

Introduction

1.1 On 30 August 2004 the Senate established the Select Committee on the Scafton Evidence to examine matters arising from public statements by Mr Mike Scafton on his conversations with the Prime Minister on 7 November 2001. The Committee was asked to inquire and report on the implications of these statements for the findings of the Select Committee on a Certain Maritime Incident, which investigated the 'children overboard' affair.

1.2 Mr Scafton, a ministerial adviser to Defence Minister Peter Reith at the time of the 'children overboard' affair, wrote a letter to *The Australian* newspaper on 16 August 2004. In this letter, Mr Scafton claimed that, on the night of 7 November 2004, he had told Prime Minister John Howard that claims of children thrown overboard by asylum seekers on the 'SIEV 4' were unsubstantiated. This is in direct conflict with the Prime Minister's repeated denials that anybody told him before the 2001 federal election that the 'children overboard' story may have been untrue.

1.3 The 'children overboard' affair has become a significant event in recent Australian political history. This is not so much because of the SIEV 4 incident itself, but more because of the nature of the issues it raised and the way that many of those issues have remained unresolved and a subject of debate now for over three years.

1.4 On 7 October 2001, several government ministers received advice that asylum seekers aboard SIEV 4 had thrown their children in the sea in an attempt to thwart efforts to return the boat to Indonesia. The Minister for Immigration, followed closely by the Prime Minister and Minister for Defence, promptly publicised this story. They suggested that people who threw their children overboard in such a manner were not genuine refugees or desirable immigrants. When doubts were raised about the story's veracity early in the piece, the Minister for Defence released photographs of children in the water as evidence that the incident had taken place. Public interest moved on to other issues, and the matter dropped.

1.5 In the closing week of the 2001 election campaign, doubts about the 'children overboard' story surfaced again in the media. Yet the Prime Minister and senior ministers still contended that their 'children overboard' claims were based on advice, and that the original advice had never been retracted. They released a video of the SIEV 4 incident, albeit one that was widely seen as inconclusive. At a Press Club lunch on 8 November 2001, the Prime Minister released part of a classified Office of National Assessments (ONA) report prepared on 9 October, which stated that children had been thrown overboard from the SIEV 4. He used this to justify his refusal to retract his original claim that children had been thrown overboard. At no stage did he admit that he was aware of problems with both the original 'children overboard' advice and the evidence used to support that advice. The public record went uncorrected until after the 2001 election.

1.6 In 2002, the Senate established the Select Committee on a Certain Maritime Incident to examine issues surrounding the 'children overboard' incident. That Committee's majority report found conclusively that no children were thrown overboard from the SIEV 4.¹ It also found that then Defence Minister Peter Reith had deceived the Australian people in the 2001 election campaign on the state of evidence to support the 'children overboard' claim.² However, it was not able to make a finding on what the Prime Minister or other ministers knew, as Cabinet directed ministerial staff not to give evidence.³

1.7 As a ministerial staffer with Peter Reith, Mr Scafton had spoken directly with the Prime Minister about the 'children overboard' issue in a number of phone calls on 7 November 2001. The CMI Committee knew this, but was unable to question Mr Scafton on the content of those discussions. The Prime Minister told the Parliament that he and Mr Scafton had talked only about the video of the alleged incident.⁴ The CMI Committee was sceptical about this.⁵ Mr Scafton's willingness to come forward and speak publicly about what he told the Prime Minister on 7 November provided a new opportunity to clear up this and a number of other issues left unresolved by the CMI inquiry.

Conduct of inquiry

1.8 The Senate appointed the Select Committee on the Scafton Evidence on 30 August 2004. Its terms of reference were to inquire and report, by 24 November 2004, on:

matters arising from the public statements made by former ministerial staffer, Mr Mike Scafton, about the conversations he had with the Prime Minister, Mr Howard, about the 'children overboard' affair on 7 November 2001 and the implications of these statements for the findings of the Select Committee on a Certain Maritime Incident.

1.9 The Select Committee was re-established in the 41st Parliament by resolution of the Senate on 18 November 2004 with a new reporting date of 2 December 2004. On 1 December 2004 the Committee sought and received an extension of time to report to 9 December 2004.

1.10 The Committee did not advertise for submissions, as its inquiry was best served by inviting witnesses known to have direct knowledge of the matters under

1 Senate Select Committee on a Certain Maritime Incident, *Report*, (CMI Report), p.xxiii. Government Senators dissented from the findings of the CMI Committee report. Unless otherwise indicated, references to the CMI Committee report are to the majority report.

2 CMI Report, p.xxiv

3 CMI Report, p.xxiv

4 *House Hansard*, 19 February 2002, p.433 (Howard)

5 CMI Report, p.124

consideration. The Committee therefore did not receive submissions, but took as evidence statements from several witnesses. These are listed at Appendix 1.

1.11 The Committee held a public hearing on 1 September 2004 to hear Mr Scrafton's evidence. Also appearing on that day were Major General Roger Powell and Commander Michael Noonan, who had interviewed Mr Scrafton as part of the Defence internal inquiry into the 'children overboard' advice in December 2001. Details of this public hearing are at Appendix 2.

1.12 Having heard Mr Scrafton's evidence, the Committee identified four further witnesses whose evidence could clarify some of the issues raised by Mr Scrafton. On 2 September 2004 it wrote to the following people inviting them to attend a public hearing to be held after the federal election on 9 October 2004:

- Mr Miles Jordana, former Senior Adviser (International) to Prime Minister John Howard
- Mr Peter Hendy, former Chief of Staff to the Minister for Defence (Mr Peter Reith)
- Air Vice Marshal Alan Titheridge (retired), former Head Strategic Command, Department of Defence
- Mr Peter Reith, former Minister for Defence

1.13 None of these individuals accepted the Committee's invitation to appear before it. Although no longer employed under the MOPS Act, both Mr Jordana and Mr Hendy stated that they felt bound by the Cabinet directive of 2002 ordering ministerial staff not to give evidence. Air Vice Marshal Titheridge said that he had nothing further to add to the evidence he gave to the original CMI inquiry. Mr Reith did not respond. The relevant correspondence is found at Appendix 3.

1.14 The Committee notes that the Government's restrictions such as the Cabinet directive hampered its investigation and mean that, once again, key questions remain unanswered. The Committee did not subpoena these witnesses.

Report structure

1.15 This report is structured as follows:

Chapter 2 provides context for Mr Scrafton's new evidence by summarising the findings of the CMI inquiry on the origins, evidence and failure to correct the record of the 'children overboard' story.

Chapter 3 examines the key aspect of Mr Scrafton's evidence, namely his account of his conversations with the Prime Minister on 7 November 2001. It examines the implications of Mr Scrafton's evidence for the truthfulness of the Prime Minister's public statements on 8-9 November 2001 and in Parliament in February 2002. It then tests the credibility of Mr Scrafton's evidence, given that the Prime Minister has publicly denied his version of the conversations.

Chapter 4 sets out other areas where Mr Scrafton's evidence can fill in the gaps of the CMI inquiry. These include: his knowledge of the failure to retract the photos once it was known they were not of a 'children overboard' incident; and the failure of witness statements from the *Adelaide's* crew, which showed that no crew member had actually seen a child thrown overboard, to reach the Defence Minister's office in Canberra in a timely way.