

## Chapter 5

### The Attempt to Correct the Record: Advice from Defence

[T]o be frank, whether this incident - the child, that is - occurred or not in my view is irrelevant. There was a series of activities happening. From the naval perspective, what was important was that that information was reported as having occurred and was relayed to government and several days later that information was corrected - which would be our normal way - and that information was relayed. What I do not have visibility of, and it is not my place to comment on, is how that information was handled at the end of the chain.<sup>1</sup>

#### Introduction

5.1 The Committee accepts that Defence did, in the first instance, mistakenly advise that children had been thrown overboard from SIEV 4. That report was conveyed to the People Smuggling Taskforce, and thence passed on to and released by Minister Ruddock.

5.2 In the matter of the misrepresentation of the photographs, the Committee argued in the previous chapter that the Minister for Defence's office released the pictures in haste, and after significant doubts had been raised about their status as evidence for the 'children overboard' event.

5.3 The key question for the Committee is how both mistakes were able to stand uncorrected throughout the period of an election campaign, during which 'border protection' was a significant and sensitive issue.

5.4 In addressing this question, the Committee will need to evaluate three matters. They are:

- the adequacy of the advice from Defence about both issues;
- the extent to which those who received clear advice deliberately and consciously ignored it; and
- the extent to which those who received less definite advice were culpable for their failure to seek a clear understanding of the facts.

5.5 Accordingly, in this chapter, the Committee outlines the nature of the advice on these matters which came from Defence in the period from 10 October to 8 November 2001.

5.6 In the following chapter, the Committee turns to the question of how that advice was received by the Minister for Defence and his office. Finally, the

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1 Rear Admiral Smith, *Transcript of Evidence*, CMI 592.

Committee makes its assessment of the adequacy of the advice from Defence and of the factors which contributed to the failure to correct the record.

### **Correcting the Record: Advice to the Minister and his Office**

5.7 From 10 October 2001 to 8 November 2001, Defence personnel gave advice relating to the veracity of the report that children had been thrown overboard on five separate occasions to Minister Reith or his office. In addition, Vice Admiral Shackleton commented on the matter to the media on 8 November 2001.

5.8 From 10 October 2001 to 8 November 2001, Defence personnel gave advice relating to the misrepresentation of the photographs on three separate occasions to Minister Reith or his office.

5.9 In what follows the Committee outlines the nature of each of these contacts.

#### ***Ritchie to Scrafton***

5.10 Minister Reith's Senior Adviser (Defence), Mr Mike Scrafton, told Ms Bryant that following Mr Ruddock's comments on 7 October, he had been involved in 'a number of telephone discussions with AVM Titheridge, Rear Admiral Smith, and Commodore Gately, in which he was querying whether there was certainty around the facts in this case'.<sup>2</sup> He advised Ms Bryant that his discussions 'particularly with AVM Titheridge and Rear Admiral Ritchie, indicated that the story was true'.<sup>3</sup>

5.11 The first of the five pieces of advice known to the Committee concerning the veracity of the claim that children had been thrown overboard, was provided to Mr Scrafton by Rear Admiral Ritchie on 10 October 2001.

5.12 Rear Admiral Ritchie told the Committee that Mr Scrafton had rung him on the morning of 10 October, asking about evidence that would support the claim that children had been thrown overboard.<sup>4</sup> This call prompted Rear Admiral Ritchie, he said, to contact Rear Admiral Smith seeking further information. At about midday, Rear Admiral Smith advised him that:

the electro-optical film - the video that we all talk about - showed that there were no children thrown overboard. It showed that there was one child held over the side, that people were jumping over the side of their own volition and that one 13 year old ... was pushed over.

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2 Enclosure to Bryant Report, Statement from Mr Mike Scrafton.

3 Enclosure to Bryant Report, Statement from Mr Mike Scrafton.

4 *Transcript of Evidence*, CMI 368.

I was also told that the CO *Adelaide* had thought that there might be reports able to be taken from sailors who were on the disengaged side ... that indicated that there might be children in the water.<sup>5</sup>

5.13 Rear Admiral Ritchie said that he passed this information back to Mr Scafton at 12.42pm on the same day.<sup>6</sup> Rear Admiral Ritchie noted that, at the time of this conversation, he himself believed that children had been thrown overboard although there was as yet no evidence to confirm the initial report. He suggested that Mr Scafton was in a similar frame of mind and was seeking to know not whether the claim was true, but whether there was any evidence to support it.<sup>7</sup>

5.14 Rear Admiral Ritchie told the Committee that Mr Scafton would 'have walked away from that conversation' knowing that there was so far no evidence to confirm the first report, but 'believing that there still might be evidence that supports [it]'.<sup>8</sup>

### ***Bornholt to Hampton***

5.15 Later that afternoon, Mr Ross Hampton, media adviser to Mr Reith, was also told that there was no evidence available to Strategic Command which would support the claim that children had been thrown overboard.

5.16 As was discussed in the previous chapter, Mr Hampton had rung Captain Belinda Byrne, staff officer to Brigadier Gary Bornholt, seeking to know the numbers of children who were in the water on 7 October.<sup>9</sup> This contact was in connection with the imminent release of the two photographs to the media. Captain Byrne told Mr Hampton that 'she had been unable to find reports to indicate that children were thrown overboard'.<sup>10</sup>

5.17 Having been told of Mr Hampton's anger at this news from Captain Byrne, Brigadier Bornholt undertook to deal with the matter himself.<sup>11</sup> The Brigadier confirmed with Strategic Command that they had no evidence that women or children were among the 14 passengers from SIEV 4 who had entered the water on 7 October. He told the Senate Foreign Affairs, Defence and Trade Committee's Estimates hearing on 20 February 2002 that:

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5 *Transcript of Evidence*, CMI 368-369.

6 *Transcript of Evidence*, CMI 369; Enclosure to Bryant Report, Statement by Mr Mike Scafton.

7 *Transcript of Evidence*, CMI 371.

8 *Transcript of Evidence*, CMI 371.

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

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

11 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Committee, 20 February 2002, p.105.

I then called the minister's media adviser at about quarter to four on that day [10 October], and I said to him, 'My advice to you is that the photographs could not be of 7 October because Strategic Command have informed us that, of the 14 people that they understand were in the water, there were no women or children' ... He expressed concern about my advice and told me that the CDF had confirmed with the minister that the photographs could be released and that there were women and children in the water. I said, 'I can't believe that'.<sup>12</sup>

5.18 It then became apparent, Brigadier Bornholt said, that he and Mr Hampton had different photographs before them. He told Mr Hampton that he would check the details and get back to him.<sup>13</sup> At 4.45pm, Brigadier Bornholt left a message on Mr Hampton's mobile telephone, 'to the effect that I had now confirmed my previous advice that the photographs were incorrect in that they did not depict the events which the minister was intending to portray'.<sup>14</sup> In the meantime, during an interview on ABC radio at 4.10pm, the Minister had released the photographs as evidence that children had been thrown overboard.

5.19 Mr Hampton disputed elements of Brigadier Bornholt's account of this contact. In particular, he said that when he and Brigadier Bornholt realised that they were looking at different photographs, he did not recall that the Brigadier had said that he would check and get back to him.<sup>15</sup> He also said that he never received the message from Brigadier Bornholt, although he noted that he received a large number of messages following the Minister's media interviews 'and that he may have therefore missed a message from Brigadier Bornholt due to a full mailbox'.<sup>16</sup>

5.20 The Committee is not entirely convinced by this explanation for the 'missed call'. As far as the Committee is aware, mobile telephone messaging facilities always advise callers if, for whatever reason, a message is unable to be recorded. It is not the case that a caller would be allowed to leave a message, but that the message bank would not record it.

### ***Barrie to Minister***

5.21 The first definitive advice provided from Defence to the Minister and his office correcting elements of the children overboard story related to the misrepresentation of the photographs. On 11 October 2001, Admiral Chris Barrie spoke to the Minister directly about the matter and, on the same day, Ms Jenny McKenry and Brigadier Gary Bornholt spoke to Mr Mike Scrafton.

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12 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Committee, 20 February 2002, p.106.

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

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

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

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

5.22 Admiral Barrie told the Committee that he was made aware by both Rear Admiral Ritchie and Vice Admiral Shackleton on the evening of 10 October, that the photographs were being connected to the wrong events in the media. On 11 October, he rang the Minister:

I told him that I had been advised that the photographs he had put out did not describe the events as he portrayed on the *7.30 Report*. I cannot remember his precise response, save that we had a discussion about there being a great deal of confusion about the photographs. But I do recall that our conversation was testy.<sup>17</sup>

5.23 Questioned as to whether he was sure that Minister Reith understood the import of this advice, Admiral Barrie said that:

I had no reason to believe that he did not understand that. Indeed, in my frame I would say that was the reason we then went on to have a discussion about the photographs that was a bit testy. That all seemed to line up for me.<sup>18</sup>

### ***McKenry and Bornholt to Scrafton***

5.24 Meanwhile, on the morning of the same day, the Head of Defence Public Affairs and Corporate Communication, Ms Jenny McKenry, and PACC's military adviser (MAPACC), Brigadier Bornholt, gave the same advice to Mr Scrafton.<sup>19</sup> Ms McKenry told the Committee that the conversation was in several facets. She explained:

The first facet was with Brigadier Bornholt in the room. We discussed the photographs that had been released. We made it very clear that they did not represent what they were purported to represent in the press. Brigadier Bornholt did explain the attempts to clarify that the previous day with Mr Hampton.<sup>20</sup>

5.25 Ms McKenry told Mr Scrafton that 'There are captions which actually say that the photographs were taken on the 8<sup>th</sup>'.<sup>21</sup> Mr Scrafton went to check the photographs, but phoned back to say that there were no captions on the photographs in the Minister's office. Ms McKenry then sent to Mr Scrafton, at 11.04am, her email of the photographs which 'quite clearly had the date on it'. She said that Mr Scrafton 'did acknowledge receipt of that email in the sense that he phoned back because there was information on that email which we raised in conversation afterwards'.<sup>22</sup>

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17 *Transcript of Evidence*, CMI 742.

18 *Transcript of Evidence*, CMI 783.

19 Enclosure 1 to Powell Report, Statements by Ms Jenny McKenry and Brigadier Gary Bornholt.

20 *Transcript of Evidence*, CMI 1101.

21 *Transcript of Evidence*, CMI 1101.

22 *Transcript of Evidence*, CMI 1101.

5.26 Later, Ms McKenry forwarded to Mr Scafton a chronology prepared by Mr Bloomfield, which outlined the sequence of events relevant to the provision of the photographs to the Minister's office.<sup>23</sup>

5.27 Questioned as to her confidence that Mr Scafton understood that the photographs were incorrectly connected to the events of 7 rather than 8 October 2001, Ms McKenry said:

I have no doubt because we went through the photographs. We talked about the photographs. We described the photographs. He later phoned back, having received the photographs. I had mentioned in the course of my email to him that the photographs I had discovered were on the unrestricted system within the defence department, which meant that they were readily distributable. He indicated to me that I should pursue getting them off the unrestricted system.<sup>24</sup>

### ***Barrie to Minister***

5.28 The next piece of advice which, to the Committee's knowledge, was provided by Defence to the Minister on the children overboard issue came on 'possibly' 17 October 2001.<sup>25</sup> On that day, Admiral Barrie had a conversation with Mr Reith in which he informed the Minister that 'I had been told by the Chief of Navy and COMAST that there were doubts about whether children had ever been thrown over the side of SIEV 4'.<sup>26</sup> Admiral Barrie went on to say to the Minister that:

I said to him the doubts seemed to be based on what the photographs showed - or did not show - and an inconclusive video. I said that I had indicated to them my position was that, until evidence was produced to show the initial report to me was wrong, I would stand by it. As at that date, no further evidence had been provided to me.<sup>27</sup>

5.29 The Committee questioned Admiral Barrie at length about his reasons for not providing definitive advice to the Minister on whether or not children had been thrown overboard.

5.30 Admiral Barrie explained his position by saying that he did not feel that he himself had been given definitive advice. His recollection, he said, of Rear Admiral

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23 See email from Jenny McKenry, dated Thursday, 11 October 2001 16:37, attached to Enclosure 1 to Powell Report, Statement by Ms Jenny McKenry.

24 *Transcript of Evidence*, CMI 1102. (Note: the term 'unrestricted' used here refers to the email system for unclassified information, which in Defence is technically called the 'restricted' system as opposed to the 'secret' system.)

25 Admiral Barrie noted that he was 'quite hazy' as to exactly what the date of the conversation was. It was, however, before he left Australia for East Timor and elsewhere on 25 October 2001. *Transcript of Evidence*, CMI 742, 755.

26 *Transcript of Evidence*, CMI 742.

27 *Transcript of Evidence*, CMI 742-743.

Ritchie's advice to him on 11 October was that he spoke of 'doubts ... I do not remember his being more definite than that'. Admiral Barrie continued:

I recall that he [COMAST] referred to the photographs and to the video, and whether or not they were conclusive one way or the other. I said to him that photographs alone were only part of the evidentiary material and that until he could produce evidence to show that what had been originally reported to me was wrong, I would not change my advice to the minister'.<sup>28</sup>

5.31 At this stage, Admiral Barrie said that he also directed Rear Admiral Ritchie to ensure that witness statements and other evidentiary material was collected 'while this was fresh in everyone's mind'.<sup>29</sup> The Committee notes that such a collection was already underway independently of Admiral Barrie's instruction, and that much of it had already been seen and assessed by the chain of command.

5.32 Later in evidence, Admiral Barrie elaborated on the issue of how definite COMAST's advice to him had been, telling the Committee that:

I think the issue I discern is just how definite was Rear Admiral Ritchie in his understanding of what took place and how indefinite is my recollection. But I would put it in this context ... I offered the commanders an opportunity to come back and convince me that I was wrong if they had material that was evidence and compelling. On the night of 20 February in estimates, when Rear Admiral Ritchie and I were looking at that message of 10 October,<sup>30</sup> he said to me 'If I'd only had that at the time we had that discussion, I would have come back to you'. So in my view I do not think that the discussion was as definite as Rear Admiral Ritchie recalls. I think he understood that an opportunity had been given to him to come back and fight a repechage if wished to, and at no time did he.<sup>31</sup>

5.33 Admiral Barrie said that 'in 20/20 hindsight ... I would say that on 11 October when Rear Admiral Ritchie had that conversation with me, rather than leaving it loose and hanging and waiting for him to come back to me, I should have directed him to resolve it and reported back.'<sup>32</sup> Since this did not happen, however, Admiral Barrie said that he did not take the view that he had been definitively informed that children had not been thrown overboard.

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28 *Transcript of Evidence*, CMI 742.

29 *Transcript of Evidence*, CMI 742.

30 See 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'.

31 *Transcript of Evidence*, CMI 749.

32 *Transcript of Evidence*, CMI 756.

5.34 Accordingly, his advice to the Minister was that ‘there were serious question marks about evidence in relation to the children overboard issue’,<sup>33</sup> but not that he was retracting the initial advice that children had been thrown overboard.

5.35 In the next chapter, the Committee discusses in detail the adequacy of Admiral Barrie’s advice to the Minister at this time.

### ***Silverstone to Minister***

5.36 The next piece of advice to the Minister for Defence concerning the veracity of the report that children had been thrown overboard from SIEV 4 came from Brigadier Silverstone on 31 October 2001.

5.37 Brigadier Silverstone gave evidence to both the Powell and Bryant inquiries stating that on the afternoon of Wednesday 31 October, Mr Reith and his party visited the Brigadier’s headquarters in Darwin. In his statements, he said that Mr Reith had spoken of the video of SIEV 4 ‘and seemed to think that the video held the key, showing a child, or children in the water’.<sup>34</sup> Brigadier Silverstone said that he had told the Minister that he had not seen the video himself, ‘but that he understood that it wasn’t very clear and did not show children in the water’.<sup>35</sup>

5.38 Brigadier Silverstone elaborated on his conversation with Mr Reith in evidence to the Committee. He said that:

My recollection of the discussion with Minister Reith on the afternoon of the 31<sup>st</sup> is that, when he raised the issue of the video, I was uncertain about what he had been told. It was inconceivable to me that the CDF had not informed him of this issue at that time. I also had concerns for where we stood, under the caretaker role, in terms of the passage of information.

While I was thinking of these issues, I used words to the effect of ‘Well, Minister, the video does not show things clearly and does not show children overboard. We also have concerns that no children were thrown in the water at all and we have made an investigation of that’. Then I paused, expecting to hear a ‘yes’. He then said, ‘Well, we had better not see the video then,’ and left my office.<sup>36</sup>

5.39 When asked to comment on what he thought the Minister had meant by that, Brigadier Silverstone said that:

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33 *Transcript of Evidence*, CMI 763.

34 Enclosure to Bryant Report, Statement by Brigadier Michael Silverstone.

35 Enclosure to Bryant Report, Statement by Brigadier Michael Silverstone.

36 *Transcript of Evidence*, CMI 346, 361.

They are the words the minister used. He could have meant a range of things - literally or as a side comment. As he left my thoughts were, 'He hasn't listened to what I said'.<sup>37</sup>

5.40 Brigadier Silverstone told the Committee that after the Minister left his office, he had informed Rear Admiral Ritchie of the conversation.<sup>38</sup>

5.41 The Committee notes that by the time of this interchange, Admiral Barrie had informed the Minister directly that the video was inconclusive, and Rear Admiral Ritchie had informed Mr Scrafton that the video did not show children thrown overboard.

### ***Houston to Minister***

5.42 The final piece of advice provided directly to the Minister for Defence on this issue came from the then Acting CDF, Air Marshal Angus Houston, on 7 November 2001. That advice was that there was no evidence to support the claim that children were thrown overboard from SIEV 4.

5.43 Air Marshal Houston informed the Senate Foreign Affairs, Defence and Trade Committee at Estimates that, on the morning of 7 November, he had contacted Air Vice Marshal Titheridge in order to discuss an article in that day's *The Australian* newspaper.<sup>39</sup> The article raised questions about the authenticity of the photographs which purported to be evidence of children thrown overboard, and also reported that residents of Christmas Island were alleging that naval officers had told them that the reports of that incident were untrue.<sup>40</sup> Air Vice Marshal Titheridge told the Acting CDF that the Minister wished to speak to him urgently about the report.<sup>41</sup>

5.44 Air Marshal Houston noted that he had then set about discovering as much as he could about the events of 7 and 8 October 2001, in order to be in a position to advise the Minister. He spoke to Air Vice Marshal Titheridge of the video, which was also mentioned in *The Australian's* article. AVM Titheridge had informed him that he had not seen the video but that he had been briefed in some detail about it. He described it, according to Air Marshal Houston, in the following terms:

He indicated that it was an infra-red video, quite grainy and of quite poor quality and, although it showed people jumping overboard, it did not show any women or children going into the water. The point he did make, though,

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37 *Transcript of Evidence*, CMI 346.

38 *Transcript of Evidence*, CMI 346, 363. This evidence was corroborated by Rear Admiral Ritchie, who confirmed that Brigadier Silverstone had told him of this conversation around 31 October. *Transcript of Evidence*, CMI 368.

39 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Committee, 20 February 2002, p.75.

40 *Transcript of Evidence*, CMI 1058.

41 *Transcript of Evidence*, CMI 1059.

was that there was a child that was taken to the side of the vessel and held over the side of the vessel.<sup>42</sup>

5.45 Air Marshal Houston inquired about whether he could see the video, but the copy held by Maritime Command in Sydney was unable to be broadcast through to Canberra. The Air Marshal then spoke to Brigadier Gary Bornholt, who showed him a copy of the signal chronology of 10 October from HMAS *Adelaide*.<sup>43</sup> Air Marshal Houston told the Senate Estimates Committee that:

From that [chronology] it became clear - as it appeared to me - that, yes, people had jumped into the water, but there was no evidence there to suggest that women and children had jumped in the water. There was one reference, however, to a child being held over the side. I think in the actual message reference was made to that, in terms of the child being dressed in a life jacket and then being put in a position on the side.<sup>44</sup>

5.46 Brigadier Bornholt also told Air Marshal Houston that the photograph which had appeared again in *The Australian* that morning did not depict the events of 7 but rather the 8 October 2001.<sup>45</sup>

5.47 Having gathered this information, Air Marshal Houston telephoned the Minister. He provided, he said, the following advice to the Minister:

I started off by telling him that I felt that it was a very confused situation, but from this evidence that I had seen it appeared to me that there had been a boarding operation on the 7<sup>th</sup>, people had jumped into the water, there had been an incident with a child being held over the side, but fundamentally there was nothing to suggest that women and children had been thrown into the water.

I then went on, as I can recall it, to describe the fact that on the second day there was a rescue operation when the vessel sank and that the photograph [sic], from what I had just been advised, related to the events of 8 October. After I had given him this run down of what happened there was silence for quite a while. It seemed to me that he was stunned and surprised. Essentially, he then said, 'Well, I think we'll have to look at releasing the video'.

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42 *Transcript of Evidence*, CMI 1059.

43 *Transcript of Evidence*, CMI 1062; 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'.

44 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Committee, 20 February 2002, pp.75-76.

45 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Committee, 20 February 2002, p.76.

I omitted to say earlier on that I also explained to him that the video was inconclusive in proving whether any women or children were thrown into the water due to its poor quality.<sup>46</sup>

5.48 Members of the Committee were concerned to understand how Air Marshal Houston had reached the conclusion that no children had been thrown overboard on the basis of the signal chronology. Senator Brandis said:

I cannot see any reference in this document to the proposition or the question of whether or not there was a child in the water. I agree it is silent on the matter. It just does not tell you one way or another.<sup>47</sup>

5.49 In response, Air Marshal Houston stated that: ‘If a child had been in the water, it would have been reported in the text of the message’.<sup>48</sup> He based that assessment, he said, not only on his many years’ experience of military messaging in joint operations,<sup>49</sup> but also on the fact that although the signal made a number of specific references to children on board SIEV 4, there were no references to children overboard. He noted that:

all the references in this signal relate to the fact that the children are on the vessel: ‘children taken to the side’, ‘child held over the side’, ‘child not thrown overboard’, ‘male SUNCs in the vicinity of wheelhouse threatened to throw women and children overboard. This did not occur’.<sup>50</sup>

5.50 In other words, the chronology was explicitly concerned with the whereabouts of children on the vessel. Since the fate of children was of explicit concern, the Committee like Air Marshal Houston is satisfied that the absence of reference to children in the water is evidence, not of neglect of the question by the signal’s author, but of the fact that indeed they were not in the water.

## ***Shackleton***

5.51 The day after Air Marshal Houston’s conversation with Mr Reith, Vice Admiral Shackleton, Chief of Navy, commented on the ‘children overboard’ story to the media, saying:

Our advice was that there were people being threatened to be thrown in the water and I don’t know what happened to the message after that.<sup>51</sup>

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46 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Committee, 20 February 2002, p.76.

47 *Transcript of Evidence*, CMI 1064.

48 *Transcript of Evidence*, CMI 1064.

49 *Transcript of Evidence*, CMI 1065.

50 *Transcript of Evidence*, CMI 1067.

51 *Transcript of Evidence*, CMI 97.

5.52 After these remarks had been made public, Vice Admiral Shackleton was contacted on the afternoon of 8 November by Mr Peter Hendy, chief of staff to Minister Reith. Mr Hendy told the Vice Admiral that what he had said was being portrayed in the media as contradicting the Minister. Mr Hendy said that he clearly recalled Mr Reith being advised by Navy that children had been thrown overboard, and suggested that Vice Admiral Shackleton issue ‘a clarifying statement to remove the apparent contradiction’.<sup>52</sup>

5.53 During this conversation, Vice Admiral Shackleton said, he ‘gained the strong impression that he [Mr Hendy] had not been told that the original report was incorrect, and this came as a surprise to me’.<sup>53</sup>

5.54 The Vice Admiral acknowledged that it was true that the Minister had originally been advised that children had been thrown overboard, and that his own remarks had been mistaken in that regard.<sup>54</sup> He therefore agreed to issue a clarifying statement addressing that issue. It said:

My comments in no way contradict the minister. I confirm the minister was advised that Defence believed children had been thrown overboard.<sup>55</sup>

5.55 The Committee discusses the circumstances surrounding Vice Admiral Shackleton’s ‘clarifying’ statement in the next chapter.

## ***Summary***

5.56 The following two tables illustrate the timing, formality and definitiveness of advice provided to the Minister and his office from Defence concerning the veracity of both the ‘children overboard’ story itself and the misrepresentation of the photographs.

5.57 The Committee considers formal advice to be that provided by either the CDF, the Secretary or by an officer responsible for a relevant area, and part of whose role it is to provide definitive advice to the Minister or his office. This is not to say that advice provided by other officers or in other contexts is invalid or inappropriate. It is simply that, in such cases, the Minister or his staff may be entitled to deem such advice as less weighty, or to deem the officer as less likely to know all the relevant information.

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52 *Transcript of Evidence*, CMI 59.

53 *Transcript of Evidence*, CMI 59.

54 *Transcript of Evidence*, CMI 59.

55 *Transcript of Evidence*, CMI 97.

**Table 5.1: Advice relating to veracity of children overboard incident**

<b>Date</b>	<b>Formal</b>	<b>Informal</b>
10 October 2001	COMAST to Mr Scrafton: non-definitive	
10 October 2001		MAPACC to Mr Hampton: non-definitive
17 October 2001	CDF to Minister Reith: non- definitive	
31 October 2001		NORCOM to Minister Reith: non-definitive
7 November 2001	A/CDF to Minister Reith: definitive	
8 November 2001		CN to media: non-definitive

**Table 5.2: Advice relating to misrepresentation of the photographs**

<b>Date</b>	<b>Formal</b>	<b>Informal</b>
10 October 2001	MAPACC to Mr Hampton: definitive <sup>56</sup>	
11 October 2001	CDF to Minister Reith: definitive	
11 October 2001	HPACC and MAPACC to Mr Scrafton: definitive	

5.58 In the next chapter, the Committee will analyse the role played by the Minister's office in allowing the record to stand uncorrected in relation to both aspects of the children overboard story. Before it turns to that issue, however, the Committee briefly outlines the nature of the advice provided by Defence to individuals and agencies other than the Minister and his office.

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56 Note Mr Hampton said that he did not receive Brigadier Bornholt's 'definitive' message, left on his mobile phone message bank. At the least, however, Mr Hampton received 'non-definitive' advice from Brigadier Bornholt on the afternoon of 10 October.

## **Correcting the Record: Advice to PM & C and PST**

5.59 There were three particular occasions upon which advice about evidence relating to the correction of the initial children overboard report was provided by Defence to those other than the Minister and his staff.

5.60 It should be noted that the ‘three’ occasions are three specific or new events. Ms Katrina Edwards indicated in her evidence to the Committee that there were other conversations between officers in the Social Policy Division of PM & C and officers in Strategic Command where the lack of written evidence held by Strategic Command was discussed.<sup>57</sup>

5.61 The three occasions were:

- Group Captain Walker’s advice to the People Smuggling Taskforce on 7 October 2001;
- Strategic Command’s chronology of events supplied to the Social Policy Division in PM & C on 10 October 2001; and
- advice from Commanders King and Chatterton to the Defence Branch, International Division, in PM & C on 11 October 2001.

5.62 To the Committee’s knowledge, apart from this advice to the PST and to other areas of the Department of the Prime Minister and Cabinet, Defence provided advice relating to the correction of the initial children overboard report to no other agency or individual.

5.63 In what follows, the Committee outlines the nature of the advice provided to the PST and PM & C, and analyses the adequacy of PM & C’s response to that advice.

### ***Advice from Group Captain Walker to PST***

5.64 On 7 October, Group Captain Steven Walker, Director, Joint Operations (DJOPS) attended the morning meeting of the PST in the place of Air Vice Marshal Titheridge.<sup>58</sup> At that meeting, he said, he learnt from Ms Jane Halton, Chair of the PST, that the passengers aboard SIEV 4 ‘were throwing children into the water’.<sup>59</sup>

5.65 Since, as Group Captain Walker said, this ‘news ... was new to me’, after the meeting he went back to his headquarters to try to confirm the information.<sup>60</sup> He told the Committee that:

I could find nothing in the written message traffic that mentioned children. I returned to the evening IDC and, when it came my turn to speak, I pointed

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57 *Transcript of Evidence*, CMI 1710.

58 *Transcript of Evidence*, CMI 1681.

59 *Transcript of Evidence*, CMI 1683.

60 *Transcript of Evidence*, CMI 1684.

out that I had no written confirmation that children had gone into the water. That was not to say that it did not happen, but what I was trying to stress was that I had no auditable evidence that children had gone into the water.<sup>61</sup>

5.66 Ms Katrina Edwards, former First Assistant Secretary, Social Policy Division, PM & C and then notetaker for the PST meetings, confirmed Group Captain Walker's evidence in this regard, saying that he had 'not been able to provide any updated information on what had occurred, nor had he been able to validate the "children" issue'.<sup>62</sup>

5.67 Despite Group Captain Walker's advice, the options paper prepared for the Prime Minister on 7 October 2001 included the statement: 'This [ie. the attempt to deter SIEV 4's entry] has been met with attempts to disable the vessel, passengers jumping into the sea and passengers throwing their children into the sea'.<sup>63</sup>

5.68 This paper was cleared by members of the PST at the evening meeting on 7 October. According to the evidence provided by Ms Edwards, that meeting started at 5.30pm with the same group attending as at the morning meeting.

Air Vice Marshal Titheridge arrived somewhat later. I have since established from Department of the Prime Minister and Cabinet security records that he entered the building at 6.25pm. My recollection, verified by the editing record of the document, as well as building security records, is that the paper was completed and cleared by all of those present. Group Captain Walker remained after Air Vice Marshal Titheridge's arrival for the bulk of the meeting, but left shortly before the end, once the Defence related material had been completed.<sup>64</sup>

## Reponse from PM & C

5.69 Ms Halton told the Committee that she did not recall Group Captain Walker telling the evening meeting of the PST that he had been unable to find signal traffic which corroborated the morning's advice that children had been thrown overboard. However, she said, 'such a comment would not have raised particular concerns as our experience to date had been that signal traffic could often be slow in arriving'.<sup>65</sup>

5.70 She also noted that, during the detailed editing of the options paper prepared by the PST for the Prime Minister, certain of the information from Defence, such as the number of those on board SIEV 4, was explicitly tempered by a caveat in that

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61 *Transcript of Evidence*, CMI 1684.

62 *Transcript of Evidence*, CMI 1715.

63 'Options for Handling Unauthorised Arrivals: Christmas Island Boat', attached to Enclosure to Bryant Report, Statement by Ms Jane Halton.

64 *Transcript of Evidence*, CMI 1705.

65 *Transcript of Evidence*, CMI 901; see also *Transcript of Evidence*, CMI 985.

paper. By contrast, she remarked, the Defence representatives did not suggest that the report that children had been thrown overboard needed to be similarly tempered.<sup>66</sup>

5.71 The Committee was concerned at the contradiction between Ms Halton's evidence concerning the editing process undertaken during the preparation of the options paper on 7 October, and evidence received from Air Vice Marshal Titheridge.

5.72 According to Ms Halton, members of the PST attending the evening meeting on 7 October were involved in an extensive process of editing the 'first cut' of the paper which she had dictated during the afternoon. There was, she said, a 'line by line discussion of the paper'.<sup>67</sup> She had 'a vivid memory of my assistant running in and out with the paper as the edits were coming out',<sup>68</sup> and emphasised that, when it was all agreed, the document 'ultimately came back for one last read'.<sup>69</sup> She told the Committee that:

My memory is that Group Captain Walker had left by that point. My memory is that he stayed for the period when all the Defence material and issues that were material to Defence were dealt with but that when that material had been completed and all the edits had been agreed he left. Air Vice Marshal Titheridge was there until the completion of the meeting.<sup>70</sup>

5.73 The Committee notes that this evidence is consistent with that quoted from Ms Edwards's testimony above. The account is, however, at variance with that of Air Vice Marshal Titheridge who, in a written answer to a Question on Notice about his involvement in developing the options paper, said:

I was one of the team that provided oral advice for a draft paper on broad handling strategies for unauthorised arrivals. I was not given a copy of the draft. I did not see elements of the final document until it was released by Ms Bryant.<sup>71</sup>

5.74 Ms Halton insisted to the Committee that her version of events was verifiable from her own notes and from other sources:

[T]he document was edited whilst Air Vice Marshal Titheridge was there in the room. That is the memory of the officers from Prime Minister and Cabinet who came in and out of the room taking the edits away, and it is consistent with the security camera details from the department and the times at which the document was edited.<sup>72</sup>

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66 *Transcript of Evidence*, CMI 1013, 1016.

67 *Transcript of Evidence*, CMI 2046.

68 *Transcript of Evidence*, CMI 2046.

69 *Transcript of Evidence*, CMI 2069.

70 *Transcript of Evidence*, CMI 2069.

71 Answers to Questions on Notice, Department of Defence, Question 49.

72 *Transcript of Evidence*, CMI 2071.

5.75 Ms Halton has subsequently provided the Committee with information detailing the times at which PST members entered and left the building. She has also provided details about the period over which the draft options paper was edited, and the scale and nature of the changes made.<sup>73</sup>

5.76 Ms Halton advised that members of the PST had been provided with numbered copies of the draft which, ‘because they were sensitive issues’, were taken back ‘when everyone had finished the editing process’.<sup>74</sup> The ‘document did not change after people had left the building’.<sup>75</sup>

5.77 The Committee notes that the account of this very detailed process for editing and finalising the options paper on 7 October is to some extent inconsistent with the account provided by Mr Bill Farmer of the general process surrounding the development of advice from the PST. This matter is discussed in chapter 7.

5.78 In relation to the specific question of whether the PST, and Ms Halton in particular, should have taken more seriously Group Captain Walker’s advice on the evening of 7 October, the Committee notes the following points. First, Group Captain Walker told the Committee that he had no ‘auditable evidence that it had happened,’ but:

[t]hat was not to say that it did not happen. It appeared to me that people in a different communication chain had different information, and they obviously had information that they had confidence in.<sup>76</sup>

5.79 In his evidence to Major General Powell’s inquiry, Group Captain Walker conceded that Strategic Command (SCD) was not always confident that it had all the relevant information. He stated:

By the time that it appeared the ‘children’ information was in the public domain, there were a number of rumours that other evidence was abroad. At the SCD level, it was then assumed that Navy, NORCOM, AST or Coastwatch had the fuller picture than our message traffic.<sup>77</sup>

5.80 Second, the Committee notes that neither Group Captain Walker nor Air Vice Marshal Titheridge inserted a caveat in relation to the ‘children overboard’ claim into the options paper prepared at the evening meeting of the PST, although other elements of the Defence information were explicitly caveated.

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73 Additional Information and Answers to Questions on Notice, Ms Jane Halton, dated 15 August 2002.

74 *Transcript of Evidence*, CMI 2069.

75 *Transcript of Evidence*, CMI 2071.

76 *Transcript of Evidence*, CMI 1696.

77 Enclosure 1 to Powell Report, Statement by Group Captain Walker.

5.81 Given the nature of Group Captain Walker's cautionary words, the absence of a caveat on this item seems somewhat strange. If Air Vice Marshal Titheridge 'was not given a copy of the draft' options paper, and 'did not see elements of the final document until it was released by Ms Bryant',<sup>78</sup> then no opportunity to caveat the relevant sentence in the options paper was available to the Defence representatives. This would mean that the lack of a caveat could not properly be used by Ms Halton to justify ignoring Group Captain Walker's advice.

5.82 However, the Committee notes that the Air Vice Marshal's evidence in this regard is contradicted by evidence from both Ms Halton and Ms Edwards.

### ***Strategic Command Chronology***

5.83 According to her evidence to the Bryant inquiry, Ms Halton noted the media speculation about the 'children overboard' incident on 8 October and told Defence representatives at the meeting on 9 or 10 October that:

they had better be certain about the veracity of the initial reports and they should do some checking.<sup>79</sup>

5.84 In her evidence before the Committee, Ms Halton confirmed that she had asked this to be done at the meeting of 9 October 2001.<sup>80</sup> Ms Edwards elaborated on the context of this request, saying that the Social Policy Division had begun seeking more details about the incident from Strategic Command on 8 October following the receipt of Situation Report 59 from the Department of Foreign Affairs and Trade which did not mention children thrown overboard.<sup>81</sup>

5.85 Ms Edwards said: 'I can remember being concerned about the lack of mention of children or people being pushed overboard. While it is not unusual for sit reps to be short on the details of events, Ms Halton and I agreed that, in the circumstances, we should follow up to obtain further details of the incident'.<sup>82</sup>

5.86 Ms Halton told the Committee that she had no memory of seeing DFAT sitrep 59 on that day, and that it was not the lack of mention of children overboard in that document which prompted her to seek further details of the event. From her perspective, she said, 'the trigger point was media reporting'. She noted that: 'It may well have been that the trigger point for her was sitrep 59. In any event, we agreed we should get the detail'.<sup>83</sup>

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78 Answers to Questions on Notice, Department of Defence, Question 49.

79 Enclosure to Bryant Report, Statement by Ms Jane Halton.

80 *Transcript of Evidence*, CMI 901.

81 *Transcript of Evidence*, CMI 1705.

82 *Transcript of Evidence*, CMI 1705.

83 *Transcript of Evidence*, CMI 2061.

5.87 Ms Edwards advised that:

Between 8 October and 10 October my group made vigorous inquiries of Defence, including seeking a full chronology of the events. As I recall, Defence asked that we clear the request with the office of the Minister for Defence, which we did. In response to these requests, Strategic Command forwarded a chronology to the Social Policy Division at lunchtime on 10 October.<sup>84</sup>

5.88 Ms Edwards said that during the afternoon her staff advised her that they felt that there were a number of inconsistencies in the document, which they then pursued with Strategic Command.

5.89 At the end of the chronology, however, there was a series of four bullet points under the heading, 'EVENTS'. The last bullet point, which has also been described as a footnote, said:

There is no indication that children were thrown overboard. It is possible that this did occur in conjunction with other SUNCs jumping overboard.<sup>85</sup>

5.90 Ms Edwards said that she met with Ms Halton later in the afternoon, after the latter had returned from interstate, and just prior to a meeting of the PST that evening. She told the Committee that:

I vividly recall reading out the words of the footnote to her and then handing her the chronology. She indicated some surprise at the wording of the document, as she seemed to be aware of other supporting evidence for the original claims.<sup>86</sup>

5.91 Ms Halton stated that she had 'no memory' of having seen the chronology. She said, however, that she did not doubt Ms Edwards's recollection of briefing her, but that the advice in the chronology would have been overridden, for her, by this 'other supporting evidence'. As Ms Edwards and Ms Halton each explained to the Committee, knowledge of it had just then been supplied to Ms Halton in a telephone call from Minister Reith.<sup>87</sup>

5.92 It consisted of photographs, a video of the incident and witness statements which were being collected from the crew.<sup>88</sup>

5.93 Ms Halton indicated initially that while she was sure it was Mr Reith who had told her about the video, it may have been Air Vice Marshal Titheridge who informed

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84 *Transcript of Evidence*, CMI 1705.

85 Enclosure to Bryant Report, 'Strategic Command SIEV 04/01 Sitrep Event Log Christmas Island - starting 06 Oct 01', attached to Statement by Ms Katrina Edwards.

86 *Transcript of Evidence*, CMI 1705.

87 *Transcript of Evidence*, CMI 1048, 955, 2066.

88 *Transcript of Evidence*, CMI 953, 992.

her about the photographs and the witness statements.<sup>89</sup> However, she noted later that Mr Reith had also informed her in the course of their conversation that he had just given a media interview.<sup>90</sup> This was the interview at which he had released the photographs. Given that, and given that Air Vice Marshal Titheridge had not by that stage seen the photographs in question, the Committee thinks it reasonable to assume that it was Mr Reith who informed Ms Halton of all three pieces of ‘evidence’ for the claim that children had been thrown overboard.

5.94 The Committee notes that this judgement is also consistent with Ms Edwards’s recollection that, following her conversation with Mr Reith, Ms Halton had sought confirmation not only of the existence of the video, but also of the photographs and the witness statements.<sup>91</sup>

### **Response of PM & C**

5.95 On the evening of 10 October, then, Ms Halton and Ms Edwards were faced with two pieces of advice.

5.96 The first was the chronology from Strategic Command Division. The chronology did not rule out the possibility that children had been thrown overboard, but said that ‘there was no indication’ that the incident had occurred. The second was verbal advice from the Minister from Defence, stating that he had three pieces of evidence for the incident and that, by implication, so satisfied was he of their veracity that he had publicly released the photographs.

5.97 Ms Halton emphasised that she did not simply take the Minister at his word. She had not previously heard of the existence of the video, and so she made a number of calls to confirm the Minister’s information on this point. She called Air Vice Marshal Titheridge, Mr Hampton, Mr Hendy and at last Mr Scrafton, who finally confirmed that the video existed.<sup>92</sup>

5.98 According to Ms Edwards’s sense of Ms Halton’s conversations with members of the Minister’s office, she was advised:

that there was no doubt that the incident had occurred and that a video of the incident existed, although it was of poor quality, that there were photos and that statutory declarations were being gathered from crew members.<sup>93</sup>

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89 *Transcript of Evidence*, CMI 953, 961.

90 *Transcript of Evidence*, CMI 972.

91 *Transcript of Evidence*, CMI 1705. Ms Halton said: ‘I have been told by a minister that certainly there is a video and we know there is uncertainty whether he told me about the photos, but it sounds like he probably did and I think Katrina might actually think that that conversation included a discussion of the photos’. *Transcript of Evidence*, CMI 1049.

92 Enclosure to Bryant Report, Statement by Ms Jane Halton.

93 *Transcript of Evidence*, CMI 1705.

5.99 Questioned about why she had made the decision to trust Mr Reith's verbal advice rather than the more cautious written advice from Strategic Command Division, Ms Halton told the Committee that there were three main reasons.

5.100 The first was her sense that, if the Strategic Command advice had been really important, someone would have contacted her directly about it. She pointed out repeatedly that the advice appeared as a 'footnote' on a fax sent to 'a junior officer',<sup>94</sup> which was not accompanied by a telephone call to her,<sup>95</sup> or a 'red light flashing and a warning bell problem type alert'.<sup>96</sup> She said that if Defence had really intended to inform the PST of problems with the children overboard report:

You do not go to a junior officer in the social policy division by fax with no follow-up phone calls ... If you have an issue of substantial concern in relation to what was going on in this context, you pick up the phone and ring me or, if you cannot find me, you ring Katrina Edwards. This did not happen.<sup>97</sup>

5.101 The Committee notes that this so-called 'junior officer' was a member of Ms Edwards's Social Policy Division who had been specifically tasked with seeking further advice on the children overboard report from the Strategic Command Division.

5.102 The second reason Ms Halton gave for discounting the Strategic Command advice at this time was her view, evident in the discussion about Group Captain Walker's advice, that Strategic Command did not necessarily have the most up to date information from the chain of command. The third was that at the meeting of the PST that same evening, no one demurred from the view that it had been established that children had been thrown overboard.

5.103 Elaborating on both these points, Ms Halton said:

we were advised by senior people who were, as best you could tell, more connected to the actual day-to-day operations of this whole process, that there was ... documentary evidence ... and that comprised the photographs.

The photographs were then duly published ...the simple reality is that people who were more intimately involved with this than Strategic Command told us there was a video, there were photos - which then duly emerged - and there were witness statements. Not only did we do that, but our interpretation of the facts of the case was put in front of the evening meeting of the 10<sup>th</sup>. Those facts were not denied.<sup>98</sup>

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94 *Transcript of Evidence*, CMI 941, 942, 943.

95 *Transcript of Evidence*, CMI 943.

96 *Transcript of Evidence*, CMI 953.

97 *Transcript of Evidence*, CMI 945.

98 *Transcript of Evidence*, CMI 957; see also *Transcript of Evidence*, CMI 941, 953, 958, 984.

5.104 The Committee notes, first, that Ms Halton was mistaken in advising the Committee that the Defence representative at that meeting was Air Vice Marshal Titheridge.<sup>99</sup> The Defence attendee was actually Commander Paul Davies from Strategic Command, whose first and only meeting of the PST this was.<sup>100</sup> The Committee has some concerns about whether Commander Davies would actually have been in a position to confirm or call into question any presentation of the ‘facts’ as then known.

5.105 It is also not clear to the Committee just how explicitly the issue was canvassed in the PST meeting on 10 October. There are no records of such a discussion in the notes of the meeting,<sup>101</sup> but Ms Edwards, the notetaker, told the Committee that she had been called away to a telephone call ‘for at least a substantial initial period of that meeting’.<sup>102</sup> She informed the Committee that it was possible that the discussion had taken place while she was absent.

5.106 The Committee notes, however, that the talking points provided to the meeting on 10 October 2001 were derived from the Strategic Command chronology.<sup>103</sup> They referred to ‘15 suspected unauthorised arrivals’ who ‘either jumped or were thrown overboard’, but made no reference to children thrown overboard.<sup>104</sup> If the ‘facts’ of the children overboard story were presented and agreed at the meeting, then they certainly were not highlighted in the material prepared for subsequent public consumption. These talking points were provided to Mr Miles Jordana, International Adviser to the Prime Minister, and, at Ms Halton’s direction, to staff in the office of Minister Ruddock, Mr Ross Hampton in the office of Minister Reith and to Minister Downer’s office.<sup>105</sup>

5.107 Finally, the Committee notes that the photographs which were ‘duly published’ depicted two women and a girl in the water,<sup>106</sup> but that Ms Halton recalled being told that ‘We didn’t think any women had gone in’.<sup>107</sup> She explained that she ‘tended to ask whether any women or girls had gone in the water’, because she knew that ‘most of these women wear the hajib or something of that sort. The notion that

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99 *Transcript of Evidence*, CMI 984.

100 Notes, High Level Group - 10 October 2001, 6pm.

101 Notes, High Level Group - 10 October 2001, 6pm.

102 *Transcript of Evidence*, CMI 1739.

103 Answers to Questions on Notice, Ms Katrina Edwards, dated 12 June 2002, Question 3.

104 Mr John Drury, Deputy Chief Executive Officer, Australian Customs Service, emphasised this point in his evidence to Ms Bryant. See Enclosures to Bryant Report, Statement by Mr John Drury.

105 PM & C Emails requested by the Senate Select Committee on a Certain Maritime Incident, No. 75.

106 Transcript of the Hon. Peter Reith MP Radio Interview with Virginia Trioli, Melbourne Radio 3AK, 10 October 2001.

107 *Transcript of Evidence*, CMI 1001.

somebody who is unlikely to swim ... and the notion of ending up in the water wearing a full hajib caused me some concern'.<sup>108</sup> She remarked too that she believed that the child or children thrown overboard were male: 'The impression I had was of no girls and no women'.<sup>109</sup>

5.108 It might be argued that the contradiction between Ms Halton's 'impression' of who was in the water and what the photographs depicted should have led her to interrogate the veracity of the pictures released by Mr Reith.

5.109 Nevertheless, the Committee notes both that Strategic Command never returned to the PST with definitive advice overturning the report that children had been thrown overboard, and that Ms Halton was advised positively and directly by the Minister for Defence that he had evidence to support the claim.

5.110 The Committee is aware that officers from PM & C had had to seek permission from the office of the Minister for Defence to pursue their earlier inquiries with Strategic Command.<sup>110</sup> It would presumably have been very difficult for Ms Halton's division tacitly to register its scepticism of Mr Reith's advice by continuing such investigations.

5.111 The Committee considers that the chronology provided by Strategic Command Division to PM & C should have sounded a significant warning note in relation to the sustainability of the original report that children had been thrown overboard.

5.112 The Committee is satisfied that its significance was appreciated by Ms Edwards, and that it was properly brought to the attention of Ms Halton.

5.113 The Committee notes Ms Halton's evidence that 'I did not see the chronology; I did not receive it'.<sup>111</sup> However, the Committee also notes that the talking points prepared on 10 October in PM & C were based on that Strategic Command chronology. Those talking points were provided to PST members at the meeting on 10 October and, according to Ms Edwards, were sent that evening to Mr Miles Jordana, international adviser to the Prime Minister.<sup>112</sup>

5.114 The Committee is puzzled as to why, if Ms Halton considered that the claim that children had been thrown overboard from SIEV 4 had been definitively established, that claim was not reflected in the talking points prepared and disseminated on 10 October.

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108 *Transcript of Evidence*, CMI 1001.

109 *Transcript of Evidence*, CMI 1001.

110 *Transcript of Evidence*, CMI 1705.

111 *Transcript of Evidence*, CMI 2066.

112 Answers to Questions on Notice, Ms Katrina Edwards, dated 12 June 2002, Question 3.

5.115 Nevertheless, the Committee acknowledges that, in the face of the direct advice from the Minister for Defence to Ms Halton and in the absence of any more positive advice from the Defence department itself, Ms Halton was placed in a position from which it would have been difficult, and perhaps seemingly redundant, to seek further clarifying advice.

5.116 In the next chapter, the Committee will discuss the extent to which Mr Reith may be said to have knowingly misled Ms Halton at this time.

### ***Advice from Commander King***

5.117 The final piece of advice that came directly from Defence to the Department of the Prime Minister and Cabinet related to the misrepresentation of the photographs.

5.118 On 9 October 2001, Strategic Command Division sent the email of the two photographs taken from the sinking of SIEV 4 on 8 October to Commander Piers Chatterton, Director of Operations, Navy. Commander Chatterton told the Committee that the reason for him getting the pictures was that he was ‘the point of contact for Strategic Command Division inside Navy headquarters at staff level, and the officer sending me those pictures would know that I would be the person to pass them on to the appropriate person within Navy headquarters’.<sup>113</sup>

5.119 Commander Chatterton assessed that the photographs depicted ‘a good news story of RAN sailors doing a courageous and brave act and that this was a public relations matter’.<sup>114</sup> He duly sent them to Mr John Clarke, Strategic Communications Adviser to the Chief of Navy.<sup>115</sup>

5.120 On 10 October, Commander Chatterton saw that the photographs were being portrayed on television as evidence of the report that children had been thrown overboard on 7 October, rather than as pictures of the rescue of passengers during the sinking of SIEV 4 on 8 October.<sup>116</sup>

5.121 On 11 October 2001, Commander Chatterton advised Mr Clarke of the error.<sup>117</sup> He also advised Commander Stefan King, who was then, according to Commander Chatterton, the Defence Force Liaison Officer in PM & C.<sup>118</sup> Commander Chatterton told the Committee that he thought it was appropriate for him to pass this information to Commander King for the following reason:

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113 *Transcript of Evidence*, CMI 1162.

114 *Transcript of Evidence*, CMI 1162.

115 *Transcript of Evidence*, CMI 1162.

116 *Transcript of Evidence*, CMI 1162.

117 *Transcript of Evidence*, CMI 1163.

118 *Transcript of Evidence*, CMI 1163.

I believed that he should be made aware of that information, as it involved Defence and high profile activity which was occurring that involved the political level at which he was the liaison officer. That is why I gave him that information.<sup>119</sup>

5.122 Commander King in turn expressed the view that he considered that the advice passed on by Commander Chatterton to him ‘was a briefing by a relevant person for a relevant purpose’.<sup>120</sup>

5.123 Accordingly, also on 11 October, he passed on the advice to his immediate supervisor in PM & C’s Defence Branch, International Division, Ms Harinder Sidhu, and they together informed their branch head, Dr Brendon Hammer.<sup>121</sup>

### **Response of PM & C**

5.124 It became clear in evidence to the Committee, that Commander King had a very different sense of the weight to be attached to the information than did his supervisors in PM & C.

5.125 In part, this appears to have been the result of the fact that, while Commanders Chatterton and King considered Commander King to have a liaison function between the departments of Defence and PM & C,<sup>122</sup> Ms Sidhu and Dr Hammer considered him to be a ‘seconded’ to the Department of the Prime Minister and Cabinet with no formal liaison role.<sup>123</sup>

5.126 Dr Hammer observed before the Committee that:

I gather from the testimony that has come before this committee that that [liaison officer] is the designation of his position within the Department of Defence, but within the Department of the Prime Minister and Cabinet he is a secondeed from the Defence organisation. He has no formal role in liaison with Defence ... For the period of his secondment he was a line member of my branch, very much like any other member of the branch.<sup>124</sup>

5.127 For this reason, according to Dr Hammer, he did not consider Commander King to be a ‘special’ or ‘formal’ conduit of information from Defence to PM & C, nor to be the appropriate person through whom information of this kind, were it true, would be conveyed.<sup>125</sup>

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119 *Transcript of Evidence*, CMI 1166.

120 *Transcript of Evidence*, CMI 1491.

121 *Transcript of Evidence*, CMI 1491-1492.

122 *Transcript of Evidence*, CMI 1491.

123 *Transcript of Evidence*, CMI 1550, 1856.

124 *Transcript of Evidence*, CMI 1856-1857.

125 *Transcript of Evidence*, CMI 1857, 1812.

5.128 Ms Sidhu described her sense of what had been conveyed to her by Commander King in the following terms:

I was informed by Commander Stefan King ... 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 SIEV 4 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 into the water.<sup>126</sup>

5.129 In a similar vein, Dr Hammer told the Committee that Commander King had advised him that:

'I have heard there is a rumour circulating over in Defence that there is something wrong to do with the timing of the photographs in relation to children being thrown overboard' ... I recall thinking, 'Another rumour from Defence - I wonder what this is about'. There was no reason at that time to expect that there was anything unreasonable, false or what have you about the photographs. I did not have any indication from anywhere that there was a difficulty with the photographs, and I was a bit intrigued that I was even being bothered, frankly, with a rumour - through an entirely inappropriate channel, incidentally - about something that I did not have within my area of responsibility.<sup>127</sup>

5.130 Dr Hammer said that he assumed that if there was anything in the 'rumour' then it would be passed 'through the proper, appropriate and predetermined channels for liaison between Defence and PM & C on people-smuggling and illegal immigration'.<sup>128</sup> That is, he assumed that it would be passed to Ms Halton by the Defence representatives on the PST. Accordingly, he determined that he did not need to do anything with the information. His thoughts, he said, were: 'This is not a significant input in that it is a rumour and that it is coming through a junior officer and through the wrong channel'.<sup>129</sup> This was where the matter rested until 7 November 2001.

5.131 On the evening of November 7, an officer from the Social Policy Division, Ms Catherine Wildemuth spoke to Ms Sidhu, seeking any information held by the Defence Branch on SIEV 4. As they were searching for that information on her computer, Ms Sidhu repeated Commander King's information.<sup>130</sup> According to Ms

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126 *Transcript of Evidence*, CMI 1550.

127 *Transcript of Evidence*, CMI 1805-1806.

128 *Transcript of Evidence*, CMI 1806.

129 *Transcript of Evidence*, CMI 1806.

130 *Transcript of Evidence*, CMI 1550.

Sidhu, what she said ‘was practically a throwaway comment: “Haven’t you heard there are rumours circulating in Defence that the photographs are not actually as they have been presented?”’<sup>131</sup>

5.132 Ms Wildemuth, however, seemed shocked and surprised by the comment,<sup>132</sup> and passed it on straightaway to her supervisor, Ms Bryant. Despite the fact that Commander King’s information was by now being characterised as ‘tearoom gossip’, Ms Bryant contacted Ms Halton who immediately rang Mr Miles Jordana, international adviser to the Prime Minister.<sup>133</sup> Ms Halton told the Committee that:

I still have quite a strong memory of that phone call and I have a memory of thinking there was something out of Defence yet again I did not know about ... I did what I had always done right throughout this process and that is immediately pass the information on. Again, I have a clear memory of ringing Mr Jordana about that and saying to him, ‘Jenny Bryant’s just told me this piece of gossip’. He said to me ... that this issue had already been canvassed in the papers and that they were having a discussion with Mr Reith’s office and ... the issue was in hand.<sup>134</sup>

5.133 After her conversation with Mr Jordana, Ms Halton said she ‘had the clear impression that the matter was in hand. I had a clear impression that it was being dealt with and I did not need to worry about it’.<sup>135</sup>

### **Dr Hammer’s response to initial advice**

5.134 The Committee’s evaluation of the responses of Ms Sidhu and particularly of Dr Hammer to Commander King’s advice is as follows.

5.135 First, the Committee acknowledges that this issue did not fall directly within Dr Hammer’s area of responsibility and that he was extremely busy with other matters.<sup>136</sup> Second, the Committee acknowledges that Dr Hammer could reasonably have expected the information, if it were true, to be passed directly from the high level Defence representatives on the PST to Ms Halton. The Committee will address what was clearly a failure of communication from Defence at that level in the next chapter.

5.136 Certainly, with the benefit of hindsight, it is clear that an email from Dr Hammer to Ms Halton may have led to the misrepresentation of the photographs being corrected almost immediately. The Committee accepts, nevertheless, that although it is easy with the benefit of hindsight to say that Dr Hammer ‘ought’ to have passed the advice on, this was a judgement that may have not been obvious at the time.

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131 *Transcript of Evidence*, CMI 1563.

132 *Transcript of Evidence*, CMI 1564-1566.

133 *Transcript of Evidence*, CMI 902.

134 *Transcript of Evidence*, CMI 1023.

135 *Transcript of Evidence*, CMI 1023

136 *Transcript of Evidence*, CMI 1806 and passim.

5.137 However, the Committee also notes the following points:

- Commander King was a serious and conscientious officer who, according to Ms Sidhu, never acted inappropriately and ‘was more inclined to err on the side of caution and seek advice on how to proceed before saying or doing anything’;<sup>137</sup>
- Commander King and Ms Sidhu mutually agreed that the report or rumour was at least potentially significant, or potentially forming, in Ms Sidhu’s words, ‘part of a larger story’;<sup>138</sup>
- Dr Hammer agreed that sometimes even reports characterised as rumours or as informal advice do turn out to be significant.<sup>139</sup>

5.138 In the light of these points, the Committee is concerned about what seems to have been the *mode* of Dr Hammer’s judgement that he need take no responsibility for passing on or verifying the information. It is a mode which also characterised Ms Halton’s dismissal of the weight that should be attached to the Strategic Command chronology.

5.139 The Committee is referring to Dr Hammer’s consistent use of descriptors such as ‘rumour’, ‘junior officer’, ‘scuttlebutt’,<sup>140</sup> and ‘unreliable channel’ as justification for not taking the advice seriously. Similarly, Ms Halton speaks of the advice from Strategic Command being faxed to a ‘junior officer’, although he is an officer tasked with seeking just that advice, of the ‘footnote’ and ‘tearoom gossip’.

5.140 The Committee is unsure about whether this mode is adopted by way of retrospective justification of judgements made, or whether it infuses the making of the judgements themselves, but in either case it could lead to failures to take advice from other individuals or agencies sufficiently seriously.

5.141 The Committee considers that the use of this language unfairly denigrates the officers to whom it is applied.

### **Ms Halton’s response to ‘tearoom gossip’**

5.142 Ms Halton was asked whether she should have done more to verify the content of the ‘rumour’ about the misrepresentation of the photographs, which she first heard on November 7.<sup>141</sup>

5.143 Although she passed the information on to the Prime Minister’s office, she did not embark on her own investigation of the truth of this significant matter. Senator Faulkner asked:

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137 *Transcript of Evidence*, CMI 1760.

138 *Transcript of Evidence*, CMI 1764.

139 *Transcript of Evidence*, CMI 1864.

140 *Transcript of Evidence*, CMI 1806.

141 *Transcript of Evidence*, CMI 1025.

to what extent was it important for you to follow up with whomever - and not just with Mr Jordana, a member of the Prime Minister's staff who at a minimum had an absolute axe to grind three days out from an election - to ensure that the public record was corrected?<sup>142</sup>

5.144 In response, Ms Halton noted that, by the time it reached her, the 'gossip' was sixth or seventh hand. Once she knew, she said, that a spokesman for the responsible minister, namely Mr Reith, had denied the report, she was satisfied that there was no truth to it.<sup>143</sup>

5.145 It is to the role of Mr Reith and his office in sustaining the original report of children overboard that the Committee now turns.

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142 *Transcript of Evidence*, CMI 1025.

143 *Transcript of Evidence*, CMI 1026.

