

Chapter 6

The Failure to Correct the Record

My German engineer very argumentative and tiresome. He wouldn't admit it was certain that there was not a rhinoceros in the room.¹

Introduction

6.1 The aim of this chapter is to analyse the factors which led to the failure to correct the record publicly in relation to the 'children overboard' story, prior to 10 November 2001. The chapter is in three parts.

6.2 The Committee begins by examining the role played by Mr Reith and his staff in sustaining the original mistaken report and the photographs as evidence for it. It goes on to canvass briefly the evidence which is available concerning the knowledge of the office of the Prime Minister of the amended advice from Defence.

6.3 Finally, the Committee assesses whether, in its view, officers of the Defence organisation could have done more to ensure that the record was corrected prior to the election on 10 November. That assessment will form the framework for a broader discussion, in the following chapter, of the lessons to be learned from this episode in relation to public administration and accountability in Australia.

Role of Minister for Defence and his Office

6.4 The actions taken by Mr Reith and his staff in their attempt to confirm and sustain the original report that children were thrown overboard from SIEV 4 may be divided into three phases, as follows:

- the search for confirmation, 7 to 11 October;
- response to advice relating to the photographs on 11 October; and
- response to advice from Air Marshal Houston on 7 November.

6.5 In considering these actions and the reasons for them, the Committee is hampered by the fact that none of the individuals concerned chose to give evidence to its inquiry, despite numerous requests that they do so. In the following discussion, therefore, the Committee relies upon the statements that each made to Ms Bryant's inquiry, upon the evidence of others involved in relevant discussions and upon the public record.

1 Bertrand Russell speaking of Wittgenstein in a letter to Lady Ottoline Morell, 1 November 1911.

The search for confirmation

6.6 The search for details of the ‘children overboard’ incident began almost as soon as the Minister was first informed of it.

6.7 The watchkeeper from Strategic Command Division (SCD), Flight Lieutenant Jason Briggs, informed Ms Bryant that Mr Ross Hampton, the Minister’s media adviser, had rung him on the morning of Sunday 7 October asking for any information on children being thrown into the water.²

6.8 At this stage, Flight Lieutenant Briggs said he had never heard of Mr Hampton and told him that he could not provide the information requested. He directed Mr Hampton to contact the Defence Liaison Officer in the Minister’s office. Subsequently, the Head Strategic Command (HSC), Air Vice Marshal Titheridge, called the watchkeeper authorising him to provide Mr Hampton ‘with a run down of what was happening on SIEV 4’.³

6.9 Flight Lieutenant Briggs then told Mr Hampton that there was no information on children being thrown into the water. ‘Soon after that’, he told Ms Bryant, ‘Group Captain Walker ... returned from the IDC meeting and asked the same question’.⁴ Again the watchkeeper checked all the written material, and then contacted Australian Theatre to ask if they had any information about the incident. They did not.

6.10 In response to demands from Mr Hampton, however, Flight Lieutenant Briggs began to compile faxes for him paraphrasing the situation reports from HMAS *Adelaide*. He stated that: ‘Each fax was sent in response to one or more calls from Mr Hampton’. He further noted that:

When there was an apparent lag in the flow of information, Mr Hampton had complained. Flight Lieutenant Briggs stated that at this point he had told Mr Hampton that no faxes had been sent because there was no information worth telling him - particularly, nothing that he did not already know, judging by the conversation ... Mr Hampton had seem agitated and quite angry at times, saying that he was under pressure from media outlets to meet their publication deadlines.⁵

6.11 The Committee notes that faxes were sent to Mr Hampton from Strategic Command at 2.00pm, 2.15pm, 7.15pm and 8.10pm on 7 October, and at 5.20pm on 8 October 2001.⁶ None of the faxes refer to children in the water.

2 Enclosure to Bryant Report, Statement by Flight Lieutenant Jason Briggs.

3 Enclosure to Bryant Report, Statement by Flight Lieutenant Jason Briggs.

4 Enclosure to Bryant Report, Statement by Flight Lieutenant Jason Briggs.

5 Enclosure to Bryant Report, Statement by Flight Lieutenant Jason Briggs.

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

6.12 On 10 October, prior to the release of the photographs to the media, Mr Hampton again sought detailed information about the incident, this time from Public Affairs and Corporate Communication. As outlined in the previous chapter, both Captain Belinda Byrne and Brigadier Gary Bornholt told Mr Hampton that Strategic Command had no evidence that any of the fourteen SUNCs who entered the water on 7 October were women or children.

6.13 Finally on 11 October, a message reached Rear Admiral Ritchie via Maritime Command and NORCOM, that Mr Hampton wanted to speak directly to CO *Adelaide* about the ‘children overboard’ incident. Rear Admiral Ritchie refused permission for him to do so, and directed instead that the witness statements from HMAS *Adelaide* be collected and forwarded up the chain of command.⁷

6.14 Over the same period, Mr Scrafton also sought further information and confirmation of the ‘children overboard’ report.⁸ At about 9.30am on 10 October, he rang Rear Admiral Ritchie about the matter, and at 12.42pm Rear Admiral Ritchie telephoned back with his advice.⁹

6.15 As outlined in the previous chapter, Rear Admiral Ritchie told Mr Scrafton that there was as yet no evidence available to support the report that children had been thrown overboard. However, CO *Adelaide* had said that ‘he had reports of sailors on the camera’s disengaged side picking up children from the water’,¹⁰ so Rear Admiral Ritchie thought that the original report might be confirmed by witness statements which were in the process of being taken from the crew.

6.16 On the afternoon of 10 October, Mr Reith gave an interview on ABC radio. In this interview, he produced the photographs as evidence of the report that children had been thrown overboard, noting that they depicted women and children as well as one man in the water. He also said:

I have subsequently been told that they have also got film. That film is apparently on HMAS *Adelaide*. I have not seen it myself and apparently the quality of it is not very good, and it’s infra-red or something, but I am told that someone has looked at it and it is an absolute fact, children were thrown into the water. So do you still question it?¹¹

7 *Transcript of Evidence*, CMI 353, 393.

8 Enclosure to Bryant Report, Statement by Mr Mike Scrafton.

9 *Transcript of Evidence*, CMI 370.

10 Enclosure 1 to Powell Report, Statement by Rear Admiral Chris Ritchie; *Transcript of Evidence*, CMI 370-371.

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

6.17 Later that same afternoon, Mr Reith took the relatively unusual step of telephoning Ms Jane Halton, Chair of the People Smuggling Taskforce.¹² He told her that he had just released photographs, which were evidence of the children overboard incident, and that there was a video and witness statements from the crew which supported the original story.¹³

6.18 This telephone call occurred at the end of the day during which officers from Ms Halton's Social Policy Division had been seeking evidence for the report of children thrown overboard from Defence's Strategic Command Division. In response to these inquiries, Strategic Command had provided a chronology of events which said there was 'no indication' that children were thrown overboard, although it conceded that it may have happened in conjunction with other SUNCs jumping overboard.¹⁴

6.19 As discussed earlier, Ms Halton said that this information was not acted upon as it 'was overtaken by the information that there were photos of the event that had been released to the media, there was a grainy video and Defence were collecting witness statements'.¹⁵

6.20 The Committee notes that at the time of Mr Reith's telephone call to Ms Halton, Mr Scrafton had been informed that the video did not show children being thrown overboard, although he had been told that it showed a 13 year old being 'pushed'. No one knew what the witness statements would contain, but simply that at best they 'may' corroborate the original report. In relation to the photographs, Mr Hampton had been left a message, which he claims that he never got, telling him that they were being connected to the wrong events. He had certainly been told that there were doubts attaching to their veracity.

Conclusion

6.21 Although by 11 October the Minister and his staff had not been told unequivocally that the original report of children thrown overboard was incorrect, each of their numerous inquiries had been met with the advice that there was not any evidence to support the claim.

6.22 Despite this lack of evidence and in the face of public and official questioning of the allegations, the Minister confirmed the veracity of the original report in the media and advised Ms Halton, the senior official responsible for the whole-of-government management of 'border protection' issues, that he had evidence which backed up the claim.

12 Ms Halton said that she 'had very few conversations with Mr Reith'. *Transcript of Evidence*, CMI 1033.

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

14 *Transcript of Evidence*, CMI 902.

15 *Transcript of Evidence*, CMI 902.

6.23 The Committee is struck by the minister's keenness to persist with the original story in the face of repeated advice that there was no evidence available to corroborate it. The original report was extremely useful politically to a government making much of its tough stance on border protection.

6.24 It is interesting to contemplate what might have been the minister's approach if he had been presented with a report that served to work *against* the government's view. Would the minister have persisted with such a report if there had been no evidence to corroborate it? On the contrary, it seems highly likely that he would have been emphatic that the absence of corroborating evidence was an excellent reason for dismissing the original report. If the original report had been 'inconvenient', would the minister's office have sought so assiduously to pursue the evidence behind it?

Response to advice relating to the photographs on 11 October

6.25 On the morning of 11 October, Mr Scafton and Mr Reith were each informed that the photographs released the previous day had been connected to the wrong events.

6.26 Ms Bryant questioned both men, as well as Mr Hampton and Mr Hendy, about their response to that advice. In particular, she sought to understand why there had been no public retraction of the claim that the photographs were evidence for the 'children overboard' incident on 7 October.

6.27 The explanation appears to be in two parts. First, the Minister and at least some of his staff convinced themselves that there was doubt about the veracity of the correction itself. Second, no one took responsibility for the integrity of the public record.

Doubting the veracity of the correction

6.28 Mr Reith said that the doubts raised about the photographs on 11 October 'were themselves contradictory'. He noted:

that one doubt was based on the timing of the incident, and a suggestion that the video was infra-red and taken at night. When pressed, this advice was found to be incorrect. He said that he and the office remained sceptical and uncertain that the photographs were not from the overboard incident.¹⁶

6.29 Mr Hampton and Mr Hendy also spoke of doubt being cast on the advice concerning the misrepresentation of the photographs because of timing issues. Mr Hendy said that he recalled being told that the Department's reason for doubt 'was that the children overboard incident had occurred at night but the photos were clearly taken in daylight'.¹⁷

16 Enclosure to Bryant Report, Statement by Mr Peter Reith.

17 Enclosure to Bryant Report, Statement by Mr Peter Hendy.

6.30 When Mr Scrafton found the ship's log of the event and ascertained that the event had occurred after sunrise, then, according to Mr Hendy:

The Department had been told they needed a better reason for doubt, and were told to check and come back.¹⁸

6.31 Mr Hampton gave a similar account of the reason for doubting the advice, despite the fact that on 11 October he had obtained a copy of the original email with the photographs, correctly captioned and dated.¹⁹

6.32 He said that Defence had advised that the photographs could not be from the overboard incident, as that had been captured on infra-red camera in darkness. Since the office established that the overboard incident occurred after dawn, they still thought that the photographs could be of that event.²⁰ Moreover, Mr Hampton also thought that the sinking occurred in darkness, so the photographs could not be of that incident.

6.33 When Ms Bryant asked Mr Hampton about the significance of the dated captions, he said that:

I acknowledge the email received by myself on Oct 11 had accompanying text to the two photos which *at face value* placed the photos at the sinking incident. I believe I passed that email on to the Minister and Mike Scrafton. The difficulty the Minister had however was that information was also coming to the office saying that the photos must have been wrong because they were taken during night hours. That was quickly proven incorrect and doubt was therefore cast on the email author as well... [emphasis added]²¹

6.34 Mr Hampton also said that:

One must remember that all the information supplied to the Government to this point from various quarters had been in support of the allegation that children were thrown overboard and that these photos depicted this event.²²

6.35 The Committee notes, first, that the sinking of SIEV 4 occurred late in the afternoon (in daylight) and that all the SIEV's passengers were embarked on the *Adelaide* prior to sunset.²³ Thus, Mr Hampton's claim that the sinking occurred at night and that the photographs could not be of that incident is incorrect. Further, the Committee notes that, as outlined in the previous section, *no* information apart from

18 Enclosure to Bryant Report, Statement by Mr Peter Hendy.

19 He obtained these 'under duress' from Mr John Clarke, as a result of a phone call which, according to Mr Clarke, was aggressive and demanding. Enclosure to Bryant Report, Statement by Mr John Clarke.

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

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

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

23 See Enclosure 2 to Powell Report, HMAS *Adelaide* SIC I3M dated 081052Z Oct 01, Sitrep 25.

the initial report had been supplied to Government ‘in support of the allegation that children were thrown overboard’.

6.36 According to Ms McKenry and Brigadier Bornholt, they did not raise the issue of the timing of the incident as a reason for doubting the veracity of the photographs, nor did their discussion with Mr Scrafton touch in any way on the ‘infra red video’.²⁴ As Ms Bryant pointed out in her report:

It is ... difficult to understand how, given that both incidents clearly occurred during daylight hours, establishing that the overboard incident had occurred during daylight could have been seen as evidence that the photographs were of that incident. Furthermore, during his ABC radio interview on 10 October, Mr Reith stated that the video was infra-red and this understanding clearly did not affect the belief held by the Minister’s Office on that day that the photographs and video depicted the same incident.²⁵

6.37 Like Ms Bryant, the Committee was unable to establish which area, if any, in Defence had provided the advice that the misrepresentation of the photographs was proven with reference to ‘timing’ issues. Given as well the lack of any coherence attaching to a discussion about ‘timing’ as a factor that would settle things one way or another, the Committee regards the attempts by the minister and his staff to introduce such a consideration is simply an attempt to further muddy the waters. Neither Ms McKenry nor Brigadier Bornholt were asked to do any further checking of the photographs.²⁶

Refusal of responsibility

6.38 The Committee notes that, Mr Scrafton, who spoke directly with Ms McKenry and Brigadier Bornholt, did not raise the timing ‘problem’ as the reason for not acting on the correction they provided. However, nor did he take any responsibility for ensuring that the record was corrected.

6.39 Mr Scrafton stated in evidence to Ms Bryant that he had discussed the PACC advice with Mr Hampton. However:

Mr Scrafton said that he did not advise Mr Reith, as this would have been Mr Hampton’s role. He said that he does not know whether Mr Reith was informed about the true nature of the photographs.

Mr Scrafton said that he was aware of some discussion of retraction within the office (including between Mr Hampton and Mr Hendy). However, he

24 Enclosure to Bryant Report, Statements by Ms Jenny McKenry and Brigadier Gary Bornholt.

25 Bryant Report, p.41.

26 Enclosure to Bryant Report, Statements by Ms Jenny McKenry and Brigadier Gary Bornholt.

noted that it was a political issue and that therefore Mr Scafton was not involved in any decision making.²⁷

Mr Scafton said that in his assessment, there was a judgement made that the photographs had been quite widely distributed on the Restricted [Defence email] system and were available to a large number of people. He considered that the political solution was 'not to raise' the issue. He was not sure if Mr Reith had been party to these judgements.²⁸

6.40 Mr Hampton said that Mr Scafton, not he, was involved in the discussion about a possible retraction:

Ms Bryant asked if the Minister's office had considered issuing a retraction or correction. Mr Hampton stated that at that stage it was between the Minister, Mr Hendy and Mr Scafton, and that he couldn't comment on what consideration, if any, was given to a retraction.²⁹

6.41 Mr Hendy said that 'they never got a clear answer on whether or not the photos were from the sinking'. Questioned about the email advice from Ms McKenry which included the dated captions, Mr Hendy said that 'people were not as clear cut in their oral advice'. He noted that:

when the question of the accuracy of the attribution of the photos came up, the Minister made the decision within 24 hours that he would not change the public record until he had conclusive advice about what had actually happened with the original reports and the photos.³⁰

6.42 According to Mr Hendy, the email advice from Ms McKenry 'did not provide conclusive advice', because in view of the mistakes made by Defence in providing information an 'independent inquiry would be necessary to get to the facts' and 'PACC [would be] among the people under investigation'.³¹

6.43 Finally, Mr Reith himself stated that it was not that he 'made the decision not to change the public record', because that implied that he accepted that the photographs had been misrepresented. Rather, he said, the reality was 'that there was continuing uncertainty and he was not willing to make further public comments which may themselves not have been correct'.³²

6.44 On 14 October 2001, three full days after having been advised of the misrepresentation of the photographs by CDF and by Ms McKenry and Brigadier

27 Note that Mr Scafton advised earlier in his statement that he was a senior adviser responsible for 'Defence business', and was not a political staffer.

28 Enclosure to Bryant Report, Statement by Mr Mike Scafton.

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

30 Enclosure to Bryant Report, Statement by Mr Peter Hendy.

31 Enclosure to Bryant Report, Statement by Mr Peter Hendy.

32 Enclosure to Bryant Report, Statement by Mr Peter Reith.

Bornholt, Mr Reith appeared on the Sunday Sunrise program. Asked why he had released the photographs, but not the video, of the so-called ‘children overboard’ incident, he replied that he had not yet seen the video but that:

I was happy to have the Department release a couple of photos, because there was a claim we were not telling the truth about what happened.³³

Conclusion

6.45 The Committee is extremely disturbed by the lack of responsibility that was taken by the Minister and his staff for the integrity of the public record.

6.46 Mr Scrafton took no responsibility for ensuring that the Minister was made aware of the advice concerning the misrepresentation of the photographs from Defence. Neither he nor Mr Hampton took responsibility for advising the Minister of the need for a retraction of the claim that the photographs were evidence of the children overboard report. Mr Hendy justified the Minister’s refusal to correct the record by claiming that PACC itself needed to be investigated, and Mr Reith continued to make public comments that may have been technically correct but were blatantly misleading.

6.47 Given that neither Ms McKenry nor Brigadier Bornholt were asked to do any further checking on the photographs, the Committee concludes that the quibbling about the timing ‘problem’ was not only illogical, but also a convenient rationalisation by means of which the Minister and his staff absolved themselves of any obligation either to correct the record or definitively to establish the truth of the matter.

Response to advice from Air Marshal Houston

6.48 On about 17 October, Admiral Barrie told the Minister that there were serious doubts about the veracity of the original report that children had been thrown overboard.³⁴ However, as discussed in the previous chapter, Admiral Barrie virtually guaranteed Minister Reith immunity in relation to the claims, saying that he would stand by the original report until someone produced what he considered to be ‘conclusive’ advice to the contrary.

6.49 On 7 November, the then acting CDF, Air Marshal Houston, advised the Minister that in his view ‘there was nothing to suggest that women and children had been thrown into the water’.³⁵ He also told the Minister that the photographs that had been released were of the sinking the day after the alleged event and that the video, while inconclusive, provided no support for the report of children overboard.

6.50 The next day, Vice Admiral Shackleton made his comments to the media.

33 Transcript of interview, Sunday Sunrise, 14 October 2001.

34 *Transcript of Evidence*, CMI 742.

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

6.51 The response from Mr Reith and his office was again twofold. First, they either denied or denied responsibility for the advice. Second, they attempted to set up a smokescreen.

Denial of advice

6.52 Mr Reith wrote in his statement to the Powell inquiry that:

At no stage have I received advice that the children were not thrown overboard. There has been no evidence presented to me which contradicts the earlier and first advice.³⁶

6.53 Mr Hampton said that he had never received any advice that the event had not occurred. Mr Hendy said that:

for most of the period it was still the case (at least for him) that they had been advised that children had been thrown and that this was a fact. He said that he had heard some gossip (*mostly* subsequent to the election) but had never received further advice about whether or not the incident had occurred [emphasis added].³⁷

6.54 Mr Scrafton also said that ‘he had never been formally advised that it wasn’t true’. However:

he noted that he obviously spent time talking to people from the Department and got the feeling that the claims may not have been correct.³⁸

6.55 Despite this ‘feeling’, Mr Scrafton, so far as the Committee is aware, did nothing to ascertain the truth of the matter nor did he suggest to others in the Minister’s office that this would be the correct course to take.

Smokescreen

6.56 Air Marshal Houston said that, following the ‘stunned silence’ with which Mr Reith greeted his advice, the Minister said, ‘Well, I think we’ll have to look at releasing the video’.³⁹

6.57 Mr Reith asked Mr Scrafton to view, on 7 November, the copy of the video held at Maritime Command in Sydney. Mr Scrafton said that ‘he considered that the tape clearly didn’t show that the incident had happened. However, neither did it provide conclusive evidence that the incident didn’t happen’.⁴⁰

36 Enclosure 1 to Powell Report, Statement by Mr Peter Reith.

37 Enclosure to Bryant Report, Statement by Mr Peter Hendy.

38 Enclosure to Bryant Report, Statement by Mr Mike Scrafton.

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

40 Enclosure to Bryant Report, Statement by Mr Mike Scrafton.

6.58 The Prime Minister spoke to Mr Scafton ‘a couple of times that evening about the tape’, and was informed that the video ‘was inconclusive’. The tape was nevertheless released the next day, on 8 November, with no accompanying publication of Air Marshal Houston’s advice. The Chief and Deputy Chief of Navy were advised by the Acting CDF, that ‘the Minister had informed him that all questions about the children in the water aspect of the boarding were to be referred to his office’.⁴¹

6.59 Later on 8 November, Mr Hendy contacted Vice Admiral Shackleton about correcting or ‘clarifying’ his remarks insofar as they ‘appeared to contradict the Minister’ by implying that the Minister had not originally been told that children had been thrown overboard.

6.60 Telling the Committee of his conversation with Mr Hendy, the Vice Admiral said:

In talking to Hendy, I gained a strong impression that he had not been told that the original report was incorrect, and this came as a surprise to me.⁴²

6.61 Because it has been unable to question the relevant witnesses about the information flows within the Minister’s office, the Committee is not in a position to judge whether Mr Reith ever apprised Mr Hendy of Air Marshal Houston’s advice.

6.62 Nevertheless, it is clear that Mr Reith himself must have been aware that the Vice Admiral’s clarifying statement, to the effect that the Minister was advised that Defence believed children had been thrown overboard, was, while technically correct, no longer the whole truth.

Conclusion

6.63 The role played by Minister Reith and his staff in the failure to correct the original and mistaken report that children had been thrown overboard from SIEV 4 was decisive.

6.64 Through a combination of denial, obfuscation, and misleading statements, the media, senior officials and the public were deliberately and systematically deceived about the evidence for and the veracity of the claim.

6.65 The Committee finds it particularly galling that none of the individuals concerned, nor the executive they served, has been held accountable for their disregard for the integrity of the public record. The issue of the accountability of both ministerial advisers and the executive will be discussed further in the next chapter.

41 Enclosure 1 to Powell Report, Statement by Rear Admiral Adams, Deputy Chief of Navy.

42 *Transcript of Evidence*, CMI 59.

Role of the Office of the Prime Minister

6.66 Again because of its inability to question the relevant witnesses, the Committee has been unable fully to determine the extent, if any, to which the office of the Prime Minister knew prior to 10 November 2001 that the veracity of the initial report that children had been thrown overboard from SIEV 4 was in doubt.

6.67 In what follows, the Committee briefly outlines the information that it does possess about the involvement of the Prime Minister's office in this issue. The major activity known to the Committee centres around two periods, namely from 7-10 October, and from 7-8 November 2001.

7-10 October

6.68 The Prime Minister was first made aware of the report that children had been thrown overboard by Minister Ruddock, during the day on 7 October 2001, after the latter had spoken of it to the media. The report was mentioned in an 'options paper' provided to the Prime Minister by the PST on the same evening.

6.69 In subsequent days, the Prime Minister made public comments, relying on the initial verbal report and its iteration in the PST paper.⁴³

6.70 On 8 or 9 October 2001, the Prime Minister's international adviser, Mr Miles Jordana, contacted PM & C asking if they were following up the details of the report.⁴⁴ Ms Edwards informed the Committee that she thought that Mr Jordana had rung 'either Ms Halton or myself or both on either October 8 or 9 seeking further details around the events of 7 October'.⁴⁵ Ms Halton, however, said that Mr Jordana had not rung her at that time, nor had she been aware of his ringing Ms Edwards.⁴⁶ Nevertheless Ms Halton did ring him, she said, on 9 October to tell him that she had requested members of the PST to provide 'clarification' of the details of the event.⁴⁷

6.71 On 10 October, the chronology from Strategic Command was sent to the Social Policy Division in PM & C. Ms Edwards said that 'talking points derived from the chronology [were provided to] Mr Jordana that evening'.⁴⁸ As the Committee has previously noted, the talking points prepared on 10 October did not refer to children thrown overboard from SIEV 4. Ms Edwards expressed the view that:

I assumed at the time ... that Ms Halton would also advise Mr Jordana of the difficulties around the chronology, as well as the 'footnote', as well as

43 See for example, interview on radio 2UE on 8 October, and comments on Capital TV on 9 October 2001.

44 *Transcript of Evidence*, CMI 1711.

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

46 *Transcript of Evidence*, CMI 2065.

47 *Transcript of Evidence*, CMI 2065.

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

the subsequent advice from Mr Reith and his office of that afternoon. In any event, no further follow up action was requested.⁴⁹

6.72 As noted earlier, Ms Halton's evidence conflicted with Ms Edwards's sharply on this point. She told the Committee that:

As I have said to you previously, I did not receive the chronology and, again, Ms Edwards and I have different but not inconsistent recollections in relation to the chronology. I did not see the chronology; I did not receive it ... In terms of advice to people about that issue, no, I was not providing advice to people about that issue. I was not undertaking that work.⁵⁰

6.73 In response to Ms Edwards's 'assumption' that she would speak to Mr Jordana about the 'difficulties' around the chronology, Ms Halton remarked:

I do not know why she would have thought that I had done it. To my certain knowledge there were about five minutes between when I walked into the building, when we agreed we had a conversation about the difficulty of the facts, a series of phone calls and chairing a meeting. Quite when I was meant to have done this, I do not know.⁵¹

6.74 In earlier evidence, however, Ms Halton said that she had briefed both Mr Jordana and Mr Moore-Wilton on 10 October about what had happened during that day.⁵² She told the Committee that:

As I have already said to you, in the evening meeting [of the PST] of the 10th we put the facts, as we knew them, to the group. No-one demurred, and I am pretty confident that those facts as we knew them would have been communicated to Mr Jordana.⁵³

6.75 The Committee also notes that, after the PST meeting, the talking points were sent at Ms Halton's direction to staff of Minister Ruddock, Minister Reith and Minister Downer.⁵⁴

6.76 On the basis of this evidence, the Committee is unable to determine precisely what Mr Jordana was told on 10 October about the nature of the evidence for the report that children had been thrown into the water from SIEV 4. The Government's refusal to allow Mr Jordana to answer questions about these matters has seriously hampered the Committee's ability to discharge fully its obligation to the Senate in this regard.

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

50 *Transcript of Evidence*, CMI 2066.

51 *Transcript of Evidence*, CMI 2067.

52 *Transcript of Evidence*, CMI 990.

53 *Transcript of Evidence*, CMI 990.

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

6.77 Also on 9 October, the Office of National Assessments (ONA) made available to Ministers and the Prime Minister a report (ONA report 226/2001) which, as part of a general briefing on 'developments in the people smuggling issue in the region',⁵⁵ mentioned that children had been thrown overboard.⁵⁶ Although, as will be discussed shortly, the ONA had no basis other than Ministers' statements for this report, it may have been seen as a 'reconfirmation' of the original verbal report.⁵⁷

7-8 November

6.78 On 7 November, doubts about the veracity of the report that children were thrown overboard and about the connection of the published photographs to that event, were raised in the media. On that day also, Air Marshal Houston told Mr Reith that, in his judgement, the initial report could not be supported.

6.79 The Prime Minister was due to speak at the National Press Club on the following day, 8 November.

6.80 On the afternoon and evening of 7 November, Mr Jordana contacted both PM & C and the Office of National Assessments, seeking what evidence they possessed which supported the report of children thrown overboard. Neither could provide any additional evidence.

6.81 Ms Bryant told a Senate Estimates committee that Mr Jordana had rung her 'after around 5pm'⁵⁸ on 7 November, asking to be provided with situation reports or other defence material held by PM & C which related to the 'children overboard' report.⁵⁹

6.82 In her answers to questions on notice from this Committee, Ms Bryant advised that she and her staff did not succeed in locating any such material on 7 November. Her telephone records indicate that she had informed Mr Jordana of that fact at 6.28pm.⁶⁰ The following day, the search for the material continued, and fax records show that at 6.20pm on 8 November a fax of 11 pages was sent to the Prime Minister's Office, comprising DFAT Sitreps 59 and 60 and a Strategic Command Operation Gabardine/Operation Relex report of 8 October 2001.⁶¹ None of this material mentioned children thrown into the water.

55 *Transcript of Evidence*, Estimates, Senate Finance and Public Administration Committee, 18 February 2002, p.96.

56 *Transcript of Evidence*, Estimates, Senate Finance and Public Administration Committee, 18 February 2002, pp.97-98.

57 Bryant Report, p.8; Enclosure to Bryant Report, Statement by Mr Mike Scafton.

58 Answers to Questions on Notice, Ms Jennifer Bryant, Question 2.

59 *Transcript of Evidence*, Estimates, Senate Finance and Public Administration Committee, 18 February 2002, p.86.

60 Answers to Questions on Notice, Ms Jennifer Bryant, Question 3.

61 Answers to Questions on Notice, Ms Jennifer Bryant, Question 3.

6.83 Mr Kim Jones, Director-General, ONA, informed a Senate Estimates committee that Mr Jordana had telephoned him 'latish in the afternoon' on 7 November, asking 'whether ONA had published any reports containing references to children having been thrown overboard in this incident'.⁶² At about 7pm, Mr Jones faxed a note to Mr Jordana advising that he had found such a report, ONA report 226/2001.⁶³ He also, he said, provided the following advice to Mr Jordana:

I made the point that it was published on 9 October and that the statements made by several ministers about this incident had been made on 7 and 8 October, and therefore the ONA report could not have been a source of the information used in their statements ... I told him that we had not been able to identify fully the source of the information in the report on the 'children overboard' question and that we were continuing research on that. I said that it could have been based on ministers' statements but there may also have been Defence reporting for which we were still searching.⁶⁴

6.84 On November 12, Mr Jones sent further advice to the Prime Minister's Office on this matter which confirmed that the only basis for the 'children overboard' reference in the ONA report was indeed ministers' statements and that ONA did 'not have independent information on the incident'.⁶⁵

6.85 Over the same period that Mr Jordana was seeking evidence for the report from PM & C and the ONA, the Prime Minister was in touch with the office of the Minister for Defence.

6.86 As was noted earlier, following the advice from Air Marshal Houston, Mr Reith had directed Mr Scafton to view the video of the so-called 'children overboard' incident held at Maritime Command. Mr Scafton did so, saying that he considered that the video did not show that the event had happened, but that neither did it provide conclusive evidence that it did not occur. In his statement to Ms Bryant, Mr Scafton said that:

the Prime Minister rang him later that evening. He said he spoke to the Prime Minister a couple of times that evening about the tape and informed him that it was inconclusive.⁶⁶

6.87 Here again, the Committee's inquiry has been significantly hampered by Mr Scafton's refusal to testify before it. The Committee finds it difficult to believe

62 *Transcript of Evidence*, Estimates, Senate Finance and Public Administration Committee, 18 February 2002, p.99.

63 *Transcript of Evidence*, Estimates, Senate Finance and Public Administration Committee, 18 February 2002, pp.99-100

64 *Transcript of Evidence*, Estimates, Senate Finance and Public Administration Committee, 18 February 2002, p.99.

65 *Transcript of Evidence*, Estimates, Senate Finance and Public Administration Committee, 18 February 2002, p.100; see also Bryant Report, p.8.

66 Enclosure to Bryant Report, Statement by Mr Mike Scafton.

that it required two separate conversations for Mr Scafton to convey to the Prime Minister the information that the videotape was ‘inconclusive’.

6.88 The question of the extent of the Prime Minister’s knowledge of the false nature of the report that children were thrown overboard is a key issue in assessing the extent to which the Government as a whole wilfully misled the Australian people on the eve of a Federal election. Its inability to question Mr Scafton on the substance of his conversations with the Prime Minister therefore leaves that question unresolved in the Committee’s mind.

6.89 In this regard, the Committee also notes the disclaimer made by Mr Scafton at the outset of his statement to the Bryant Report. He advised Ms Bryant that:

he had been involved in or aware of a number of discussions between Mr Reith’s office and the Prime Minister’s Office and the Prime Minister, which he could not discuss.⁶⁷

6.90 Regardless of the extent of his knowledge of the facts of the case, it seems clear that by the evening of 7 November the Prime Minister knew that there were doubts surrounding the connection of the photographs to the alleged events of 7 October. In an interview with the ABC, the Prime Minister said that he had spoken on the evening of 7 November to Mr Reith, who told him, in relation to the photographs, that there was ‘some debate about whether they were one day or the next’ and that ‘there was doubt about it’.⁶⁸ Both Mr Howard and Mr Reith insist that Mr Reith did not mention the telephone call he received from Air Marshal Houston.⁶⁹

6.91 This evidence, that the Prime Minister was aware of doubts attaching to the photographs, is consistent with the fact that when Ms Halton rang Mr Jordana to tell him of the ‘tearoom gossip’ concerning their potential misrepresentation on the evening of 7 November, Mr Jordana reassured her that it was being ‘dealt with’.⁷⁰ In Ms Halton’s words: ‘They were discussing it with Minister Reith’s office, and I had no sense from that conversation of concern in any way, shape or form’.⁷¹

6.92 Early on the following day, 8 November 2001, at about 7.15am, Mr Scafton called Ms McKenry from Sydney to say that ‘the government had decided to release the video of the footage taken of UBAs on SIEV 4 on the day before the boat sank’.⁷²

67 Enclosure to Bryant Report, Statement by Mr Mike Scafton.

68 Transcript, ‘Too Good to be False’, Four Corners, 4 March 2002, www.abc.net.au/4corners/stories/s496427.htm, (23 July 2002), p.12 of 25.

69 Transcript, ‘Too Good to be False’, Four Corners, 4 March 2002, www.abc.net.au/4corners/stories/s496427.htm, (23 July 2002).

70 *Transcript of Evidence*, CMI 1038.

71 *Transcript of Evidence*, CMI 1038.

72 Enclosure 1 to Powell Report, Statement by Ms Jenny McKenry.

6.93 According to Ms McKenry, the ‘government’ wanted the video released by noon which required her staff to work urgently with PACC personnel in Sydney to ensure that copies of the video were flown to Canberra as soon as possible. She advised that:

Later that morning I had a conversation with Tony O’Leary from the Prime Minister’s Office on the suggestion of Mike Scrafton. Tony was after confirmation that we would meet the deadline and asked about the availability of copies of the video in Canberra. I also had a conversation with Peter Hendy, COS [chief of staff] for Minister Reith, re the timing of the release ... The video was released by PACC in Sydney in time for the midday news bulletins.⁷³

6.94 At lunchtime on 8 November, the Prime Minister appeared at the National Press Club. In answer to a question about the alleged misrepresentation of the photographs, the Prime Minister said that his comments on ‘children overboard’ were based not on the photographic evidence but on his discussions with Ministers Ruddock and Reith. He then quoted from the ONA report which, he noted, he had received on 9 October.⁷⁴

6.95 In the afternoon of 8 November (AEST), Vice Admiral Shackleton made his comments to the media concerning the nature of the ‘original advice’ to Ministers. As already discussed, Mr Hendy from Minister Reith’s office contacted the Chief of Navy and Ms McKenry saying that he thought a statement was required clarifying that the Minister had been advised that children were thrown overboard.⁷⁵

6.96 Mr Hendy said that he would leave the content of the ‘clarifying statement’ to PACC and the Chief of Navy, but he asked that a copy of the statement be sent to Mr Arthur Sinodinos in the Prime Minister’s Office.⁷⁶

Conclusion

6.97 The Committee is unable to conclude with any certainty whether the advice given to Minister Reith, which overturned the report of the incident itself and the photographs as evidence of it, was communicated fully to the Prime Minister and his staff.

6.98 Instead, the Committee draws attention to the following points:

73 Enclosure 1 to Powell Report, Statement by Ms Jenny McKenry.

74 Transcript, ‘Too Good to be False’, Four Corners, 4 March 2002, www.abc.net.au/4corners/stories/s496427.htm, (23 July 2002).

75 Enclosure 1 to Powell Report, Statement by Ms Jenny McKenry.

76 Enclosure 1 to Powell Report, Statement by Ms Jenny McKenry.

- after 10 October, the Prime Minister's Office was relying for confirmation and evidence of the initial report on Minister Reith's endorsement of the photographs, the video and witness statements;
- Mr Jordana was moved to seek further confirming evidence on 7 November, presumably in the wake of increased media speculation and in preparation for the Prime Minister's forthcoming address to the National Press Club;
- by the evening of 7 November, Mr Jordana and the Prime Minister both knew of doubts attaching specifically to the provenance of the photographs, and the Prime Minister knew that the video was inconclusive and did not prove the report;
- also by the evening of 7 November, Mr Jordana had gained no further written evidence to confirm the original report. He had been advised by the ONA that their report may have been based upon Defence sources, but also that it may have been based solely on ministerial statements;
- on 8 November, the Prime Minister did not respond to a direct media question about the attribution of the photographs, but referred to advice received from Ministers Ruddock and Reith, and the ONA; and
- on the evening of 8 November, the Prime Minister again cited the 'unconditional' ONA advice as the basis for his repetition of the claim. On the matter of the photographs, he referred the media to Mr Reith.⁷⁷

6.99 There is no evidence that, prior to 7 November 2001, the Prime Minister knew that any aspect of the 'children overboard' story was false.

6.100 The Committee is of the view that no later than 7 November, the Prime Minister knew that, at the least, there were genuine doubts about the connection of the photographs to the alleged 'children overboard' incident and that the video was inconclusive.

6.101 The Committee is unable to determine whether on 7 November Mr Reith, in telephone conversations with him, informed the Prime Minister that there was no other evidence supporting the claim, and that he had been informed by the Acting CDF that the incident did not take place.

Adequacy of Defence's Advice

6.102 In this third and final section of the chapter, the Committee assesses whether, in view particularly of the lack of response to their advice from Minister Reith, the senior officers of the ADF and the Defence department could and should have done more to ensure that the record was corrected prior to the election on 10 November.

6.103 In this discussion, the Committee focuses on roles played by the officers who were potentially direct conduits of information to either the Minister himself or to Ms

77 Transcript, 'Lateline', 8 November 2001, www.abc.net.au/lateline/s412276.htm (23 July 2002).

Halton and through her to the whole-of-government taskforce dealing with these matters. In other words, the Committee focuses on the adequacy of the attempts to ensure that the record was corrected by Admiral Chris Barrie, Air Vice Marshal Alan Titheridge, and Dr Allan Hawke.

Admiral Chris Barrie

6.104 At the outset, the Committee notes that the period from 7 October to 10 November and beyond was a period of intense activity and commitment for the Australian Defence Force. Admiral Barrie eloquently expressed the pressures under which he and other officers were operating at the time, saying that:

we have got an organisation which at the strategic and operational level is under more stress in terms of operations about to be conducted and being conducted than at any time since I have joined the outfit - in 41 years.⁷⁸

6.105 He outlined the range of those operations as follows:

We were barely three weeks out from the brutal images of aircraft smashing into the World Trade Center in New York and we were about to join the launch of a dangerous mission to Afghanistan, Operation Enduring Freedom. In short, I was focused on the imminent war in Afghanistan and the urgent need to safeguard our homeland from a possible terrorist attack, the risk of which I considered real and unprecedented.

As well, we were in East Timor, as we are now as part of our commitment to peacekeeping, having played a major role there in the INTERFET days. We were, and are now, in Bougainville preserving the peace. And we are in Bosnia, the Middle East, Cyprus, Egypt, Sierra Leone and Solomon Islands. In addition, we were supporting as required the government's border protection policy.⁷⁹

6.106 The Committee acknowledges that judgements about the advice to be given in relation to the children overboard incident were not being made 'at leisure', and that, in Admiral Barrie's words, 'this was not uppermost in my mind'.⁸⁰

6.107 Having said that, however, the Committee notes the suggestion from Professor Hugh Smith, School of Politics, Australian Defence Force Academy (ADFA), that Admiral Barrie was remiss in not pursuing more vigorously the persistent doubts about the veracity of the event. Professor Smith said:

Certainly there is a feeling that the CDF should have been able to pick up more rapidly and more strongly than he did that this was a politically significant piece of corrected information and he should have taken greater efforts to convey it to the minister. ... A lot of people say that it did not

78 *Transcript of Evidence*, CMI 778.

79 *Transcript of Evidence*, CMI 741.

80 *Transcript of Evidence*, CMI 756.

seem significant at the time. But, I think, one of the responsibilities of people in high office is to have an idea of what is going to be significant before the problem arises. Certainly senior officers are expected to have some political acumen, some political insight into what is important and what is not important, what the minister must know and must be told, even if it is inconvenient, and other information which is less important. ... You could argue that even at the time the wider political significance was clearly important given the nature of the election campaign.⁸¹

6.108 Admiral Barrie clearly did not ignore the issue, and clearly he did provide advice about it to the Minister. The Committee, however, is concerned about several features of Admiral Barrie's approach to addressing the issue with the Minister. They are that:

- he appears neither to have adopted the advice sent up through the chain of command nor to have made an independent assessment of the evidence supporting the initial report. As a result, he was unable to advise the Minister definitively about whether children had been thrown overboard or not, and virtually guaranteed Minister Reith immunity in relation to his claim that the incident had actually occurred;
- his advice in relation to the misrepresentation of the photographs appears to have been weak; and
- he apparently continued to protect the Minister's position up until 24 February 2002.

6.109 The Committee will address these issues in turn.

Failure to provide definitive advice on incident itself

6.110 The Committee has referred elsewhere to Defence personnel and others explaining the 'frangible' nature of original reports, and indeed how the chain of command recognises that initial information may be proved wrong later. Professor Smith expressed the point thus:

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

... I think it is recognised that a lot of the initial information—that is the only information available and the commander must act on it—is doubtful. It may be proved wrong later. It is, in Brigadier Silverstone's word,

81 *Transcript of Evidence*, CMI 1232.

‘frangible’; it is not rock solid. So the military have procedures for correcting information, for providing up-to-date reports as the commanders—the chain of command—require.⁸²

6.111 Major General Powell, who conducted the Defence routine inquiry into the whole affair, elaborated this in the following terms:

[O]perational information should be corroborated at each level of command after commanders and staff have had a reasonable opportunity to review, analyse and assess, in a deliberate manner, the situation and/or events being reported. This process must take place at each level of command and must be completed before information is passed to superior commanders and their staffs.⁸³

6.112 The Committee considers that, on the basis of this usually well-observed practice, it would have been standard practice for Admiral Barrie to take as correct, and act on, the advice that emerged from his senior officers via the chain of command.

6.113 By 11 October, as discussed in Chapter 4, the chain of command had made the relevant inquiries and assessed the relevant messages, signals, statements, video footage and chronologies, and had reached its verdict: the original report was mistaken.

6.114 Admiral Barrie was advised to that effect on 11 October by Rear Admiral Ritchie, Commander Australian Theatre, and the officer ‘directly responsible to the CDF’ for ‘the planning and conduct of ADF operations, including the operation which is under discussion here, Operation Relex’.⁸⁴

6.115 Rear Admiral Ritchie confirmed to the Committee that he was satisfied by 11 October ‘that there is no evidence ... to support the claim that children had been thrown overboard’.⁸⁵ He conveyed this to the CDF in a ‘long conversation’ on that day.⁸⁶ When pressed by the Committee whether he was confident that he made clear to the CDF that there was ‘no evidentiary support for ...children...overboard’, Rear Admiral Ritchie replied: ‘Yes, I am confident’.⁸⁷

6.116 Rear Admiral Ritchie said that, on the basis of what he recorded in his notebook immediately after his conversation with the CDF, he was ‘fairly confident’ that he had told Admiral Barrie that the video showed no children thrown overboard. He also said that he had referred to the statements from the *Adelaide*’s crew that Rear

82 *Transcript of Evidence*, CMI 1206.

83 Powell Report, p.4.

84 *Transcript of Evidence*, CMI 367.

85 *Transcript of Evidence*, CMI 371.

86 *Transcript of Evidence*, CMI 372.

87 *Transcript of Evidence*, CMI 373.

Admiral Smith had ordered Commander Banks to collect.⁸⁸ Rear Admiral Ritchie said that he:

gave no consideration to sending those things [the statements] to CDF or passing them on any further. They had come as far as they needed to go. We had formed the view and said that, in all probability, this did not happen. The advice I got back was that the issue would not be pursued any further.⁸⁹

6.117 As was discussed in Chapter 5, however, Admiral Barrie conveyed a different picture to the Committee of his conversation with Rear Admiral Ritchie. For Admiral Barrie, the discussion was not as definite as Rear Admiral Ritchie claimed.⁹⁰ He told the Committee that he thought that Rear Admiral Ritchie ‘understood’ that he had the opportunity to ‘come back and convince me that I was wrong if they had material that was evidence and compelling’.⁹¹

6.118 Following this conversation, Admiral Barrie waited for about a week before advising the Minister that there were any doubts about the original report and finally did so in terms which indicated that he would ‘stand by’ it until further evidence was produced.⁹²

6.119 The Committee remains perplexed about two matters. The first is why, on 17 October, Admiral Barrie was still saying that the countervailing evidence had not been produced. Certainly sufficient material had been gathered, read, analysed and assessed through the chain of command to convince Brigadier Silverstone, and Rear Admirals Smith and Ritchie that the initial report was wrong.

6.120 Second, if it were true that he remained unconvinced by the advice provided to him, the Committee does not understand why Admiral Barrie did nothing further to attain certainty about the incident in his own mind. To put these points differently, the Committee does not understand the basis upon which Admiral Barrie chose not to take the advice provided to him by his senior officers.

6.121 When asked by the Committee if he had ever previously given advice to a Minister which contradicted that passed to him through the chain of command, the CDF replied:

88 *Transcript of Evidence*, CMI 375.

89 *Transcript of Evidence*, CMI 375. Consistent with this also is Rear Admiral Smith’s recollection that Rear Admiral Ritchie had confirmed with him that he had relayed the conclusion reached by the chain of command on this issue to CDF. *Transcript of Evidence*, CMI 585.

90 *Transcript of Evidence*, CMI 749.

91 *Transcript of Evidence*, CMI 749.

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

Yes. I always try to provide the best quality advice to Government, based on my own assessment of advice I have been given.⁹³

6.122 However, it seems to the Committee that Admiral Barrie did not make an *assessment* of the advice, so much as make a *decision* to stick with the original verbal report from Commander Banks to Brigadier Silverstone. He certainly had access to no material or information that was unavailable to his senior officers, and on the basis of which he might justify reaching a different conclusion.

6.123 In relation to this point, Admiral Barrie told the Committee that by October 11, he had been apprised of ‘no new fact or piece of information which would satisfy [him] that the initial report was wrong’.⁹⁴ He implied that Rear Admiral Ritchie merely alerted him to the fact that ‘some’ were doubting that the incident had occurred, but that he had not provided him with any reason for accepting that doubt.⁹⁵

6.124 Even if that is true, which in view of Rear Admiral Ritchie’s testimony seems unlikely, the Committee notes that the CDF did not then proceed to take further action. It is true that he checked that relevant witness statements had been collected, and was advised that they were being held in Perth.⁹⁶ However, he did not send for that material or direct anyone to brief him further on the matter.⁹⁷

6.125 Given the controversy surrounding the issue, the ‘testy’ ministerial conversation about photos, the reports coming to him from senior officers, and Rear Admiral Ritchie’s long conversation with him about the lack of evidence for ‘children overboard’, the Committee regards it as a significant failure on the part of Admiral Barrie not to have attended more diligently to settling the matter when all the relevant material had been assembled as per his instruction.

6.126 Admiral Barrie himself said to the Committee that he regretted not giving to Rear Admiral Ritchie, during their 11 October conversation, a direction ‘to get to the bottom of the issue and make a positive determination one way or the other’⁹⁸ instead of ‘leaving it loose and hanging and waiting for him to come back to me’.⁹⁹

6.127 The problem is that while the CDF may have believed that, in their 11 October conversation, he had given Rear Admiral Ritchie an opportunity to come back at him with a ‘repechage’ of evidence, the latter’s belief was that the matter was settled, and that there was no new task to be pursued arising from their conversation. He was confident, he said, that he had given clear and sufficient advice, and that

93 Answers to Questions on Notice, Department of Defence, Question W9.

94 *Transcript of Evidence*, CMI 791.

95 *Transcript of Evidence*, CMI 791.

96 *Transcript of Evidence*, CMI 742.

97 *Transcript of Evidence*, CMI 761.

98 *Transcript of Evidence*, CMI 757.

99 *Transcript of Evidence*, CMI 756.

Admiral Barrie had accepted that no children were thrown overboard. Rear Admiral Ritchie told the Committee: ‘I came away from the conversation on the 11th convinced that the issue was a dead issue... So I would have had no cause to raise it again’.¹⁰⁰

6.128 On balance, the Committee thinks it reasonable to consider Rear Admiral Ritchie’s belief as justified. The task which CDF claims he directed him to do – namely, collect witness statements and evidence – was already in train. Rear Admiral Ritchie stated in his evidence to the Bryant inquiry that he advised CDF this was happening. By 11 October witness statements had been gathered and passed through the immediate chain of command, and Commander Banks had forwarded a detailed a chronology of events.

6.129 Under these circumstances Admiral Barrie’s direction to collect witness statements and other material was redundant. Moreover, Admiral Barrie himself admits he did not give any specific instructions for Rear Admiral Ritchie to do anything beyond the assembly of material. Given that, in COMAST’s mind, there was a settled conclusion that children had *not* been thrown overboard, and that this conclusion had been reached on the basis of an examination of the relevant material – written and visual – it would be perfectly reasonable for Rear Admiral Ritchie to assume that the assembly of the evidence in one place was simply a prudent and necessary administrative action, not one which would result in an immediate review, once again, of the evidence.

6.130 In summary, then, by 11 October, everyone in the relevant chain of command – Commander Banks, Brigadier Silverstone, Rear Admirals Smith and Ritchie – had concluded that no children had been thrown overboard from SIEV 4. The Committee does not understand how, given the loudly proclaimed significance of the chain of command as the authoritative vehicle for reports and advice and any corrections thereto, Admiral Barrie – having taken no action to assess the evidence himself or to make direct inquiries – nevertheless remained of the view that the initial reports should be upheld. This was very convenient for the Minister.

Nature of advice on photographs

6.131 On the evening of Wednesday 10 October, Admiral Barrie received telephone calls from both Rear Admiral Ritchie and Vice Admiral Shackleton, advising him that photographs that had just been shown on the *7:30 Report* were in fact of the sinking of SIEV 4 and did not connect to the alleged ‘children overboard’ incident.

6.132 Admiral Barrie advised the Committee that he spoke to the Minister the ‘following day’ and ‘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*’. Admiral Barrie went on to say that:

100 *Transcript of Evidence*, CMI 373.

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.¹⁰¹

6.133 According to Admiral Barrie's testimony to the Powell, Bryant and Senate Committee inquiries, however, the focus of this conversation with the Minister was on the 'confusion' about the photographs and the need in future to be sure that 'we were talking about the same documents'.¹⁰²

6.134 The Committee notes that whatever confusion and misunderstanding there may have been between Defence public affairs and ministerial advisers during the transfer of the photographs between their respective offices, there was absolute clarity within Defence about the fact of the photos being of the sinking, and not of the alleged 'children overboard' incident the previous day.

6.135 Given that Admiral Barrie had been forthrightly advised by COMAST and Chief of Navy that the photographs were wrong and that the Minister was on the public record stating an untruth, the Committee is of the view that Admiral Barrie should have been determined to ensure that the minister understood clearly that there was an error and that the public record needed correcting.

6.136 To have concluded his conversation with the minister with 'an agreement ... that never again would we discuss photographs without ensuring that we both had the same photographs in front of us'¹⁰³ was a useful thing. However, it was relatively trivial in comparison with the key issue, namely, that there had been a significant error made concerning an incident that was controversial and probably inflammatory, and that the public record had to be corrected. Admiral Barrie told the Committee that the 'conversation never went at any point to what was going to be done about it'.¹⁰⁴

6.137 The Committee has previously noted that on 14 October, after he had been advised by Admiral Barrie that the photographs were not evidence of children thrown overboard, the Minister said on the Sunday Sunrise program that:

I was happy to have the Department release a couple of photos, because there was a claim we were not telling the truth about what happened.¹⁰⁵

6.138 When the Committee asked Admiral Barrie whether he thought that the Sunday Sunrise statement was consistent with the Minister's agreement days earlier to 'drop the issue',¹⁰⁶ the CDF responded:

101 *Transcript of Evidence*, CMI 742.

102 Enclosure to Bryant Report, Statement by Admiral Barrie.

103 *Transcript of Evidence*, CMI 742.

104 *Transcript of Evidence*, CMI 752.

105 Transcript of interview, Sunday Sunrise, 14 October 2001.

In my view, there was no connection between the Minister's remarks on the Sunday Sunrise program and his statement that he would 'drop' the issue of the confusion over the photographs.¹⁰⁷

6.139 The Committee is of the view that, rather than 'no connection', there was no consistency between the Minister's agreement with CDF and his public statements on Sunday Sunrise.

Protection of the Minister's position

6.140 Regardless of what failure, inadequacy or offence might be discerned in relation to Admiral Barrie's advice about the incident and the photographs, the greater problem was Admiral Barrie's continued reluctance, as opportunities repeatedly presented themselves, to give to the matter the attention it required. This is especially so given the statements and advice about it coming to him, via the chain of command, through the top echelon of the ADF.

6.141 On November 12, Air Marshal Houston briefed Admiral Barrie about Vice Admiral Shackleton's comments to the press about the nature of the original advice to the Minister, and reported to him that 'on the previous day he [Houston] had advised Minister Reith that...children had not been thrown overboard'.¹⁰⁸

6.142 Admiral Barrie told the Committee that:

As a result of what Air Marshal Houston told me and my doubts about what had in fact occurred, I decided to commission an inquiry to establish the facts and see if any corrective action was needed.¹⁰⁹

6.143 The Committee is puzzled as to why Admiral Barrie commissioned a further inquiry at this stage. He did not first speak to Air Marshal Houston about 'the basis of his advice to the Minister',¹¹⁰ and he had, on his own account, barely a month earlier directed the taking of evidence that he knew had resulted in key documentary material being gathered and assembled in Perth, and which was available to him at any time he might ask for it.

6.144 On 17 December, Major General Powell presented his report to Admiral Barrie, and briefed him on his key findings – notably that no children had been thrown overboard from SIEV 4. This considered report and its conclusions, based on substantial evidence, and including numerous statements, eyewitness accounts, signals

106 According to Rear Admiral Ritchie, CDF told him of this 'agreement' by the Minister on 11 October. Enclosure 1 to Powell Report, Statement by Rear Admiral Ritchie.

107 Answers to Questions on Notice, Department of Defence, Question W6.

108 *Transcript of Evidence*, CMI 743.

109 *Transcript of Evidence*, CMI 743.

110 *Transcript of Evidence*, CMI 743.

and logs, was still not enough it seems for Admiral Barrie to change his advice to the minister.

6.145 The Committee is surprised that the CDF, as the government's principal military adviser, apparently did not even foreshadow with the minister's office the potential difficulties that the Powell Report might bring once its findings were made public. Moreover, he sought to defer any action on the basis of the Report, making the judgment that:

[B]efore analysing the evidence and dealing with his [Powell's] recommendations I would await the Bryant report. This report would also be covering many of the issues, and was expected by late December. I thought the most efficient and reliable way to get to the bottom of things was to have the benefit of both reports and the entirety of the evidence upon which they were based.¹¹¹

6.146 Again, the Committee is struck by this judgement which seems to be entirely at odds with the CDF's stated view that he alone asserts the right and responsibility to make the call in relation to Defence operational matters. While the full complement of controversy certainly embraced the civilian as well as the military arms of the ADO, Admiral Barrie had consistently stuck to a view which was grounded in, and informed by, strictly operational considerations – namely, Commander Banks's original, in situ, verbal report as recorded by Brigadier Silverstone.

6.147 On 24 January 2002, the Bryant Report was received by the Defence Department Secretary, but it seems Admiral Barrie was not alerted to its arrival before he departed on leave on 27 January. Admiral Barrie returned to Australia on 19 February and appeared before Senate Estimates on 20 February 2002.

6.148 During the Estimates hearings, Admiral Barrie maintained that he was never 'persuaded myself that there was compelling evidence that the initial report of the commanding officer was wrong. It was my view that the photographs were simply part of the evidentiary material. The really important aspects of this are witness statements and perceptions, and that initial report, so far as I was concerned, ought to stand. I never sought to recant that advice which I originally gave to the minister'.¹¹²

6.149 The Committee notes that the Secretary of the Department of Prime Minister and Cabinet, Mr Max Moore-Wilton, maintained similarly during the Estimates hearings that he also was not persuaded that the absence of evidentiary material by itself 'proved' that the incident had not occurred. He said: 'I am not aware that children have not been thrown overboard. I do not think anyone has yet established

111 *Transcript of Evidence*, CMI 743.

112 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Committee, 20 February 2002, p.73.

whether children have been thrown overboard or not. What they have established is that there is no documentary evidence'.¹¹³

6.150 During the Estimates hearings, however, the nature of the different advice provided to the Minister by Admiral Barrie and Air Marshal Houston was made public for the first time.

6.151 Also during those hearings, Admiral Barrie's attention was finally drawn to the chronology from CO *Adelaide* dated 10 October 2001 which did not report a child being thrown overboard. This was the first time Admiral Barrie had read the signal, which had been included in the Powell Report Enclosures, and which was a key written message that had led Defence personnel to repudiate the original 'children overboard' report.

6.152 Admiral Barrie stated to the Committee that:

When I left the Senate legislation committee hearings, I was acutely conscious that I would have to determine absolutely one way or another within a short space of time whether or not children were thrown over the side. Over the weekend, I read through the material available to me to see whether it was sufficient to answer all my queries about what had happened. ... As the material did not satisfactorily resolve all the issues in my mind on the evening of Sunday, 24 February 2002 I arranged through Maritime Command in Sydney for the ship to telephone me. I then spoke to Commander Banks. We discussed the events of 7 October 2001, and he informed me that he was sure that no child had been thrown overboard. I questioned him closely to test the basis for his assurance. On the basis of this conversation, which put to rest the concerns that I had about the written material, I was convinced that, despite the initial reports to the contrary, in fact no child had been thrown into the water from SIEV4 on 7 October 2001.¹¹⁴

6.153 The item that galvanised Admiral Barrie's attention during Estimates in February 2002 – the 10 October 2001 signal from Commander Banks – had in fact been brought to his office by Brigadier Bornholt on 11 October 2001. The Brigadier had explained to the CDF's Chief of Staff that the signal, which chronicled the events of 7 October 'indicated that there were no women or children in the water'.¹¹⁵ The significance of Brigadier Bornholt's delivery of the signal was apparently not appreciated by the Chief of Staff.¹¹⁶

113 *Transcript of Evidence*, Estimates, Senate Finance and Public Administration Committee, 18 February 2002, p.37.

114 *Transcript of Evidence*, CMI 745.

115 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Committee, 20 February 2002, p.124.

116 In evidence, Admiral Barrie indicated that, from his Chief of Staff's perspective, Brigadier Bornholt did not draw his attention specifically to the significance of the signal. *Transcript of Evidence*, CMI 754.

6.154 It is regrettable that Admiral Barrie was unaware of the contents of the October 10 signal. While the Committee accepts that Admiral Barrie was indeed ignorant of the signal up until 20 February 2002, the fact of his ignorance does not exhaust the account. No doubt a copy of the signal was also with the other material in Perth. It was this same signal that prompted Air Marshal Houston to take the action he did on November 7 when, as Acting CDF, he advised the Minister that no children had been thrown overboard.

6.155 Finally, the Committee is also disturbed by the character of Admiral Barrie's own contributions to the Powell and Bryant inquiries. In his statements to both, Admiral Barrie does not indicate that he ever unequivocally informed the Minister for Defence either that the photographs were misrepresented or that there were serious doubts about the so-called 'children overboard' incident itself.

6.156 For example, in his statement to the Powell inquiry in relation to his advice about the photographs, Admiral Barrie wrote:

It seemed that it had become possible that material released by the Minister, was not the same material I had been advised had been provided to the Minister's office. I could not say whether or not such was true. During this conversation the Minister and I agreed that in future we would need to ensure that we were speaking about the same material if we were to have another discussion about the release of material.¹¹⁷

6.157 His statement for the Bryant Report records that:

Admiral Barrie recalls that he had an informal discussion with someone, but couldn't recall with whom, about doubts concerning the children thrown overboard claim. He said the doubt didn't originate with the *Adelaide*, but there were doubts in headquarters ... Admiral Barrie did not inform the Minister that there was firm evidence to suggest that children were not thrown in the water because he was not aware there was such evidence. In discussion with the Minister, it had become apparent that we were talking about two different sets of photographs and we had a discussion about the future handling to make sure that this would not happen again.¹¹⁸

6.158 The Committee is satisfied that Admiral Barrie's sworn testimony to the Senate inquiry establishes that, in fact, the CDF did give more direct advice, at least about the incorrect attribution of the photographs, than is indicated by these earlier statements. However, the Committee is disturbed at the extent to which these earlier statements themselves appear to aim more at protecting the Minister's position than at conveying forthrightly just what advice the CDF provided to him. This apparently ongoing attempt to 'cover' for the Minister is concerning.

117 Enclosure 1 to Powell Report, Statement by Admiral Chris Barrie.

118 Enclosure to Bryant Report, Statement by Admiral Chris Barrie.

Conclusion

6.159 The Committee does acknowledge the enormous workload under which Admiral Barrie and his senior officers were labouring at the time of the ‘children overboard’ controversy. It acknowledges that, from a military and operational perspective, whether or not children were thrown overboard was an utterly unimportant issue.

6.160 However, the Committee cannot but contrast the approach and mindset of the CDF with that of some of his senior naval colleagues in the chain of command. When these colleagues heard doubts, they actively pursued further inquiries. When they were presented with evidentiary material, they acted in accordance with the evidence. When these colleagues made considered judgments, they promptly passed them up the chain of command, and reported back down it. When they became aware of errors, they quickly advised the relevant parties and pressed for their correction.

6.161 The contrast is illustrated, for example, by the following evidence from Rear Admiral Smith concerning his decision to bypass the chain of command and speak directly to Commander Banks about the ‘children overboard’ claims - an action not lightly taken:

I instigated that action because I was becoming concerned at the different reports that I was getting. I was aware of the different points of view of Commander Banks and Brigadier Silverstone. I was acutely aware of the sensitivity of this particular subject and the visibility it was getting within the media. I just wanted to cut to the chase and find out what actually happened.¹¹⁹

6.162 Although Admiral Barrie clearly had a broader range of responsibilities and was working under correspondingly greater pressure than was Rear Admiral Smith, the Committee notes that Admiral Barrie did nevertheless have a number of conversations with Minister Reith on this matter over the period. It is not clear to the Committee that it would have taken more time and effort for Admiral Barrie to pass on the advice he received from his chain of command in a direct and forthright manner, than it took for him to do so equivocally.

Air Vice Marshal Titheridge

6.163 Like Admiral Barrie, Air Vice Marshal Titheridge’s workload during the relevant period was dominated, he said, by Operation Slipper and the war on terrorism.¹²⁰

6.164 He was nevertheless the chief representative of the Defence forces on the People Smuggling Taskforce, although he noted that by early October ‘the need to focus on planning for the Australian Defence Force’s contribution to the war on

119 *Transcript of Evidence*, CMI 592.

120 *Transcript of Evidence*, CMI 700.

terrorism ... curtailed my personal attendance at the unauthorised arrival management interdepartmental committee and I was increasingly represented by my senior staff'.¹²¹

6.165 He was also the channel through which the initial verbal report that children had been thrown overboard was conveyed from Brigadier Silverstone to Ms Halton on 7 October 2001.

6.166 Air Vice Marshal Titheridge did not at any stage advise Ms Halton or the People Smuggling Taskforce either that there were serious questions about whether children had in fact been thrown overboard or that the photographs released as evidence of that event were actually taken on a different day. He did not do so, he said, because it was not until November 25 that he saw a newspaper article which caused him to doubt the initial report.¹²²

6.167 The Committee notes, however, that Air Vice Marshal Titheridge's evidence about the date on which problems with the 'children overboard' story first came to his attention is in tension with the evidence of a number of other witnesses.

6.168 Rear Admiral Ritchie, for example, told Ms Bryant that he thought that on 11 October he would have informed Air Vice Marshal Titheridge 'in accordance with normal practice' that he had been told there was no evidence supporting the original report.¹²³ Although Rear Admiral Ritchie said that he had no record of informing AVM Titheridge, his assumption that he did is supported by evidence taken from Rear Admiral Smith.

6.169 Rear Admiral Smith told the Committee that he had rung Air Vice Marshal Titheridge, according to his phone records, at 11.58am on 17 October 2001. He said:

I advised him of what was occurring with SIEV5 and then we had a general conversation about the issue of SIEV4, photographs and children overboard et cetera. I made the point to him: did he know that none of it was true? He advised me that yes, he knew. So that again satisfied me that the chain of command were aware that there was no substance to those allegations.¹²⁴

6.170 Rear Admiral Smith went on to say that he had subsequently advised Admiral Ritchie that he had had that conversation with the Air Vice Marshal. He confirmed that he was 'in absolutely no doubt' that the Head of Strategic Command knew that no children had been thrown overboard.¹²⁵

121 *Transcript of Evidence*, CMI 684.

122 *Transcript of Evidence*, CMI 684-685.

123 Enclosure to Bryant Report, Statement by Rear Admiral Chris Ritchie; see also his statement, Enclosure 1 to Powell Report.

124 *Transcript of Evidence*, CMI 586.

125 *Transcript of Evidence*, CMI 586.

6.171 Within Air Vice Marshal Titheridge's own Strategic Command Division, there was also knowledge that, at the least, there were doubts about the availability of evidence to support the report and that the photographs had been misrepresented. The chronology with the notorious 'footnote' that was provided to PM & C on 10 October, for example, was compiled in AVM Titheridge's Division.

6.172 Similarly, the Director Joint Operations, Strategic Command, Group Captain Steven Walker, advised the Committee that he knew from the time of their first publication that the photographs were 'wrong'. He said that he had had a number of conversations with his contact in PACC about that issue, and that he 'presumed' that he had discussed it with the Air Vice Marshal, although he had no specific recollection of doing so. The reason, he explained, for his 'presumption' was that:

We have regular meetings and briefings to share information within headquarters. I presume it would have been covered, because it was a topical issue of concern at the time.¹²⁶

6.173 Finally, Air Marshal Houston told a Senate Estimates committee that, after he had advised the Minister on 7 November that there was no evidence to support the report that children had been thrown overboard from SIEV 4, he 'back-briefed' Air Vice Marshal Titheridge about the conversation.¹²⁷

6.174 The Committee questioned Air Vice Marshal Titheridge at some length about the discrepancies between the recollections of other officers and his own. The Air Vice Marshal reiterated that he had no memory of any doubts being raised in relation to the 'children overboard' story until later in November.¹²⁸ He claimed:

I looked back at that period and I looked at my notes for that period and just about all the references, apart from subsequent SIEVs, are on 'war against terror' and other issues. I think I said to you that I did not focus on it; it was just not an issue for me until late November.¹²⁹

6.175 The Committee notes, however, that according to evidence from Ms Halton and Ms Edwards, two specific requests were made of Air Vice Marshal Titheridge in the days following the dissemination of the report that he confirm the initial advice.

6.176 The first request was made at the PST meeting on 9 October 2001 at which he was the Defence representative. Ms Halton's statement to the Bryant Report, which she confirmed in evidence to the Committee, records that she 'told the Defence rep ...

126 *Transcript of Evidence*, CMI 1701.

127 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Committee, 20 February 2002, p.118.

128 *Transcript of Evidence*, CMI 718, 723, 732, 733.

129 *Transcript of Evidence*, CMI 723.

that they had better be certain about the veracity of the initial reports and they should do some checking'.¹³⁰

6.177 Ms Edwards also noted that there was discussion at that meeting about the adequacy of 'internal information flows ... particularly in response to the lack of detail being sent to DFAT for inclusion in their situation reports (in particular Sitreps 59 and 60)'.¹³¹ As noted earlier, Ms Edwards told the Committee that it was concern about the lack of mention of children overboard in those DFAT Sitreps that had led her and Ms Halton to 'follow up to obtain further details of the incident'.¹³²

6.178 The notes of the PST meeting for 9 October record, under the heading 'Information processes', that:

- in future, Defence will provide PM & C and DFAT with three times daily bulletins
- AVM Titheridge will continue to ring Jane with updates to enable MO [Minister's Office] media people to be briefed
- Noted that the normal link was the field commander through CDF who would brief Minister Reith.¹³³

6.179 Ms Edwards noted in evidence that:

As a result of this conversation Defence provided written updates two or three times a day ... for the remainder of the time the potential unauthorised arrivals remained on the *Adelaide*.¹³⁴

6.180 As has previously been established by the Committee, however, none of those updates contained information that confirmed the initial report that children had been thrown overboard.

6.181 The second request for confirmation of the initial report was made by Ms Edwards. She informed the Committee that once she had received the Strategic Command Chronology on 10 October, she recalled attempting to contact Air Vice Marshal Titheridge 'and initially speaking to one or more officers in his absence'. She then, she said, spoke to the Air Vice Marshal 'personally, seeking clarifications on the material and suggesting that a more definitive answer be sought through the chain of command around whether the events occurred'.¹³⁵

130 Enclosure to Bryant Report, Statement by Ms Jane Halton; *Transcript of Evidence*, CMI 939.

131 Answers to Questions on Notice, Ms Katrina Edwards, dated 12 June 2002, Question 7.

132 *Transcript of Evidence*, CMI 1705.

133 PST Notes, High Level Group - 9 October 2001.

134 Answers to Questions on Notice, Ms Katrina Edwards, dated 12 June 2002, Question 7.

135 Answers to Questions on Notice, Ms Katrina Edwards, dated 12 June 2002, Question 8.

6.182 Ms Edwards said, however, that she did not recall ‘any written material being provided to PM & C in relation to the events of the morning of October 7 other than the chronology’.¹³⁶

Conclusion

6.183 In relation to the role played by Air Vice Marshal Titheridge in the failure to correct the ‘children overboard’ story, the Committee makes two points.

6.184 First, it is clear that he himself did not appreciate the significance of the issue. The Committee acknowledges that Air Vice Marshal Titheridge’s primary focus during this period was on preparations for the war in Afghanistan. Nevertheless, he was also the Australian Defence Force’s senior representative on a high level interdepartmental taskforce which was coordinating activities as a result of which the lives and safety of hundreds of individuals were at stake.

6.185 The Committee finds it difficult to believe, in the face of the testimony of Rear Admirals Ritchie and Smith, Air Marshal Houston and Group Captain Walker, that Air Vice Marshal Titheridge was not informed of the lack of evidence for the initial report that children had been thrown overboard. His failure to register and pass on that information to his colleagues on the PST is rendered particularly serious by the fact that he was directly questioned on two occasions about the veracity of the report by the Chair and another member of that high level interdepartmental committee.

6.186 Second, the Committee notes that no emphasis seems to have been placed on providing Air Vice Marshal Titheridge with the corrected information in order that he might effectively discharge his responsibilities as Defence’s representative on the PST. For example, there is no record of Admiral Barrie ensuring that the Air Vice Marshal was in possession of the correct information so that he could communicate it in the appropriate whole-of-government forum. Defence’s focus seems to have been solely on its ‘vertical’ responsibility to the Minister, rather than on its ‘horizontal’ responsibilities to the wider bureaucracy and, thereby, to the rest of government.

6.187 This focus seems relevant also to an explanation of the role played by the Secretary of the Department of Defence, Dr Allan Hawke.

Dr Allan Hawke

6.188 Dr Hawke became directly involved in what he called the children overboard ‘imbroglio’¹³⁷ on 11 October 2001, in the context of attempts to correct the misrepresentation of photographs purporting to support the view that children had been thrown overboard. On that day, Dr Hawke was advised of the misrepresentation by the Head of Defence’s Public Affairs and Corporate Communication and of the

136 Answers to Questions on Notice, Ms Katrina Edwards, dated 12 June 2002, Question 8.

137 *Transcript of Evidence*, CMI 3.

fact that, as described in Chapter 5, advice to that effect had been passed by phone and email to Mr Hampton and Mr Scrafton in the Minister's office.

6.189 On 8 November, the then Acting CDF, Air Marshal Houston, advised Dr Hawke that he had told Minister Reith that there was nothing in the evidence he had seen to show that children had been thrown overboard.¹³⁸

6.190 On the same day, following the Prime Minister's answers to questions about the photographs at a Press Club luncheon, which included a reference to an ONA report, Dr Hawke asked for a copy of that report and any other Defence intelligence material indicating that children had been thrown overboard. There was none – a fact that Dr Hawke confirmed the following morning with the relevant senior Defence official.¹³⁹

6.191 Later in the afternoon of 8 November, Dr Hawke became aware of comments made by the Chief of Navy, Vice Admiral Shackleton, to the effect that Defence had never advised the Minister that children had been thrown overboard. Dr Hawke later faxed to the head of PM & C, Mr Max Moore-Wilton, a copy of the 'clarifying statement' by Admiral Shackleton about the advice given to the minister.¹⁴⁰

6.192 Dr Hawke told the Committee that he had asked himself whether he 'could have or should have taken a more active involvement' in the provision of advice:

I certainly could have. Whether I should have remains an open question in my mind, with one clear exception. The clear exception where I might well have done more is my involvement in the matter of the photographs. In retrospect, I should have discussed that issue directly with and provided clear written advice to Minister Reith.¹⁴¹

6.193 Responding the question, why did he not write to Minister Reith, Dr Hawke said that:

At the time this was not a big issue. It subsequently became so... It is easy to say that there were a lot of other things going on and that I was attending to those, and that this issue was not very large on the radar screen at the time.¹⁴²

6.194 Similar comments were also made by the CDF and others, but the Committee is equivocal about such an assessment. The matter seemed to be on the 'radar screen' of the media. For example:

138 *Transcript of Evidence*, CMI 4.

139 *Transcript of Evidence*, CMI 4.

140 *Transcript of Evidence*, CMI 4.

141 *Transcript of Evidence*, CMI 4.

142 *Transcript of Evidence*, CMI 54.

- it is incontrovertible that there was significant media interest in the events at the time – the photographs were released in response to emphatic calls from the press for ‘proof’ of ‘children overboard’;
- on 12 October, the *Sydney Morning Herald (SMH)* reported statements by Deputy Prime Minister Anderson that ‘from time to time’ asylum seekers threw children into the water in order to compel the navy to help them. The *SMH* also reported that the Immigration Minister could not verify such claims;
- on 7 November an article in *The Australian* reported comments from Christmas Island residents claiming that HMAS *Adelaide* crew members had said that children had not been thrown overboard.¹⁴³ This article was of sufficient moment to prompt the Minister to seek an urgent conversation with the Acting CDF;¹⁴⁴
- Vice Admiral Shackleton’s comments of 8 November were headline news, and Dr Hawke had been associated with the release of the subsequent ‘clarifying statement’.

6.195 Even setting aside the press and television interest, the Committee notes that on 9 November 2001, the *Sydney Morning Herald* wrote to Dr Hawke, Admiral Barrie, Minister Reith and Minister Ruddock and others in the following terms:

Today the Sydney Morning Herald is putting a series of questions to officials, defence personnel, ministers and ministerial staff on asylum seeker issues, including the circumstances surrounding claims that children were thrown off the asylum seeker vessel intercepted in the vicinity of Ashmore Reef last month.

Your response will assist tomorrow’s news coverage and analysis.

In the event responses are not received, consideration will be given to publishing ‘The questions they would not answer’ and who refused to answer them.¹⁴⁵

6.196 The questions sent to Dr Hawke included one asking whether he was aware ‘of an official cover-up of the circumstances surrounding the incidents of October 7-8, notably in relation to the false claim that children were thrown overboard?’¹⁴⁶

6.197 In response to this letter, Defence’s Public Affairs and Corporate Communication sent a fax, which said:

I am not in a position to release the information requested. As you would be aware this is a whole of Government issue. In view of the foregoing, you may wish to direct your inquiries to the Minister for Defence.¹⁴⁷

143 *Transcript of Evidence*, CMI 1058.

144 *Transcript of Evidence*, CMI 1059.

145 Attachment to *Submission No. 13*.

146 Attachment to *Submission No. 13*.

6.198 By this stage it was presumably clear to Dr Hawke that the Minister had no intention of retracting his claims about the photographs, and that he had not publicly responded to or acknowledged the advice of Air Marshal Houston two days earlier. Even so, and with the media actively seeking the truth about this issue, Dr Hawke did not put advice in writing or express his concern to the Minister about either matter.

6.199 The Committee notes, then, that there are potentially three grounds for criticising Dr Hawke's actions in this period. They are that he:

- did not put advice in writing to the Minister in relation to the photographs;
- did not pursue the Minister in relation to the advice provided by Air Marshal Houston; and
- did not communicate any of this advice to PM & C or the PST.

6.200 On the first matter, Dr Hawke has acknowledged the deficiency of his actions and told the Committee that he had offered his resignation to the incoming Minister for Defence, Senator Hill, on the grounds that he felt 'in retrospect' that he should have put that advice in writing.¹⁴⁸

6.201 On the second matter, Dr Hawke expressed the view that it was an 'operational' matter, and thus the province of the CDF. Moreover, at the time that Air Marshal Houston gave his advice to Mr Reith, Dr Hawke said that he 'was aware that CDF (Admiral Barrie) held to his original view, so it was a matter within the Australian Defence Force'.¹⁴⁹

6.202 The Committee discusses Dr Hawke's 'strict' view of the diarchy between himself, as civilian head of Defence, and CDF, as military and operational head of Defence, in the next chapter. It notes that there is at least some argument to be made that, in an operation essentially under civilian whole-of-government control, the Secretary of Defence should have played a larger role in ensuring that the Minister did not promulgate misleading information.

6.203 Finally, the question of Dr Hawke's responsibility for providing clarifying or corrective advice to the whole-of-government taskforce dealing with these issues was raised explicitly in evidence to the Committee. The question invites reflection on how accountability is to be properly effected in whole-of-government operations.

6.204 Ms Halton, for example, wondered why Dr Hawke, who was a relatively close colleague of hers, did not pick up the phone and talk to her about the problems he had come to know about. She said:

I had a small number of calls with people in Defence through this period. I had a conversation with Ms McKenry; I had a conversation with Dr Hawke.

147 Attachment to *Submission No. 13*.

148 *Transcript of Evidence*, CMI 49, 53.

149 *Transcript of Evidence*, CMI 19.

Some of those people have been known to me for very many years. The notion is that it was not possible for one of those people, or any of those other people for that matter—bureaucracies are a big place and a small place and inevitably there are people that you have worked with in various environments in all sorts of agencies—to pick up the phone—on a couple of occasions I was explicitly asking about things—and say, ‘You just need to know that this looks a bit dodgy’ or ‘We are a bit concerned.’ As I said, not only were we not told; it was never alluded to—there was never the slightest suggestion. I am probably as perplexed as you as to why, given some of the personal connections with people in that agency, that did not happen.¹⁵⁰

6.205 Professor Patrick Weller, an academic expert on public administration, elaborated on the issue in the following terms:

If a secretary ... is advising his minister about an issue and he knows that the Prime Minister is also on the public record about that incident, but he feels that the minister is not passing on the information to the Prime Minister, does that secretary not have an obligation to make sure that at least the Prime Minister and his department are aware that there are facts wrong and that there is severe doubt about what is happening?

In those circumstances I would have thought the appropriate role for the secretary of such a department would be to ring the secretary of the Prime Minister’s department and say, ‘We’ve got problems. We have severe doubts. The Prime Minister has been on the record that this happened. He did say “if the reports are correct”. The reports are not correct.’ It seems to me that the system again has failed in that case. If this stayed within the Department of Defence, the minister may or may not have been briefed, may not have appreciated the brief or may have just decided that he did not want to pass on the brief, but it seems to me that the department still has a responsibility to the government as a whole and particularly to the Prime Minister to make sure that the Prime Minister’s department knows that something is wrong or there is a correction coming through about what has been said in those circumstances. In those senses I would be critical of some of the advice that has been given up and whether or not the system worked.¹⁵¹

6.206 Dr Hawke responded to the comments of Ms Halton and Professor Weller in a letter to the Committee.¹⁵² The essence of the response was that CDF was responsible for directing Defence’s involvement in border protection and for reporting to the government on these matters. The CDF had, until 24 February 2002, held to the position that he was ‘yet to be convinced that the original report that children had been

150 *Transcript of Evidence*, CMI 1036-1037.

151 *Transcript of Evidence*, CMI 1232.

152 Letter from Dr Hawke to Senator the Hon. Peter Cook, dated 3 June 2002.

thrown overboard was incorrect, and so advised the Minister for Defence'.¹⁵³ Dr Hawke stated:

For my part, I believe it would have been quite wrong for me to have cut across the considered position of the CDF on the initial allegations by contradicting it before the Minister for Defence or, more especially, anyone outside of Defence.¹⁵⁴

6.207 Dr Hawke concluded the letter by referring to the Ministerial Directive that:

made it absolutely clear that my actions must not be inconsistent with 'the CDF's role as principal military adviser and his statutory responsibilities and authority as commander of the Defence Force'.¹⁵⁵

6.208 The Committee notes that Dr Hawke's letter, beyond noting that the Minister was advised about the misrepresentation of the photographs on 11 October, does not go to the question of the responsibility of either himself or CDF, through Air Vice Marshal Titheridge, to inform agencies or individuals outside Defence of that information.

6.209 Clearly an issue that emerges from this affair is the question of the relative significance of 'vertical' as opposed to 'horizontal' lines of accountability for contemporary governance. The Committee discusses that broader issue in the next chapter.

153 Letter from Dr Hawke to Senator the Hon. Peter Cook, dated 3 June 2002.

154 Letter from Dr Hawke to Senator the Hon. Peter Cook, dated 3 June 2002.

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