

Chapter 2

The 'Children Overboard' Incident

2.1 To help place the significance of Mr Scafton's evidence in context, this chapter presents an abridged chronology of the 'children overboard' incident and the events that unfolded subsequently. It summarises the chain of events from when the incident was first reported to when doubts started to emerge in Defence about whether the incident occurred, through to the abortive attempts that were made to correct the record.

2.2 Apart from providing the historical background of the incident, the chapter explains the importance of the video, photographs and Office of National Assessments (ONA) report, all of which were used by the Howard Government as evidence of the veracity of the children overboard story. The next chapter discusses how Mr Scafton's evidence sheds new light on these three items of information, especially in terms of the efforts to correct the record.

2.3 The chapter also examines a number of the unresolved issues from the CMI inquiry, particularly as they relate to Mr Scafton's knowledge of events.

2.4 This chapter is based on the October 2002 report of the Select Committee on a Certain Maritime Incident. That report examined the matter in as much detail as was possible with the evidence available at the time. The Committee recommends the CMI report to persons interested in the detail of the children overboard story.

The incident

2.5 In the early afternoon of 6 October 2001, at about 100 nautical miles north of Christmas Island, the HMAS *Adelaide* intercepted 'SIEV 4' (Suspected Illegal Entry Vehicle 4), a vessel carrying 223 passengers and crew.

2.6 With a mission to 'deter and deny' the vessel and its human cargo entry to Australian waters, the *Adelaide* set about attempting to turn SIEV 4 back to Indonesia. Those on board SIEV 4 resisted these efforts to the point where a navy boarding party was inserted on the vessel and set it on a course towards Indonesian waters. The situation onboard SIEV 4 became increasingly tense, as a number of the asylum seekers grew agitated and, among other things, started sabotaging the vessel.

Sunday 7 October 2001 – man overboards and the video

2.7 At about daybreak on Sunday 7 October 2001, 14 male passengers jumped or were thrown overboard from SIEV 4. These 'man overboards' occurred while the navy boarding party was attempting to restore order on SIEV 4. At some stage, a man was

seen to be holding a girl over the side of SIEV 4, possibly threatening to throw the child into the sea or onto one of the *Adelaide's* seaboats that was alongside the SIEV, but eventually brought the child inboard. All 14 males were recovered and returned to SIEV 4. No children were retrieved from the water.¹

2.8 The *Adelaide* recorded the entire episode on its Electro Optical Tracking System (EOTS). This recording became known as the 'video' of the event.

2.9 It was during the tense tactical situation involving the man overboards that the commanding officer of the *Adelaide*, Commander Norman Banks, spoke by telephone to his immediate superior, Brigadier Mike Silverstone,² who was based in Darwin. While talking to his superior, Commander Banks was simultaneously receiving multiple reports from his crew on the *Adelaide* and the boarding party as the man overboards were occurring. Brigadier Silverstone described the charged and confused situation that Commander Banks was reporting on as a 'kaleidoscope of events'.³

2.10 This conversation was the origin of the erroneous children overboard report. Brigadier Silverstone believed Commander Banks said to him that 'a child was thrown over the side'.⁴ Commander Banks, on the other hand, maintained that he did not say this, telling the CMI Committee that 'no children were thrown overboard [from SIEV 4], no children were put in the water, no children were recovered from the water'.⁵

2.11 In any event, following his conversation with Commander Banks, Brigadier Silverstone telephoned a number of senior officers to update them on the situation with SIEV 4. Under a special arrangement to fast-track information on SIEV 4 to Canberra, he first called Air Vice Marshal Alan Titheridge, Head Strategic Command in Canberra, and told him that some of the passengers or SUNCs (Suspected Unlawful Non Citizens) had jumped into the sea and children had been thrown overboard. The CMI Committee noted that this special arrangement was not repeated for any other SIEV incident. Indeed, Brigadier Silverstone informed the CMI Committee that the requirement to brief Air Vice Marshall Titheridge early on 7 November was the only reason for him ringing Commander Banks in the middle of an operation, something that was contrary to his normal practice.⁶

1 CMI Report, pp.42-43. See also Enclosure 1, Witness Statements made by Defence personnel on HMAS *Adelaide* to *The Report of the Routine Inquiry into Operation Relax: The Interception and Boarding of SIEV IV by HMAS Adelaide*, Major General R.A. Powell, 14 December 2001 (ie. the 'Powell Report')

2 Commander Joint Taskforce 639

3 CMI Report, p.49

4 CMI Report, p.46

5 CMI Report, p.40

6 CMI Report, p.53

2.12 Following Brigadier Silverstone's report to Air Vice Marshal Titheridge, word that children had been thrown overboard travelled quickly through senior decision making circles in Canberra to government ministers and thence to the media. By 11.15 a.m. Mr Ruddock, the Minister for Immigration, had told the media of a report that passengers on SIEV 4 had thrown children overboard. He then relayed the same report to the Prime Minister and Mr Reith, the Minister for Defence, at 12.30 p.m.⁷

Monday 8 October 2001 – SIEV 4 sinks and the photographs

2.13 On Monday 8 October 2001, the day after the man overboards, SIEV 4 began to sink rapidly while under tow by the *Adelaide*. In what Commander Banks described as a 'controlled abandon ship', SIEV 4's passengers and crew entered the water.⁸ All 223 were rescued and embarked on the *Adelaide*. Commander Banks went on to characterise the successful rescue in the following way:

The performance of the ship's company of *Adelaide* to make this rescue happen was unparalleled, and can best be described by the simple superlative 'superb' ... A number of the ship's company acted selflessly and several – seven, to be exact – entered the water to assist and, on occasion, help rescue the unauthorised arrivals. The photographs of A.B. Whittle and Leading Seaman Cook Barker are indicative of that effort, but many more of team *Adelaide* contributed than just those seen in the two much-publicised images.⁹

2.14 As Commander Banks indicates, the crew of the *Adelaide* photographed the sinking of SIEV 4 and rescue of its passengers. In the days that followed the two 'much-publicised images' of sailors Whittle and Barker assisting unauthorised arrivals in the water became known – mistakenly as it turned out – as the 'photos' of the children overboard incident.

Public reporting of 'children overboard', doubts and attempts to correct the record

2.15 With the news of the incident emerging during the heat of a federal election campaign, the Government was soon under political and media pressure to produce evidence to substantiate the claim that children had been thrown overboard. At the same time, however, doubts about the veracity of the original report started to emerge within Defence. Amidst the public furore about the incident, senior Defence officers began to grow concerned at the absence of any written operational reports ('Opreps') from the *Adelaide* on the incident.

7 For the chain of communication that led to the public dissemination of the incident, see para 4.5 in CMI Report, pp.51-53

8 CMI Report, p 36

9 CMI Report, p 39

2.16 The timeline that follows summarises some of the key events that occurred from 9 October, including the release of the photographs, the video and the ONA report. It shows that the initial search for evidence to corroborate the story turned into attempts by some Defence officials to report to government ministers, ministerial advisers and other officials that there was no evidence to support the story. It also identifies the extent of Mr Scrafton's role during this period, based on the evidence before the CMI Committee. For a fuller account, interested persons are directed to the CMI report.¹⁰

9 October 2001

- Commander Banks instructed by senior officers to provide any information which would confirm or corroborate the report that a child had been thrown overboard from SIEV 4.
- Commander Banks calls on those of his crew with knowledge of the man overboard incidents on 7 October to make witness statements.
- Commander Banks, in an unauthorised interview, tells Channel 10 that he has sent photographs of the rescue to Defence headquarters.
- Defence sends the photographs to the Defence Minister's office but without the captions identifying them as related to 8 October attached.
- Department of Prime Minister and Cabinet (PM&C) requests Defence to check the veracity of the original children overboard report.
- ONA report 226/2001, mentioning that children had been thrown overboard, circulated to the Prime Minister and other ministers and senior officials.

10 October 2001

- Commander Banks tells Brigadier Silverstone that no one could yet confirm that a child had been recovered from the water.
- Rear Admiral Smith¹¹ passes on advice from Commander Banks to Rear Admiral Ritchie¹² that the Electro Optical film – ie. the video – shows no children being thrown overboard.
- Rear Admiral Ritchie advises Mr Scrafton, the senior military adviser in the Defence Minister's office, that the video does not show a child being thrown overboard, but that Defence still believes that evidence would show up to confirm the incident.

10 CMI Report, chapters 4-6.

11 Naval Component Commander

12 Commander Australian Theatre

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- Sixteen sworn witness statements are taken from members of the crew of the *Adelaide*. The EOTS operator states that he saw SUNCs jumping from SIEV 4 and that 'I believe one child also went overboard'. However, he also states that 'all persons who dove overboard did so by there [*sic*] own accord'. No other crew member's statement indicates that a child went or was thrown overboard, although a number mention that a teenage boy jumped of his own accord.
 - Commander Banks tells both Rear Admiral Smith and Brigadier Silverstone that no children had been thrown in the water.
 - Strategic Command supplies PM&C with a chronology on SIEV 4, containing a bullet point note that states: 'There is no indication that children were thrown overboard. It is possible that this did occur in conjunction with other SUNCs jumping overboard'.
 - The Defence Minister's media adviser, Mr Hampton, is advised by Defence that there are doubts about whether the photographs represent the incident of 7 October. He is also told that Strategic Command understands that neither children nor women were retrieved from the water.
 - Defence releases the photographs to the Minister's office which provides them immediately to the Press Gallery in Canberra. The photographs depict two women and a girl in the water.
 - Minister for Defence, Mr Reith, follows with a radio interview where he 'officially releases' the photographs and mentions the video, claiming they verify the children overboard story.
 - After the photographs appear on the ABC's *7.30 Report*, information about their incorrect attribution passes immediately through the military chain of command to Admiral Barrie, the Chief of the Defence Force (CDF).

11 October 2001

- Admiral Barrie contacts Mr Reith and tells him that he has been advised that the photographs do not represent the incident of 7 October.
- Brigadier Bornholt¹³ and Ms Jenny McKenry¹⁴ give the same advice to Mr Scrafton. Later, Ms McKenry sends Mr Scrafton the photographs with captions attached that show they are of the sinking.
- Commander Banks forwards copies of the witness statements by email to Rear Admiral Smith and Brigadier Silverstone, and the latter emails them to Rear Admiral Ritchie.

13 Military Adviser Public Affairs and Corporate Communication, Department of Defence

14 Head of Defence Public Affairs and Corporate Communication, Department of Defence

- Senior defence officers conclude that there is no evidence to support the claim that children had been thrown overboard. Rear Admiral Ritchie briefs Admiral Barrie to this effect.

17 October 2001

- Admiral Barrie informs Mr Reith that he 'had been told by the Chief of Navy [Vice Admiral Shackleton] and COMAST [Commander Australian Theatre, Rear Admiral Ritchie] that there were doubts about whether children had ever been thrown over the side of SIEV 4'. The admiral goes on to say, however, that he will stand by the original children overboard report until evidence is produced to show that it was wrong.

31 October 2001

- Brigadier Silverstone informs Mr Reith, during the Minister's visit to the Brigadier's headquarters in Darwin, that the video is unclear but does not show children in the water and that there are concerns that no children were thrown in the water. According to Brigadier Silverstone, Mr Reith's responds, 'Well, we better not see the video then'.

7 November 2001

- Acting CDF, Air Marshal Houston, in response to a media article raising doubts about the authenticity of the photographs portraying the children overboard event, tells Mr Reith that there is no evidence to suggest that women or children had been thrown into the water on 7 October, that the photographs depicted the rescue of 8 October and that the video was inconclusive in proving whether women or children had been thrown overboard due to its poor quality.
- The Prime Minister's adviser for international affairs, Mr Jordana, contacts both PM&C and ONA seeking evidence to support the children overboard report.
- In the evening, PM&C informs Mr Jordana of rumours from Defence that the photographs are not of the children overboard incident. Mr Jordana replies that the Prime Minister's office is discussing this issue with the Defence Minister's office and gives the impression that the 'matter is in hand'.
- The Director-General of ONA, Mr Jones, faxes ONA report 226/2001 to Mr Jordana with a covering note that says because the report was published on 9 October it could not have been the source for statements by ministers made on 7 and 8 October about the incident. The note also indicates that ONA had not been able to identify the source of the report, that it could have been based on

ministers' statements but may also have used Defence intelligence and that ONA is still searching for the source.¹⁵

- On instructions from Mr Reith, Mr Scrafton visits Maritime Command in Sydney to view the video and later during the evening, when the Prime Minister phones him, says that the video is inconclusive.

8 November 2001

- Vice Admiral Shackleton, Chief of Navy, comments on the incident to the media, saying 'Our advice [to the Government] was that there were people being threatened to be thrown in the water and I don't know what happened to the message after that'.
- After a call from Mr Hendy, chief of staff to Mr Reith, Vice Admiral Shackleton issues a 'clarifying statement' saying that his comments did not contradict the Minister and confirming that 'the minister was advised that Defence believed children had been thrown overboard'.
- The Prime Minister delivers a speech at a National Press Club lunch, during which he releases part of ONA report 226/2001 to support the Government's claims about the children overboard story.
- Early evening, in response to Mr Jordana's request the previous day, PM&C faxes reports from Defence and the Department of Foreign Affairs and Trade (DFAT), none of which mentions children thrown into the water.

Unanswered questions in the CMI evidence

2.17 As the above chronology shows, the CMI Committee was able to establish to a large extent what information was passed up the Defence chain of command and when it reached ministers' offices. Where that Committee encountered problems, however, was in determining what happened after this information reached the ministerial level and what decisions and action, if any, resulted from the receipt of information that cast doubt on the children overboard story. The Cabinet ban on ministerial staff appearing before the CMI Committee meant that at a number of crucial points ministerial offices became the 'black holes' in the CMI report.

2.18 In relation to Mr Scrafton, this problem was particularly evident in three areas:

15 On 12 November 2001 Mr Jones sent further advice to the Prime Minister's Office which confirmed that the only basis for report 226/2001 was ministerial statements and that ONA did 'not have independent information on the incident'.

- What he did with the advice from Brigadier Bornholt and Ms McKenry on 11 October about the photos and, moreover, what decisions were made in the Defence Minister's office about the misrepresentation of the photos;
- The nature and detail of his conversations with the Prime Minister on the evening of 7 November; and
- The nature of his involvement in, and knowledge of, the discussions between Mr Reith's office and the Prime Minister's office and the Prime Minister, which Mr Scafton alluded to in his interview for the Bryant inquiry but refused to disclose.

2.19 The CMI Committee went to some lengths to obtain evidence from Mr Scafton. The Committee Chair wrote to Mr Scafton on three separate occasions inviting him to appear before it.¹⁶ On each occasion, the reply came from ministerial offices rather than Mr Scafton himself. It was the Prime Minister's chief of staff, Mr Arthur Sinodinos, who replied to the first invitation. His letter stated that, in accordance with a decision of Cabinet, MOPS staffers would not appear before the Committee. On the second two occasions the Defence Minister, Senator Hill, responded on Mr Scafton's behalf. On both of these occasions the Defence Minister declined to allow Mr Scafton to appear, even to give evidence on events that Mr Scafton had been involved with as a Defence department official after leaving the Minister's office.

2.20 Denied the opportunity to take evidence from Mr Scafton, the CMI Committee had to rely on the record of his interview before the Bryant inquiry. Mr Scafton's evidence to Ms Bryant was that:

- he did not pass on the advice about the misrepresentation of the photos to Mr Reith;
- he was aware of some discussion within the office over issuing a retraction or correction about the photos;
- a 'political solution' had been arrived at 'not to raise' the issue publicly; and
- he was unsure if Mr Reith had been involved in these decisions.¹⁷

2.21 On the basis of those statements, the CMI inquiry criticised Mr Scafton for not taking it upon himself to ensure the Minister was informed of the advice that the photographs had been misrepresented and for failing to advise the Minister to retract the line that the photographs were evidence of the children overboard report.¹⁸

16 The letters were dated 5 April 2002, 17 April 2002 and 16 May 2002.

17 CMI Report, pp.115-116

18 CMI Report, p.117

2.22 The CMI Committee also noted Mr Scafton's statement that he had spoken to the Prime Minister twice on 7 November about the video and informed him that it was inconclusive. While pointing out that it had been significantly hampered in not being able to question Mr Scafton, the CMI Committee found it 'difficult to believe that it required two separate conversations for Mr Scafton to convey to the Prime Minister the information that the videotape was "inconclusive"'.¹⁹ The CMI report went on to say:

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.²⁰

2.23 The ability of this Committee to question Mr Scafton on not only his conversations with the Prime Minister but also his knowledge of discussions within Mr Reith's office and with other senior officers involved in the 'children overboard' affair, has provided an opportunity to re-examine a number of unanswered questions from the CMI report. In the next two chapters, the Committee discusses the extent to which Mr Scafton's evidence casts new light on those issues.

19 CMI Report, p.124

20 CMI Report, p.124

