captions) to the Minister’s Canberra office on 10 October ‘under considerable pressure from Ministerial staff in the Minister’s Office at 1444 [2.44pm] where they were immediately made available by Ministerial Staff to members of the

106 Enclosure to Bryant Report, Statement by Mr Ross Hampton; see also Enclosure to Bryant Report, Statement by Captain Belinda Byrne, which speaks of Mr Hampton’s ‘agitation’ on 10 October when she told him ‘that she had not found information to confirm that children had been thrown overboard’.

107 Enclosure to Bryant Report, Statement by Mr Ross Hampton.

108 Enclosure to Bryant Report, Statement by Mr Ross Hampton.

109 Enclosure 1 to Powell Report, Statement by Brigadier Gary Bornholt.

110 Bryant Report, p.20.

111 Answers to Questions on Notice, Department of Defence, Question W5.

112 Bryant Report, p.20.

113 Bryant Report, p.22.

Parliamentary Press Gallery'.¹¹⁴ Subsequently he was asked to provide them to the media upon request, again without captions.¹¹⁵

4.93 Mr Bloomfield noted that, had the photographs been released through Defence, then they would have been cleared through the appropriate authority. He emphasised that: 'Had I been asked to clear the pictures for release I would have sought clearance from Brigadier Bornholt. I was not asked for such clearance'.¹¹⁶

4.94 According to Admiral Barrie, the clearance procedure broke down

when Ministerial staff directly approached Public Affairs and Corporate Communication media room staff in an effort to obtain the photographs rather than going through Ms McKenry and Brigadier Bornholt.¹¹⁷

4.95 Despite this, Brigadier Bornholt, who was the releasing authority for images from Operation Relex, did become aware during the afternoon of 10 October that the Minister's office was seeking to release photographs of the SIEV 4 incident.¹¹⁸

4.96 Mr Hampton had contacted the Brigadier's Staff Officer, Captain Belinda Byrne, early in the afternoon of 10 October seeking information about how many children were among the 14 manoverboards from SIEV 4.¹¹⁹ Captain Byrne had in turn sought the information from Strategic Command, but was told by the watchkeeper that he had been unable to find any report which confirmed that children had gone overboard. When Captain Byrne relayed this information to Mr Hampton, she said, he 'was agitated and told her that there were photos of children in the water'.¹²⁰

4.97 Following this conversation, at about 3.30pm on 10 October, Captain Byrne asked Brigadier Bornholt whether he knew of such photographs.¹²¹ He did not, but he knew from Strategic Command that they could find no evidence of children in the water on 7 October. Brigadier Bornholt subsequently obtained copies of the photographs and their explanatory text from Strategic Command, noting that they 'clearly described the events as having occurred on 8 Oct 01'.¹²²

114 Enclosure to Bryant Report, Statement by Mr Tim Bloomfield.

115 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield, Minute to Head Public Affairs and Corporate Communication (HPACC) dated 11 October 2001.

116 Enclosure to Bryant Report, Statement by Mr Tim Bloomfield.

117 Answers to Questions on Notice, Department of Defence, Question W5.

118 Enclosure 1 to Powell Report, Statement by Brigadier Gary Bornholt.

119 Enclosure to Bryant Report, Statement by Captain Belinda Byrne.

120 Enclosure to Bryant Report, Statement by Captain Belinda Byrne.

121 Enclosure 1 to Powell Report, Statement by Brigadier Gary Bornholt.

122 Enclosure 1 to Powell Report, Statement by Brigadier Gary Bornholt.

4.98 Brigadier Bornholt telephoned Mr Hampton twice during the afternoon of 10 October, at about 3.45pm and 4.45pm. According to his statements to both the Powell and Bryant inquiries, the Brigadier thought that he had copies of the two photographs together with their accompanying text when he first spoke to Mr Hampton. However, as Ms Bryant noted, he spoke only of the fact that there was no evidence for children in the water and not of the captions, which indicates that he had not seen them at that time.¹²³

4.99 This supposition is corroborated by Mr Hampton's diary notes of that first conversation, which record that Brigadier Bornholt spoke of four photographs, not two: 'different set of photos - OK'.¹²⁴ It is further corroborated by the fact that, when Mr Hampton told him that the CDF had provided the photographs for release and confirmed that they were of 7 October, the Brigadier began to seek additional clarification of the issue.

4.100 However, it is clear that Brigadier Bornholt did raise questions about whether the photographs were correctly connected to the events of 7 October.

4.101 Mr Hampton, according to Brigadier Bornholt, 'was irate at his news'¹²⁵ and told him that the 'MINDEF was doing a 1630hrs doorstep and the photographs would be released'. Brigadier Bornholt said that he 'advised that there remained a question as to their veracity'.¹²⁶

4.102 Even if, then, neither Mr Hampton nor the Minister had received definitive advice that the photographs were incorrectly attributed prior to the Minister speaking publicly of them and formally releasing them as evidence of the 'children overboard' incident, questions had been raised both about them and about whether, on 7 October, there were children in the water at all.

4.103 In the Committee's view, the pressure to produce evidence to corroborate the report of children overboard seems to have propelled the Minister and Mr Hampton into releasing material over which at least some doubts had been cast. It is arguable that, prior to the release, the doubts expressed were not terribly strong and were themselves liable to doubt and amenable to rationalisation. However, had the focus been on the need to be *certain* about the evidence, rather than on the need simply to *produce* evidence, then it seems that it should have been possible to wait for full corroboration.

123 Bryant Report, p.23. Ms Bryant also notes that the timing of the email which conveyed the two photographs to Brigadier Bornholt is consistent with the finding that he had not received them at the time of his first conversation with Mr Hampton.

124 Enclosure to Bryant Report, Statement by Mr Ross Hampton.

125 Enclosure to Bryant Report, Statement by Brigadier Gary Bornholt.

126 Enclosure 1 to Powell Report, Statement by Brigadier Gary Bornholt.

Miscommunications

4.104 The final contributor to the public misrepresentation of the photographs was a series of miscommunications between the Minister's office and Defence personnel.

4.105 Two of these have already been mentioned, namely, the confusion between Mr Bloomfield and Mr Hampton over what constituted the 'captions' to the photographs, and the lack of clarity between CDF and the Minister, and between Mr Hampton and Brigadier Bornholt, about what the photographs depicted.

4.106 The central miscommunication, however, related to the differences in Mr Hampton and Mr Bloomfield's understandings of the purpose for which the photographs were being released.

4.107 As noted earlier, Mr Bloomfield was always aware that the photographs depicted the rescue of the SIEV's passengers from their sinking vessel on 8 October 2001.

4.108 He first spoke of the photographs with Mr Hampton in the context of telling him about Commander Banks's interview with Channel 10, which itself focused on the sinking of SIEV 4 and the rescue of its 223 passengers. At this stage, however, Mr Bloomfield did not have copies of the photographs and when he subsequently described them to Mr Hampton, he did so in general terms as being of 'UBA's in the water'.¹²⁷

4.109 According to Mr Bloomfield's recollection, he had the photographs forwarded to Mr Hampton before he sent an email brief about the content of Commander Banks's interview.¹²⁸ The brief did not explicitly advise that the photographs were of the sinking of the vessel on 8 October, but it did mention the photographs in the context of the interview. It read:

I received a call ... from channel ten seeking a photograph of Commander Norm Banks and copies of photographs that she understood had been forwarded to Defence Canberra by HMAS *Adelaide*. Following a brief discussion it transpired that CH10 had conducted an interview with CMDR Banks in relation to the most recent UBA's ... At my request, [Andrew Herring Fleet Public Relations Officer] contacted CMDR Banks ... and gained the following appreciation of the interview.¹²⁹

4.110 The interview content, he advised, included discussion of the rescue of the UBAs, the provision of food and water, the austere accommodation arrangements,

127 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield, Minute to Head Public Affairs and Corporate Communication (HPACC) dated 11 October 2001.

128 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield, Minute to Head Public Affairs and Corporate Communication (HPACC) dated 11 October 2001.

129 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield, Minute to Head Public Affairs and Corporate Communication (HPACC) dated 11 October 2001.

medical treatment and personal encounters. The brief went on to say that Mr Bloomfield was unaware of what else was said but was ‘advised it was a lengthy interview’.

4.111 Mr Bloomfield told Ms Bryant that although ‘he considered it was clear that the photos were directly related to Commander Banks’s interview which was about the sinking and rescue, rather than the child overboard incident’, he accepted in retrospect that Mr Hampton may have been thinking of them differently.¹³⁰

4.112 Mr Hampton was less prepared than Mr Bloomfield to accept that there was miscommunication based on mutual misconception of what each had uppermost in his mind. He said that at the time of the release of the photographs, ‘everyone was talking about the children overboard incident - no-one was talking about the sinking. Conversations were in the context of finding a way to back up Mr Ruddock’s comments given questioning in the media’.¹³¹

4.113 Mr Hampton thought that the only possible explanation for Mr Bloomfield not alerting him to the true subject matter of the photographs was that at the time he had not himself read their accompanying text. Mr Hampton insisted that:

there was no doubt we were supplying the photos to the media on the basis that they were photos of the first jumping/throwing event. It is just not believable that Mr Bloomfield thought it was otherwise. It is also unbelievable that if he had on his computer screen before him text - ostensibly proving that the photos were of another event - that he wouldn’t have alerted me to the fact that we [were] about to possibly mislead the media and public.¹³²

4.114 The Committee considers, however, that the miscommunication could well have arisen precisely because of the different ‘top of mind’ concerns present for each party.

4.115 Mr Hampton was clearly focused on proving the report that children had been thrown overboard. Mr Bloomfield was worried primarily about Commander Banks’s unauthorised interview and about its contravention of the explicit public affairs directive for Operation Relex that no media comment at all was to come from within Defence.¹³³

4.116 As Ms Bryant pointed out, ‘the loose terms in which the photographs were discussed between Mr Bloomfield and Mr Hampton (“UBA’s in the water”)’ meant that neither became aware of the other’s misconception, which was then not corrected before the photographs were released

130 Enclosure to Bryant Report, Statement by Mr Tim Bloomfield.

131 Enclosure to Bryant Report, Statement by Mr Ross Hampton.

132 Enclosure to Bryant Report, Statement by Mr Ross Hampton.

133 Enclosure 1 to Powell Report, Statement by Mr Tim Bloomfield.

Defence knowledge of misrepresentation

4.117 The realisation within Defence that there was no evidence to support the report that children had been thrown overboard from SIEV 4 arose gradually over the period from 8 or 9 October to 11 October. As was discussed earlier in this chapter, that realisation was communicated over that period up the chain of command, landing with Rear Admiral Ritchie and Admiral Barrie by 11 October 2001.

4.118 By contrast, knowledge that the photographs of Able Seaman Laura Whittle and Leading Seaman Cook Barker were being misrepresented when they were published in the media on 10 October was available immediately to anyone who had seen the photographs with their captions on the Defence email network.

4.119 Thus, information about the incorrect attribution was passed through the military chain of command within minutes of the photographs appearing on the ABC's *7.30 Report* on the evening of 10 October. Rear Admiral Smith contacted Rear Admiral Ritchie (COMAST) and Vice Admiral Shackleton (CN) to tell them of the misrepresentation,¹³⁴ and COMAST and CN in turn both rang Admiral Barrie.¹³⁵

4.120 Knowledge that the photographs were being publicly misrepresented was available on the civilian side of Defence even before the *7.30 Report* was broadcast, with Brigadier Bornholt having confirmed that afternoon that they depicted the events of 8 rather than 7 October 2001. The Brigadier had left a message on Mr Hampton's mobile phone to that effect at 4.45pm, but Mr Hampton said that he never received it.¹³⁶

4.121 In the late afternoon of 10 October, Brigadier Bornholt sent an email to the Head of Public Affairs and Corporate Communication, Ms Jenny McKenry, informing her that Mr Hampton had not returned his call. He suggested that Mr Mike Scrafton, Military Adviser to Mr Reith, needed to be informed of the misrepresentation of the photographs in writing.¹³⁷ The Secretary of the Department of Defence, Dr Allan Hawke, was told the next day that the photographs were being publicly misrepresented.

Conclusion

4.122 By 11 October 2001, the Chief of Defence Force, Admiral Barrie, had been told that there was no evidence to support the report that children had been thrown overboard from SIEV 4 and that the photographs published purportedly as evidence of that incident were actually of a different incident and taken on a later day.

134 Enclosure 1 to Powell Report, Statement by Rear Admiral Ritchie.

135 *Transcript of Evidence*, CMI 370, 57.

136 Enclosure to Bryant Report, Statement by Mr Ross Hampton.

137 Enclosure 1 to Powell Report, Statement by Brigadier Gary Bornholt.

4.123 On 11 October 2001, the Secretary of the Department of Defence, Dr Allan Hawke, was likewise told that the photographs published on television on the evening of 10 October and in the print media on 11 October were falsely represented as evidence of ‘children overboard’.

4.124 The question to which the Committee turns in the next chapter is what happened next to that information, and how the record was allowed to stand uncorrected.

