

GOVERNMENT SENATORS' REPORT

1. On the evening of 7 November 2001 Mr. Mike Scrafton, who was at the time a ministerial adviser to the then Minister for Defence, Hon. Peter Reith MP, spoke by telephone with the Prime Minister on at least two occasions.¹ At the time of the conversations, the Prime Minister was at The Lodge in Canberra and Mr. Scrafton was at a restaurant in Sydney. On each occasion, the calls were initiated by the Prime Minister to Mr. Scrafton's mobile telephone. Mr. Scrafton does not suggest that he initiated any of the telephone calls.

2. November 7 was the Wednesday prior to the 2001 Federal election. It was also the eve of the day on which the Prime Minister was to address the National Press Club. Mr. Howard, who was engaged in the preparation of his address, was in the company of four of his senior advisors: Mr. Arthur Sinodinos, his Chief of Staff, Mr. Tony Nutt, his Principal Private Secretary, Mr. Tony O'Leary, his Press Secretary and Mr. Paul M'Clintock, the Secretary to Cabinet. Mrs Howard was also present. One of the issues which would probably arise at the National Press Club was the so-called "children overboard" affair. The background and development of that episode is summarised, in terms which Government Senators do not necessarily adopt but which highlight the key issues in the controversy, in Chapter 1 of the Majority Report of this Committee ("the Majority Report").

3. The core factual controversy in the "children overboard" affair was whether children had been thrown overboard from an illegal entry vessel, designated SIEV 4, by asylum seekers, during the course of apprehension and boarding by an Australian Navy vessel, HMAS *Adelaide* on 7 October 2001. Initial reports from the *Adelaide* that that was so had been publicly referred to by Ministers (including the Prime Minister) in the days immediately following. The episode was politically significant, particularly as it arose in the early days of an election campaign.

4. Over the following days and weeks, doubts arose within various parts of the Defence bureaucracy and the armed services about the accuracy of the original report (and thus the Prime Minister's and Ministers' statements), although the original report was never rescinded or countermanded by the Chief of the Defence Force, Admiral Barrie, who was the Government's principal adviser on such matters. The existence of such doubts, and questions about the veracity of still photographs initially advanced to support the accuracy of the initial report, had lately come to light, in particular by an item in *The Australian* newspaper on the morning of November 7 which reported that the photographs were not of the alleged children overboard incident (as they had been represented by Mr. Reith to have been), but of the subsequent sinking of SIEV 4, when its occupants (including children) were immersed.

1 The number of telephone conversations is a significant and controversial issue. Mr. Scrafton's evidence on this matter, and the objective evidence provided by telephone logs, is discussed at paras 31ff., in particular paras 38-41.

5. The principal purpose of Mr. Scafton's conversations with the Prime Minister was to inform him about the contents of a Navy video (sometimes called "the grainy video"), which had been taken from the bridge of the HMAS *Adelaide* during the course of the alleged incident. The video did not purport to record the entire incident, since it only showed activity on one side of SIEV 4. Nevertheless, it was the only contemporaneous photographic record of the incident.

6. Mr. Reith asked Mr. Scafton to view the video, which he did in Sydney on the afternoon of 7 November, and be prepared to tell the Prime Minister about it. Evidently Mr. Reith told Mr Howard that Mr Scafton had viewed the video. Mr. Scafton was expecting to hear from the Prime Minister that evening so he could describe the contents of the video to him. This was the only reason why the Prime Minister would be ringing Mr. Scafton.

7. In the circumstances described below, a controversy has developed about what Mr. Scafton told Mr. Howard during the course of those conversations. The core factual issue before this Committee is whether Mr. Scafton's assertions about that conversation, made on and subsequent to 16 August 2004, are credible or reliable.

8. On the day after his conversations with Mr. Scafton (i.e. 2 days before the election), the Prime Minister ordered the release of the video. Although the video, because it showed a view of only one side of SIEV 4, did not conclusively show that children had *not* been thrown overboard, the events depicted on the video did not provide any evidence to support the statement that children *had* been thrown overboard. On any view of Mr. Scafton's various versions of his conversations with him, the Prime Minister had been made aware of the fact that the video provided no support for the children overboard claims at the time he ordered its release.

9. On the Tuesday after the election (which the Government won), the Prime Minister instructed Mr. Max Moore-Wilton, the Secretary of the Department of Prime Minister and Cabinet, to arrange for an internal review of the incident, and to report. One of the terms of reference of the inquiry, recorded in the Prime Minister's letter to Mr. Moore-Wilton of 13 November 2001, was "to conduct a full examination of ... the nature of advice provided to Government ministers, and how it was transmitted." The inquiry was conducted by Ms. Jennifer Bryant, a senior officer of the Department of the Prime Minister and Cabinet; this became known as "the Bryant Inquiry".

10. Ms. Bryant conducted extensive interviews with persons involved in the "children overboard" incident, including Mr. Scafton. The interview with Mr. Scafton took place on 14 December 2001. A written record of interview was then prepared, which Mr. Scafton signed and which is dated 3 January 2002. In his evidence before this Committee, Mr. Scafton accepted that the document was a fair and accurate report of what he had said to Ms. Bryant.² The record of interview relevantly contained the following statements:

2 *Scafton Inquiry Hansard* p.64

Mr Scafton stated that he continued to be marginally involved in events around the incident until the week before the election and never had a sense that the original advice³ was not correct.

...

Ms Bryant asked Mr. Scafton when he became aware there was no evidence for the claim that children were thrown overboard from SIEV 4.

Mr. Scafton 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 claim may not have been correct.

Mr. Scafton stated that Mr. Reith and Dr. Nelson were very confident that the incident had occurred because of the advice they had received from the CDF and Real Admiral Smith respectively.

...

Mr. Scafton said that the day before the [video] tape was released (i.e. the day of or after the Prime Minister's appearance at the Press Club where he had agreed to release the tape), Mr. Reith rang Mr. Scafton asking him to view one copy of the tape which was held at Maritime Headquarters. Mr. Scafton went to look at the tape, which Commodore Hancock had arranged to be ready. Mr. Scafton said 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.

Mr Scafton stated 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.

...

11. Mr. Scafton's statement reported in the last quoted paragraph is the only reference to his conversations with the Prime Minister. He did not suggest that he said anything else to the Prime Minister. In particular, he did not suggest that he had told the Prime Minister that the original report was inaccurate (or words to that effect), he did not suggest he discussed the still photographs, and he did not suggest that he discussed with the Prime Minister a report from the Office of National Assessments, which provided some support for the original reports that children had been thrown overboard, and to which the Prime Minister had referred at his National Press Club appearance on 8 November.

12. Mr. Scafton also signed answers to four further written questions, also dated 3 January 2002. In answer to Question 4: "Do you recall being advised at any stage that there were no children among those in the water on 7 October?" he said "No."

13. At the time Mr. Scafton made his statement to the Bryant Inquiry, the fact of his telephone conversations with the Prime Minister on 7 November was not public

3 i.e. that children had been thrown overboard from SIEV 4

knowledge, and there would have been no particular reason to believe that they would become public knowledge. Nor was there any reason for him to believe that the content of his conversations with the Prime Minister would become politically controversial. The Bryant Inquiry was an internal inquiry, and there was not at the time, any suggestion that statements made to the inquiry would be publicly released.

14. The extent of the Prime Minister's knowledge of doubts about the original reports concerning the "children overboard" affair had become politically controversial by the time Parliament resumed in February 2002. On several occasions, set out in paras. 3.19 and 3.20 of the Majority Report, the Prime Minister insisted that at no time had he been advised by his Department or any other official that the original reports were wrong, and that he had no reason to believe they were. So far as Mr. Scafton was concerned, this was entirely consistent with his statements to the Bryant Inquiry (made 37 days after the conversations), which involve no suggestion that he told the Prime Minister any such thing, and which in fact assert that Mr. Scafton himself never had a sense that the original advice was not correct. In other words, what the Prime Minister said on 12 February 2002 was the same as what Mr. Scafton had said on 14 December 2001.

15. The Report of the Senate Select Committee on a Certain Maritime Incident ("the CMI Committee") was tabled in October 2002. That Report identified the fact that Mr. Scafton had had telephone conversations with the Prime Minister on the evening of 7 November. Mr. Scafton did not appear before the CMI Committee, although it had in evidence before it his statement to the Bryant Inquiry. The Majority Report of the CMI Committee concluded that it was unable to make any findings about what Mr Scafton may have told the Prime Minister (although the only relevant evidence before it, Mr. Scafton's statement to Bryant, was uncontradicted and unambiguous).

16. There the matter rested until 16 August 2004 when, out of the blue but notably at a time when speculation was rife that the Prime Minister would shortly call an election Mr. Scafton published a letter to *The Australian*, concerning his conversations with Mr Howard on 7 November 2001. Mr. Scafton did not suggest that the letter was based upon any contemporaneous notes or *aides memoire*, nor is there any reason to doubt that the letter was written immediately prior to the date on which it was published. In other words, the letter is based upon Mr. Scafton's unassisted recollection almost three years after the event.

17. The key paragraphs of the letter are set out in paragraph 3.4 of the Majority Report. In short, Mr. Scafton claimed that, in the course of 3 telephone conversations with the Prime Minister on the evening of 7 November 2001, he told the Prime Minister (a) that the videotape was inconclusive; (b) that photographs released in early October were not of the "children overboard" incident; and (c) that no one in Defence with whom he dealt believed that any children had been thrown overboard. Paragraph (a) is consistent with what Mr. Scafton told the Bryant Inquiry. Paragraphs (b) and (c) refer to matters of which no mention is made in Mr. Scafton's statement to the Bryant Inquiry, and paragraph (c) is in direct contradiction of his statement to the

Bryant Inquiry, appearing in the first quoted paragraph in paragraph 10 above, as well of his answer to written question 4 quoted in paragraph 12 above. He also referred to a discussion of an ONA report on the incident, which is not referred to in his statement to the Bryant Inquiry either.

18. In response to Mr. Scafton's new claims, the Prime Minister issued a statement (set out at paragraph 3.6 of the Majority Report) which affirmed the statement which he had made in the House of Representatives on 12 February 2002 (as well as in a number of media interviews, relevant extracts of which are set out at paragraphs 3.8 – 3.16 of the Majority Report). The Prime Minister's statement referred to Mr. Scafton's evidence to the Bryant Inquiry.

19. On the basis of Mr. Scafton's new claims, on 30 August 2004 (the day after the 2004 Federal election had been called) the Senate established this Committee. It held one public hearing, on 1 September 2004, at which the principal witness was Mr. Scafton.

20. In Mr. Scafton's opening statement to the Committee, he repeated the claims which he had made in his 16 August 2004 letter to *The Australian*. As had been the case in his letter to *The Australian*, Mr. Scafton stated that he had spoken to the Prime Minister on his mobile phone three times during the course of the evening.⁴

21. Mr. Scafton appreciated that his more recent version of the conversation was inconsistent with his statement to the Bryant Inquiry and, were they to be believed, he must accept that he had misled that inquiry – both by making a deliberately false statement (the first paragraph quoted in paragraph 10 above) and also by deliberately omitting material matters.⁵ In particular, he said that his statement to the Bryant Inquiry that he never had doubts about the accuracy of the initial report was "not true". He sought to explain this in four ways.

22. In the first place, Mr. Scafton claimed that he had, at the time of his interview with Ms. Bryant, been constrained by a Cabinet directive. He had not seen a copy of the Cabinet directive, but claimed that he had been advised of it by Dr Allan Hawke (the Secretary of the Department of Defence), Mr. Matt Brown (the Chief of Staff to the new Defence Minister, Senator Hill) and Mr. Peter Hendy (the Chief of Staff to the former Defence Minister, Mr Peter Rieth, who had retired at the election). However, Mr Scafton went on to say that he had not spoken to either Brown or Hendy about the Cabinet directive before the time of Senate Estimates hearings in February 2002, some 2 months *after* he spoke to Bryant. He could not recall when he spoke to Hawke. He never saw the Cabinet directive. In the end, Mr. Scafton's evidence about his understanding of the Cabinet directive was:

Mr Scafton – I could not know if I was confused about it or not. I have never seen it.

4 *Scafton Inquiry Hansard* p.6.

5 *Scafton Inquiry Hansard* pp.46, 64, 70, 73

Senator BRANDIS – So you are not saying you were confused about it. You might have been?

Mr. Scafton – No, I am not sure if I am confused or not. I know that I am not confused about something I do not know anything about. I never saw the decision.⁶

Ultimately, Mr. Scafton did not dispute that the only relevant Cabinet directive was one dated 11 March 2002, which constrained participation by staff employed under the *Members of Parliament (Staff) Act* ("the MOP(S) Act") in participating in the CMI Inquiry. At the time Scafton spoke to Bryant, there was no operative Cabinet directive at all.⁷

23. The second ground advanced by Mr. Scafton to justify his allegedly misleading statements to the Bryant Inquiry were that since it was a public service inquiry, and he was at the time of the relevant events a member of Ministerial staff employed under the MOP(S) Act, the terms of reference of the Inquiry (set out in the Prime Minister's letter to Mr. Moore-Wilton dated 13 November 2001, the relevant portions of which are quoted at para. 9 above) did not apply to him.⁸ The difficulties with that view are:

- (a) The terms of reference of the Bryant Inquiry were not so limited as Mr. Scafton insisted. It was not limited to public servants, and the term of reference which was relevant to Scafton (i.e. "the nature of advice provided to Government ministers, and how it was transmitted") dealt with the very thing with which Ministerial advisers were most immediately concerned;
- (b) Mr. Scafton, at the time he was interviewed by Ms. Bryant made no objection on the ground that the terms of reference did not apply to him and freely participated;
- (c) The very matters which Mr. Scafton lately claimed he withheld from the Bryant Inquiry (i.e. the additional topics, apart from the video, first mentioned in his letter to *The Australian*) were not of a materially different character to the one topic – i.e. the contents of the video – which, it is uncontroversial, he did discuss. If the MOP(S) Act was a proper excuse or justification for him withholding information about the other topics, why did he feel unconstrained about discussing the video.

24. Mr. Scafton also sought to justify his alleged withholding of relevant information from the Bryant Inquiry on the ground of confidentiality:

6 *Scafton Inquiry Hansard* p.48

7 *ibid.*

8 *ibid.* p.54

I co operated with Jennifer [Bryant] to the extent that I though I reasonably could, without revealing any of the things which were critically damaging or controversial about my time in the minister's office.⁹

Yet the information which Scafton did reveal to Bryant could not, on 14 December 2001, have been thought of as having any greater (or lesser) degree of confidentiality than the information which he lately claims to have withheld. Furthermore, the Bryant Inquiry was an internal inquiry – Scafton had no reason to believe that anything he said would be aired in the public arena, so as to expose the confidence to risk. Finally, as the Prime Minister's letter to Mr. Moore-Wilton makes abundantly clear, what the Prime Minister was seeking was "a *full* examination of ...the nature of advice provided to Government ministers", there was no rationale or justification in a witness, freely participating, acting as Mr. Scafton claims he acted.

25. Finally, Mr. Scafton claimed that he had self-censored his evidence to the Bryant Inquiry because he was concerned about the possible effect upon his public service career, particularly in view of what was evidently a bad personal relationship with Mr. Moore-Wilton. He said "that was a major consideration".¹⁰ If that were to be accepted, the best that can be said for Mr. Scafton is that his lack of candour to the Bryant Inquiry was self-serving. Yet even that pusillanimous explanation of his conduct strains credulity. Why would Mr. Scafton feel afraid to tell the truth to a confidential internal inquiry, commissioned by the Prime Minister, when (on his new version of events) he had been prepared to tell the Prime Minister himself? One thing it is *certain* would not have come as a revelation to the Prime Minister, would be for Mr. Scafton to relate to Ms. Bryant what he had already told Mr. Howard. And, as we have pointed out more than once, at the time Mr. Scafton spoke to Ms. Bryant, he had no reason to believe that the conversation with the Prime Minister (which was not publicly known at the time) would become a matter of political controversy.

26. In the view of Government Senators, Mr. Scafton's various attempts to discredit *his own evidence* to the Bryant Inquiry are inconsistent with the both the chronological record and the documentary evidence, implausible, irrational and evasive. Without setting out the *Hansard* extract at length, we draw attention to the examination of Mr. Scafton between pp. 45-64, where interested persons can make up their own minds. It is, in our view, the almost inescapable conclusion that on 14 December 2001, Mr. Scafton had no reason or motive to lie to, or be less than candid with, Ms Bryant. Ironically, Mr. Scafton's attempts to discredit his own evidence to the Bryant Inquiry only make sense if one accepts the premise that, at the time he spoke to her, his conduct was dishonest.

27. Against that background, Government Senators turn to consider Mr. Scafton's evidence to this Inquiry concerning his telephone conversations with the Prime Minister.

9 *ibid.* p.55

10 *ibid.* p.62

28. A considerable amount of attention was devoted at the hearing of this Committee to the question of how many telephone conversations took place. In his statement to the Bryant Inquiry, Mr. Scafton had said there were "a couple". In his letter to *The Australian*, he stated without qualification that there were three. In his opening statement to this Inquiry, he stated:

I spoke to the Prime Minister by mobile phone on a number of occasions. My recollection is that it was three times, but it is possible that I have conflated the number of issues with the number of calls.¹¹

This is itself curious, since Mr. Scafton then identifies *four* issues about which he claims to have spoken with the Prime Minister. But a fair reading of Mr. Scafton's evidence suggests that he was trying to say that to the best of his recollection there were three conversations, but he accepted that there might have been only two. He does not suggest that there were four.

29. The number of telephone conversations is not an important issue in itself. But it does have a probative significance in two ways. First, the reliability of Mr. Scafton's evidence depends upon the clarity of his recollection of the (now distant) events of 7 November 2001, and inconsistent or uncertain evidence about the telephone calls themselves is some indication (although not a conclusive one) of the reliability of his memory about the event overall. Secondly, and more importantly, the number of telephone conversations is important in the context of the *sequence* of the topics discussed, for the reasons which will be developed below.

30. Mr. Scafton's evidence before this Inquiry about the telephone conversations occurs at four points: in his opening statement and in his answers to questions from Senators Faulkner, Brandis and Ferguson. Rather than paraphrase, we set out the relevant evidence.

31. In his opening statement, Mr. Scafton described the conversations in these terms:

On my way to dinner that evening I detoured to Maritime Headquarters and watched the tape in the company of Commodore Max Hancock, Chief of Staff to the Maritime Commander. After watching the relevant portion of the tape—about 15 minutes—twice, I returned the minister's call and advised him that it was at best inconclusive. He said that he had to call the Prime Minister and would get back to me. Shortly after, he rang again and said that he had given my mobile number to the Prime Minister and that I could expect a call later in the evening. I continued on to dinner. Later in the evening of 7 November 2001 I spoke to the Prime Minister by mobile phone on a number of occasions. My recollection is that it was three times, but it is possible that I have conflated the number of issues discussed with the number of calls. In the course of those calls I recounted to him:

11 *ibid.* p.6

- that the tape was at best inconclusive as to whether there were any children in the water but certainly did not support the proposition that the event had occurred;
- that the photographs that had been released in early October were definitely of the sinking of the refugee boat on 8 October and not of any children being thrown into the water; and
- that no-one in Defence that I had dealt with on the matter still believed that any children were thrown overboard.

During the last conversation the Prime Minister asked me how it was that he had a report from the Office of National Assessments confirming the ‘children overboard’ incident. I replied that I had gained the impression that the report had as its source the public statements of the minister for immigration. When queried by him as to how this could be, I suggested that the question was best directed to Kim Jones, then Director-General of ONA.

32. In response to questions from Senator Faulkner, Mr. Scafton's evidence was as follows:

Mr Scafton—Peter Reith rang me, saying he had been talking to the Prime Minister, there was some concern about the article that had appeared in the *Australian* that morning and that they wanted somebody they could trust to go along and have a look at the tape, which was at Maritime Headquarters—which was the first time I became aware that the tape was actually in Maritime Headquarters.

CHAIR—Could I interrupt again for a moment. I assume you were chosen because you were the only ministerial staffer in Sydney.

Mr Scafton—I think that is correct—no other reason. I made some phone calls and arranged to go to Maritime Headquarters to view the tape. I took my dinner companion with me. She sat in the outer office while I went in with Commodore Max Hancock, Chief of Staff. Max explained to me that the tape was some 24 or 30 hours long—quite a long tape but they had focused it down to the relevant bits, about 15 or 17 minutes worth of tape. We sat and watched that twice, looking at what it showed. It showed a man with a child on the top of the boat, but you could not see the far side. You could see some heads bobbing in the water. But it certainly did not indicate anything about anybody being thrown in. After that, I rang Minister Reith back and explained to him my interpretation of the tape, which was that it was at best inconclusive and certainly did not support the proposition that children had been thrown overboard. He said to me he had to call the Prime Minister back on this and he would get back to me. I hung around Maritime Headquarters. Twenty minutes or so later he rang me back and said that he had given my mobile number to the Prime Minister and the Prime Minister would call me about the tape—he wanted to hear first hand. I asked him whether he knew what sort of time frame that would occur in. He said, ‘No.’ I said, ‘I’m going out to dinner.’ He said, ‘Well, go; the Prime Minister will ring you at some point.’ I was sitting down to entree when the Prime Minister rang.

Senator FAULKNER—We will not ask you what the menu was, Mr Scrafton.

Mr Scrafton—The food was cold by the time I got to it. The Prime Minister rang. I went through the issue of the video with him—what was on it. That was all I was asked to do. He rang me back later with some clarifying questions. My recollection is that I at that point explained to him that not only was the tape inconclusive but nobody I dealt with in Defence believed that the event had taken place—and that the photographs represented the sinking the day after the supposed event. My recollection at that point is that he rang me back again afterwards specifically to ask me about the ONA report that he had. I said that, from my discussions with people in Defence, in Strategic Command, the impression was going around that this must have been based on the minister's statements rather than on intelligence sources. He said, 'How could that possibly be?' I suggested he talk to Kim Jones about it, and that was the end of our discussion.¹²

...

Senator FAULKNER—So the Prime Minister rang?

Mr Scrafton—The Prime Minister rang me. He started out by saying, 'John Howard here. I have with me,'—and he ran through a series of names. I did not pick up all of them, but certainly Arthur Sinodinos, Tony Nutt and O'Leary were people that—I knew who they were.

Senator FAULKNER—Did you think they were on a speakerphone or did you think it was just a—

Mr Scrafton—No. The reason I did not think we were on a speakerphone was because the Prime Minister repeated everything I said during that first phone call. I would say, 'I have just viewed the video and I looked at about 15 minutes of tape,' and he would then repeat that out loud. I could hear him doing that. I had the impression that he was doing that for the benefit of whoever was in the room.

Senator FAULKNER—Did you feel that he repeated it accurately and fairly?

Mr Scrafton—Yes. He repeated verbatim what I was saying. I will say that in subsequent conversations he did not do that. He just spoke directly and conversationally to me.

Senator FAULKNER—Could you provide to the committee as much detail as you can about the contents of that first conversation?

Mr Scrafton—I think that I have done this in my statement. Basically I went through what I have said already: that I had looked at the tape; that it showed black, bobbing items on the other side of the boat that looked like they could have been people in the water; that it showed a man and a child on the roof of the boat but that he certainly was not in my view in any way

threatening in his behaviour to the child; and that you could not from what I had seen of the video draw any conclusion that the event had happened. At best you could say it was inconclusive. He asked a couple of clarifying questions along the lines of: how long was the whole tape? I said that it was very long and that is why we just looked at an excerpt from it, but Maritime Command had sorted out which was the right bit. Then he hung up—he said, ‘I’ll get back to you,’ and then he hung up.

Senator FAULKNER—Were you able to recall any other clarifying questions?

Mr Scafton—There may have been, but I cannot recall.

Senator FAULKNER—Are you able to indicate whether you informed the Prime Minister that you viewed this particular tape in the company of Commodore Hancock?

Mr Scafton—I do not think I said that.

Senator FAULKNER—After providing that information to the Prime Minister, the Prime Minister said he would get back to you?

Mr Scafton—Yes.

Senator FAULKNER—Can you be as precise as you can about when he got back to you?

Mr Scafton—Probably about 15 to 20 minutes later. He rang me back and asked about the photographs. I had eaten my cold entree and was onto my main course.

Senator FAULKNER—As I said, I am not going to ask you about the menu. You had already told Mr Jordana, though, that the photographs did not represent the incident at all.

Mr Scafton—That is correct.

Senator FAULKNER—Did you tell Mr Howard that you had already told his senior staffer that the photographs did not represent the incident at all?

Mr Scafton—No. I was dealing with the Prime Minister over a mobile phone in a restaurant. I did not engage him on a lot of detail.

Senator FAULKNER—Quite seriously, Mr Scafton, I think we all understand the power relationships in these circumstances. Did you inform the Prime Minister in similar terms about the photographs, as you had informed his senior adviser a day or two earlier?

Mr Scafton—Yes.

Senator FAULKNER—Was your advice to the Prime Minister categorical?

Mr Scafton—Yes.

Senator BRANDIS—What did you say? What were your words? Do not tell us what conclusion you thought had been achieved; just tell us as well as you can remember what you said. We understand that you cannot give us

a verbatim account but as well as you can remember tell us the substance and effect of the words you used.

Mr Scafton—As well as I can remember, I said that the photographs actually represented the saving of the people in the water from the sinking of the boat the day after the 7th. I said something to that effect. I specifically referred to the fact that it was of the sinking of the boat and that it was of the rescuing of the people from the water.

Senator BRANDIS—Is that it?

Mr Scafton—Yes.

Senator BRANDIS—Thank you.

Senator FAULKNER—So that advice was clear and categorical?

Mr Scafton—Yes.

Senator FAULKNER—What else did he ask you about, or was this conversation effectively limited to the photographs?

Mr Scafton—It appeared to me from the Prime Minister's responses that he was surprised at what I was telling him. At that point, with my heart in my mouth, I said, 'And nobody whom I deal with in Defence actually believes that the event took place, Prime Minister.' It was because of the way the Prime Minister had responded that I felt I should add that comment.

Senator FAULKNER—Can you explain that a little more?

Mr Scafton—The Prime Minister genuinely sounded surprised when I said to him that the photographs were not of the event that he thought they were.

Senator BARTLETT—So you were surprised that he was surprised.

Mr Scafton—Yes, in a sense. It was not the reaction that I had expected. But he had opened the discussion on the photographs and asked me, so I then volunteered the further information that nobody in Defence who I had dealt with considered the event had actually taken place.

Senator FAULKNER—This conversation relates to the photographs, which you indicated were categorically a misrepresentation of the event.

Mr Scafton—That is correct.

Senator FAULKNER—You went on to say that nobody in Defence actually believed the incident—that is, children being thrown overboard—took place. Are you able to say whether anything else occurred in that conversation?

Mr Scafton—No. Again, at this point my recollection and the Prime Minister's vary, although I do not know what the Prime Minister thinks the second conversation was about. He has said that there were two conversations, but he has not said what he thought the second conversation might have been about. Our recollections on the number of phone calls diverge at this point. Again, my recollection is that he ended the phone call at that point and then a little while later, about the same sort of time, I suppose—15 or 20 minutes—he rang me back concerning the ONA report,

asking me how it was that ONA was reporting on an issue as factual when I was telling him that it had not occurred.

Senator FAULKNER—Given your much interrupted dinner, have you checked privately or personally with your dinner companion of the evening as to whether your dinner companion can recall the number of phone conversations?

Mr Scafton—No, I have not checked—for two reasons. One is that the two very expensive bottles of wine we had were both drunk mostly by her, getting angry while I was away from the table talking to the Prime Minister.

Senator FAULKNER—That is a real-world note for our committee.

Mr Scafton—She probably has less recollection than I do of what happened that night.

Senator FAULKNER—I assume you did not take these calls at the dinner table itself.

Mr Scafton—No, I did not. I got up and moved away from the table, down to the far end of the restaurant.

Senator FAULKNER—I think everyone would accept that that was appropriate. Let us go then, if we can, to what you believe was the final phone call, certainly about the other outstanding issue, which is the ONA report. Can you outline to the committee, please, what the purport of the Prime Minister's question was in relation to that particular report?

Mr Scafton—The Prime Minister rang me back and seemed quite genuinely concerned or perturbed that he did have the ONA report and that the report might not have been accurate if what I had told him was true. He said, 'How could this be that I would have this report and have you telling me the opposite?' I suggested to him that it was an inappropriate question to ask me and he should refer it to Kim Jones, Director-General of ONA—at which point the conversation again ended.¹³

33. In response to questions from Government Senators, Mr. Scafton's evidence was:

Senator BRANDIS—You can recall you had three conversations?

Mr Scafton—Yes.

Senator BRANDIS—Are you sure about that?

Mr Scafton—Absolutely.

Senator BRANDIS—Okay. You used the expression 'a couple of times' to Jennifer Bryant, though now, three years later, you are absolutely sure there were three. How do you explain that discrepancy?

Mr Scafton—I am not going to keep going around this.¹⁴

13 *Scafton Inquiry Hansard* pp.39-42

14 *Scafton Inquiry Hansard* p.92

...

Mr Scafton—I will go back to the issue that I was in an incredibly stressful situation of talking to the Prime Minister about things that the Prime Minister, to all of my understanding, should have known but seemed not to have known. I was, in a sense presumptuously, correcting the record for him. Do I remember what I had for entree that night? No, I do not.

Senator BRANDIS—Yes, you do. You said it was a cold entree. You remember that much about it.

Mr Scafton—I said it was cold but I do not know what it was. Do I remember what the wine was? No, I do not. I cannot even remember the name of the restaurant but I know that it was in Leichhardt.

Senator BRANDIS—You need not go into that. I am interested in your recollection.

Mr Scafton—I think this is important. I am trying to explain to you what I remember.

Senator BRANDIS—If you think it is important, go ahead.

Mr Scafton—Okay. I am trying to explain to you what I remember. The very salient issue that is burnt on my mind from that evening is what I said to the Prime Minister. There was more than one phone call. My recollection is that there were three. I am not prepared to go to the grave fighting over that but I have no doubt whatsoever as to what I said.

Senator BRANDIS—In answers to some questions from Senator Faulkner this morning, you gave evidence that, in the course of the sequence of telephone conversations, you really discussed four things. You discussed the video, you say you discussed the photographs, you say you made the remark that nobody in Defence whom you dealt with believed that children had been thrown overboard and you say you discussed the ONA report.

Mr Scafton—That is correct.

Senator BRANDIS—Is that right?

Mr Scafton—That is correct.

Senator BRANDIS—And your evidence to Senator Faulkner was that it was in the first telephone call that you discussed the video.

Mr Scafton—That is correct.

Senator BRANDIS—You remember that?

Mr Scafton—Yes.

Senator BRANDIS—And your evidence to Senator Faulkner was as well that in the course of the first telephone call—that is, the telephone call during which you discussed the video—the Prime Minister adopted the practice of repeating what you were saying to him, so that you surmise his advisers in the room with him would have heard his reiteration of what you had just said to him. Is that correct?

Mr Scafton—That was my surmise, yes.

Senator BRANDIS—And you also said to Senator Faulkner that, to the best of your recollection, the Prime Minister’s reiteration of what you said to him was accurate?

Mr Scafton—That is correct.

Senator BRANDIS—So we can say, then, that the four advisers in the room heard via the Prime Minister’s reiteration of what you said to him everything that you said to the Prime Minister.

Mr Scafton—In the first conversation.

Senator BRANDIS—In the first conversation.¹⁵

...

Senator BRANDIS—In each case the conversations were conversations initiated by the Prime Minister—you received his calls?

Mr Scafton—That is correct.

Senator BRANDIS—Are you quite certain of that?

Mr Scafton—Yes. I did not have his number.

Senator BRANDIS—Remind us again, please, how long the first conversation—that is, the one that was limited to the video evidence—took.

Mr Scafton—A few minutes. It is difficult to say. Probably up to five minutes. I cannot remember the exact period.

Senator BRANDIS—I am not asking you to remember the exact time—just approximately.

Mr Scafton—It was long enough for me to describe to him pretty much what I have said to the committee about what was on the video.

Senator BRANDIS—We understand that. That was over the cold entree. ‘Then 15 or 20 minutes later he rang me back and asked about the photographs. I had eaten my cold entree and was on to my main course.’ I am reading from your evidence this morning. You are quite sure about that?

Mr Scafton—Yes.

Senator BRANDIS—It could not have been significantly longer than that estimate of 15 to 20 minutes?

Mr Scafton—Not significantly longer, I wouldn’t think—about that sort of time frame.

Senator BRANDIS—Certainly not longer than the time it takes, at a reasonable restaurant, between an entree and a main course being served.

Mr Scafton—No, I assume so.

Senator BRANDIS—Your evidence has been that in the second conversation he did not repeat the custom that he had adopted in the first conversation of reiterating your remarks so that if there were people with

him your remarks could have been heard by them via his reiteration. Is that correct?

Mr Scafton—I am not quite sure what you said then—but, no, he did not reiterate what I said.

Senator BRANDIS—Did it strike you at the time as strange that the first time he had adopted that custom and the second time he had not?

Mr Scafton—I am not sure I reflected on it at the time but, thinking about it subsequently, in the first instance he was simply receiving information from me and in the second instance he was interrogating me over something.

Senator BRANDIS—You said he raised the subject of the photographs?

Mr Scafton—That is correct.

Senator BRANDIS—I am not going to ask you to recite again everything you have told Senator Faulkner this morning, because we have got it on the record. This was also the conversation when, according to your version of these events, you stated to the Prime Minister words to the effect: ‘Everybody I deal with in Defence believes that no children were overboard.’

Mr Scafton—That is correct.

Senator BRANDIS—And he sounded surprised, you said, I think.

Mr Scafton—That was my impression, yes.

Senator BRANDIS—So there were two topics of the second conversation, on your version of events. No. 1 was him asking you a series of questions about the photographs, which you responded to fully?

Mr Scafton—Yes.

Senator BRANDIS—About how many questions did he ask you, roughly?

Mr Scafton—Two or three, I suppose.

Senator BRANDIS—You may as well tell us again what they were.

Mr Scafton—Again, I cannot remember in full detail.

Senator BRANDIS—I am not asking you for that. We know you cannot give us them verbatim.

Mr Scafton—He inquired something along the lines of: what about the photographs then? I explained to him in an exchange that the photographs were of the sinking of the boat. Then I offered information to him that the event had not happened, based on my discussions with people in Defence.

Senator BRANDIS—What did he say?

Mr Scafton—That he would get back to me. He sounded surprised. He said, ‘Is that what you are saying? Then we ended the conversation.’

Senator BRANDIS—Surely, before you ended the conversation it must follow from what you have already told us that you then made the observation that nobody in Defence believed—

Mr Scafton—That is what I just said, Senator.

Senator BRANDIS—I thought you were still talking about the photographs.

Mr Scafton—No, I said after we had discussed the photographs I led into the discussion and I offered the view to the Prime Minister off my own bat that nobody I dealt with in Defence at that stage believed that the event took place.

Senator BRANDIS—If your version of events is to be believed, it was presumably the most challenging thing you said to the Prime Minister from your point of view?

Mr Scafton—It was the most difficult thing to say, yes.

Senator BRANDIS—All right. Was there any reaction from him? When you say he seemed ‘surprised’, how was that apparent surprise manifested?

Mr Scafton—Along the lines of: so what are you telling me? It was a question along those lines.

Senator BRANDIS—What did you say? Did you repeat the statement?

Mr Scafton—I confirmed for him what I had just said.

Senator BRANDIS—In substantially the same words?

Mr Scafton—In substantially the same terms.

Senator BRANDIS—Okay. So when you had finished talking about the photographs you initiated the remark about nobody believing that children had been thrown into the water. That was not a response to a question?

Mr Scafton—No.

Senator BRANDIS—You nailed your courage to the sticking place and you said to the Prime Minister words to the effect that you have just recited?

Mr Scafton—Yes.

Senator BRANDIS—And he said, according to you, ‘What are you telling me?’ and you said those words again?

Mr Scafton—Something like that, yes.

Senator BRANDIS—What did he then say when you had said them a second time?

Mr Scafton—The conversation ended. I think he said something along the lines of: ‘I will have to get back to you’ or ‘I will deal with this’—I cannot remember exactly.

Senator BRANDIS—He terminated the conversation?

Mr Scafton—My recollection is that he terminated the conversation.

Senator BRANDIS—I should ask that about the first conversation too. Did he terminate the first conversation?

Mr Scafton—Nobody hangs up on the Prime Minister, or at least I do not.

Senator BRANDIS—You are quite sure? I want to give you every opportunity to—

Mr Scafton—Senator, I have signed a statutory declaration. I have taken a polygraph. This is exactly how I recollect what happened.

Senator BRANDIS—Then there was a third conversation when he rang back again?

Mr Scafton—I am prepared to entertain the possibility that this continued on from that conversation. I have said that in my opening statement. I was not keeping a record of how many times I spoke to him at this stage. This was an enormous thing for me to have done personally in the circumstances.

Senator BRANDIS—Let me remind you of what your evidence was this morning. You said:

Again, my recollection is that he ended the phone call—

this is referring to the second conversation—

at that point and then a little while later, about the same sort of time, I suppose—15 or 20 minutes—he rang me back concerning the ONA report, asking me how it was that ONA was reporting on an issue as factual when I was telling him that it had not occurred.

Then Senator Faulkner asked you:

Given your much interrupted dinner, have you checked privately or personally with your dinner companion of the evening as to whether your dinner companion can recall the number of phone conversations?

You responded:

No, I have not checked—for two reasons. One is that the two very expensive bottles of wine we had were both drunk mostly by her, getting angry while I was away from the table talking to the Prime Minister.

So you stood up and walked away from the table?

Mr Scafton—I have already said that. I walked away from the table.

Senator BRANDIS—That is the position you adopt in relation to all three of the conversations?

Mr Scafton—That is my recollection.

Senator FAULKNER—I just want to be clear with Mr Scafton. My understanding is that you have given evidence that you believe there were three phone conversations with the Prime Minister, but you do accept there might have been two. Is that basically it in a nutshell?

Mr Scafton—That is correct, yes.

Senator FAULKNER—I am putting it in layman's language; of course, I am not an eminent lawyer like Senator Brandis. You think there were three telephone conversations but you accept that there might have been two?

Mr Scafton—I am prepared to admit that it was a very stressful situation so that is why I am trying—

Senator FAULKNER—I understand. I am just trying to cut to the chase.

Mr Scrafton—There could have been two. I recall three.

Senator FAULKNER—Thank you.

Senator BRANDIS—I do not think that Senator Faulkner and I are trying to get to any different point here. I understand you to be saying that, to the best of your recollection, there were three, but you allow for the possibility that there may have been two.

Mr Scrafton—That is correct.

Senator BRANDIS—Your best evidence, your most likely outcome, is that there were three.

Mr Scrafton—That is correct.¹⁶

...

Senator BRANDIS—Mr Scrafton, if you were wrong about it being three, not two, then I assume your evidence is that the last of the four topics discussed between you—that is, the question of the ONA report—was in the second conversation as well, and that is what you meant in your statement this morning when you said, ‘I may have been conflating the conversations’?

Mr Scrafton—Yes.

Senator BRANDIS—So there are two possibilities: the one you think is most likely is that in conversation 2 you talk about the photographs and you state and then repeat your view about children not being thrown overboard, and in the third conversation you talk about the ONA report.

Mr Scrafton—That is correct.

Senator BRANDIS—That is what you think happened, but you allow for the possibility that all three of those topics may have been discussed in the second conversation.

Mr Scrafton—That is correct.

Senator BRANDIS—That is putting it fairly?

Mr Scrafton—Yes.¹⁷

...

Senator FERGUSON—Mr Scrafton, right from early this morning we have been discussing the facts of recollections of events that happened three years ago. The question that has been publicly debated is your recollections of events as opposed to those of the Prime Minister. The Prime Minister said there were two telephone conversations and you insisted from the start—in your public statements and in your letter—that there were three.

16 *Scrafton Inquiry Hansard* pp.95-99

17 *Scrafton Inquiry Hansard* p.100

Mr Scafton—I would like to correct that. My statutory declaration says ‘several’, but I was not certain about the number.

Senator FERGUSON—You said today that there were three.

Mr Scafton—My opening statement says that I was prepared to accept—

Senator FERGUSON—In your interview with Mark Colvin you said, ‘I clearly recollect three phone calls.’

CHAIR—That is a separate question. Why don’t you ask that question now?

Senator FERGUSON—You clearly said to him, ‘I clearly recollect three phone calls.’

Mr Scafton—That is right.

Senator FERGUSON—The public debate that has been going on is that you said there were three phone calls and the Prime Minister said there were two.

Mr Scafton—The public debate is about what I said to the Prime Minister.

Senator FERGUSON—No, the public debate has also been over the number of phone calls and I think anybody who has read any newspapers would say that that is the fact. In this case, the Prime Minister’s recollection of two phone calls has been proved correct and your ‘clear recollection’, as you said to Mark Colvin, of three phone calls, has been proved incorrect.

...

Senator FERGUSON—I will accept that it is asserted. The other issue is the length of the first phone call. You said that everything that you were saying to the Prime Minister was being relayed to the other people in the room. You asserted that this morning. That phone call was some nine minutes. The four people in that room have all corroborated by public statement and affirmation that the Prime Minister only discussed the video in that first phone call. You have no corroboration for anything that you have said publicly. There is no written record; there is no note. There is no way that anybody can corroborate what you claim to have said. Yet, in one 51-second phone call, you must have covered all of those other things that you said the Prime Minister talked to you about—photographs, ONA and all of the other matters. I would leave it to the Australian public to judge whether or not the Prime Minister’s recollection in the second instance is far more believable than yours. If he has corroboration, don’t you think that that makes it more believable?

Mr Scafton—That is a strange question to ask me.¹⁸

34. We have taken the trouble of setting out Mr. Scafton's evidence on the critical conversations in its entirety, so that it cannot be said that our conclusions about the

18 *ibid.* pp.109-10

reliability of his evidence are based upon selective quotation. What he says speaks for itself, and we have given it in full.

35. On any fair reading of that evidence, the following conclusions emerge:

- (d) on the issue of the *number* of telephone conversations, Mr. Scafton's position varies from one of stubborn insistence that he clearly remembers three ("absolutely"), to equivocation on the issue of whether there were two conversations or three, to a final position that he recalls three, but it is possible his memory may have been defective and that there were only two;
- (e) on the issue of the *topics discussed*, Mr. Scafton insists that there were four (the video, the photographs, the alleged inaccuracy of the children overboard claims, and the ONA report);
- (f) on the important issue of the *sequence* in which the topics were discussed, Mr. Scafton was also adamant that the video was discussed first (in the first conversation), the photographs and the inaccuracy of the children overboard claim were discussed next (in the second conversation), and the ONA report was discussed last (in the third conversation). Matching the sequence of topics to the number of conversations, Mr. Scafton also agreed that if he was wrong about the *number* of conversations, then the second, third and fourth topics were all discussed in the second conversation.¹⁹

36. The one point of common ground which emerges between Mr. Scafton and the Prime Minister is that the *only topic of the first conversation was the video*. It was, for a reason which Mr. Scafton found unable to explain, only in the course of that conversation that the Prime Minister repeated for the benefit of those with him in the room (Messrs. McClintock, Sinodinos, Nutt and O'Leary) what Mr. Scafton was saying to him; he does not allege that at any point the Prime Minister's repetition of those matters was either inaccurate or incomplete. That is also corroborated by the statements of those four gentlemen, which are Appendix 4 to the Majority Report. On any view, then, the first conversation initiated by the Prime Minister to Mr. Scafton concerned only the video. What Mr. Scafton has said about that conversation to this Committee is consistent with what he said about it to Ms. Bryant.

37. During the course of the hearing, after the evidence set out above had been given, Senator Brandis produced the telephone records of all telephone land lines and mobile telephones at The Lodge on the evening on 7 November. Those records indicate that only two telephone calls were placed to Mr. Scafton's mobile telephone number from any of those telephones. (The calls were in fact placed from the Prime Minister's personal mobile phone.)

38. The records demonstrated that the Prime Minister's first call to Mr. Scafton was at 8.41 p.m., and lasted for nine minutes and 36 seconds. That, on all views of the evidence, was the telephone conversation in which the only topic covered was the video. Mr. Scafton agreed that although he had no direct recollection of the time of that conversation, "It is not impossible that it was 8.41."²⁰

39. The records also demonstrated that the second telephone call was initiated at 10.12 p.m., and that it lasted for only 51 seconds.²¹

40. By this time, Mr. Scafton had conceded that there were only two telephone calls:

"I think I have accepted that there were probably two phone calls."²²

He also conceded that all topics other than the video, which he claimed to have discussed with the Prime Minister subsequent to the first telephone call, could not have been dealt with in 51 seconds:

Senator BRANDIS—That call lasted for 51 seconds, Mr Scafton. That is what the record says, and we have offered to show the originals to other senators. If the record is accurate ... and what I have read to you from the record is true, those three topics, as you have discussed them, could not possibly have been discussed in 51 seconds, could they?

Mr Scafton—I suspect you are right, and I would suspect—

Senator BRANDIS—Barely time for pleasantries, for somebody to get on the line—

Mr Scafton—There were no pleasantries in talking to the Prime Minister on those sorts of issues.²³

41. Mr. Scafton then sought to suggest that the other topics were covered in the first telephone conversation, after all. Yet if (as all agree) the first conversation dealt only with the video, this position is unsustainable. It is plainly inconsistent with Mr Scafton's own unequivocal and emphatic evidence that the first conversation dealt only with the video. It is also contradicted by all four of the persons present when the Prime Minister made the first call, and repeated aloud what Mr. Scafton had told him. Mr. Scafton's attempt to retrieve his position appears from the following exchange:

Senator BRANDIS—Assuming that to be true, the second call was 51 seconds: how can you explain your evidence that those three topics were all covered in that time?

Mr Scafton—I can only assume that I am not only mistaken about the number of phone calls but what order they were discussed in. It certainly

20 *Scafton Inquiry Hansard* p.105

21 *Scafton Inquiry Hansard* p.106

22 *ibid*

23 *ibid*

did not take me 10 minutes to tell the Prime Minister about the video. I am not sure what the Prime Minister thinks he rang me back for 51 seconds on afterwards. What I am clear about is that, in the course of those phone calls, the four subjects were discussed.

Senator BRANDIS—Mr Scrafton, in the first phone call, unlike the subsequent phone call, you told Senator Faulkner this morning and you reaffirmed to me this afternoon that the Prime Minister adopted the custom of repeating out loud what you were saying to him, and he said that about the video—

Mr Scrafton—That is right.

Senator BRANDIS—not about the other topics. Can I tell you, these matters have been put on the public record, so I am sure you are aware of them.

Mr Scrafton—No, I have said that on several occasions.

Senator BRANDIS—I am sure you are aware that the four people who say they were in the room with the Prime Minister that evening say they do recall the Prime Minister conversing with you about the video but not about other matters. The Prime Minister himself has said that he conversed with you about the video but not about other matters. So, in the first phone call—the nine-minute-36-second phone call, the only one in which the advisers would have been able to hear what you were saying to the Prime Minister by medium of him—the only topic discussed was the video. That must follow.

Mr Scrafton—That was my recollection.

Senator BRANDIS—And that is also your recollection, both this morning and this afternoon.

Mr Scrafton—That is correct.

Senator BRANDIS—How can it be true that the other three topics were discussed in the second, 51-second phone call?

Mr Scrafton—I have been prepared all along to acknowledge that perhaps I had the sequence or the number of phone calls incorrect. What I am very clear about is what I discussed with the Prime Minister. It may have been the case that I discussed the first topics with him in the first phone call, and the last one was the one when he rang me on the ONA report.

Senator BRANDIS—So you are changing your story again, Mr Scrafton.²⁴

42. Further on the subject of Mr. Scrafton's credibility, it should be noted that he claimed that he had left his dining companion at the table for prolonged periods of time during each of the conversations – for so long, in fact, that "the two very expensive bottles of wine we had were both drunk mostly by her, getting angry while I was away from the table talking to the Prime Minister." Since the total length of both conversations was ten minutes twenty-seven seconds, Mr. Scrafton's evidence on this

point might be best described as merely corroborative detail, intended to give artistic verisimilitude to an otherwise bald and unconvincing narrative.²⁵

43. The campaign begun by Mr. Scafton to claim that the Prime Minister had misled the public over the "children overboard" affair, which had begun with his letter to *The Australian* on 16 August, appropriately ended with another letter to that newspaper on 4 September, advancing a yet further version of events. This was the fourth.

44. For completeness, the four different versions of these events given by Mr. Scafton were:

- (a) his evidence to the Bryant Inquiry on 14 December 2001;
- (b) his letter to *The Australian* on 16 August 2004;
- (c) his revision of his version of events before the Senate inquiry when confronted with the telephone records; and
- (d) his further revision in his letter to *The Weekend Australian* on 4 September 2004.

45. Government Senators do not find it necessary to express a conclusion as to whether Mr. Scafton was deliberately lying to the Senate Inquiry (although they make the point that, since Mr. Scafton himself told the Senate inquiry that his evidence to the Bryant Inquiry was "not true",²⁶ he is, by his own account of himself, a man who is prepared to lie about, and had already lied about, these events). They merely point out the variety of his inconsistent versions of these events; the fact that apart from his statement to the Bryant Inquiry, none of his recollections were made when they were fresh in his mind or are otherwise supported by contemporaneous evidence; his inexplicable silence for almost three years – long after he had left the Commonwealth Public Service – before he suddenly made the allegations at what can only be regarded as a politically strategic time; and the most important fact that his recent allegations simply cannot possibly be true in light of the objective evidence of the telephone records.

46. Even disregarding all of the factors recited in the last paragraph, the evidence of any witness, given when events are fresh in his mind and he has no reason to reconstruct or reinvent, would invariably be preferred by any court or fact-finding tribunal, to a different version offered for the first time three years later, in the absence of the emergence of any new fact which might have triggered a *bona fide* change in his memory. The fact that Mr. Scafton is, by his own admission, a person who was

25 *The Mikado*, Act II. This is not the first occasion upon which witnesses appearing before the Senate in relation to the children overboard affair have assumed a somewhat Gilbertian character: *cf.* CMI Report, p. 531, para. 9

26 *ibid.*p.70

prepared to lie about these matters can only make the credibility of his recently-made allegations even more doubtful.

47. In view of all of those circumstances, the "finding" of the majority report that Mr. Scafton is a credible witness is not just counterintuitive; it is virtually impossible to sustain on a fair reading of the evidence.

48. The entire weight of that evidence points the other way: that Mr. Scafton's original statement to Ms. Bryant's Inquiry was the truth. That statement was completely consistent with what the Prime Minister told Parliament on 12 February 2002, and what he said again during his press conference late morning on 1 September, before the cross-examination of Scafton had taken place:

JOURNALIST: You said you had two conversations with Mike Scafton.

PRIME MINISTER: Yes, that is my recollection.

JOURNALIST: What was the second one that day? Why did you feel you needed to ring him back?

PRIME MINISTER: Why did I feel ... well, look, Alex, I had two conversations with him to my recollection and you're asking me, I mean, my recollection is, I had a reasonably lengthy one and then I had a very short one. As for the second one, it was probably to tell him to put the video out.²⁷

That explanation is not only corroborated by the telephone records, but by Mr. Scafton's original version of the events.

Senator George Brandis

Deputy Chair

Senator Alan Ferguson

27 Transcript of Prime Minister's Doorstop Interview, Richmond, 1 September 2004, pp.5-6

