

## Additional Comments

### Senator Andrew Bartlett

I support the contents and findings of the main report, but wish to make a couple of additional points.

#### **The Scafton evidence – a missed opportunity**

The extra information that came to light through this Inquiry demonstrates that it would have been enormously preferable if the original Senate CMI Inquiry had been able to hear evidence from Mr Scafton and other Ministerial staff at the time. This inquiry was clearly hampered by being held after the start of the election campaign and it would definitely have served the public interest far better if the information Mr Scafton revealed had been made public at the time of the original Inquiry in 2002. The CMI report "highlighted a serious accountability vacuum at the level of ministers' offices"<sup>1</sup> and whilst there has been further work done by the Senate on trying to address that vacuum<sup>2</sup>, this Inquiry and the Government's contemptuous response to it shows that that vacuum remains.

I believe the CMI Committee made a serious mistake in 2002 in not pushing harder for potential witnesses such as Mr Scafton, Mr Reith, Mr Jordana and others to appear. It is a matter of public record<sup>3</sup> that during the original CMI Inquiry, I proposed that subpoenas be issued in an attempt to get important witnesses to appear before the Committee, but was unable to get support for this from other members of the Committee. Mr Scafton confirmed that such an approach would have been successful, at least in his case and most probably in the case of other Ministerial staff. Mr Scafton gave an unequivocal answer to a question on whether he would have appeared before the CMI Committee if the Committee had issued him with a subpoena:

*Mr Scafton—I would have appeared. The advice was provided to me by the Defence Legal Service at the time, who said that I would have had no alternative other than to appear before the Senate if I had been subpoenaed.*<sup>4</sup>

Whilst subpoenas should definitely be a last resort, in serious matters of public importance, such as this, I believe they should be pursued if necessary. One can only speculate how differently things may have turned out if Mr Scafton's evidence was given in 2002 rather than the end of 2004.

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<sup>1</sup> Para 7.107 – CMI report

<sup>2</sup> e.g. Senate Finance and Administration References Committee report into Staff employed under the *Members of Parliament (Staff) Act 1984*, October 2003

<sup>3</sup> e.g. Senator A. Bartlett, Senate debates, Hansard, 30/8/2004, p.26677

<sup>4</sup> Scafton Committee Hansard, 1/9/2004, p.11

Mr Scafton should be congratulated for having the courage to come forward on this matter. He has subjected himself to enormous public scrutiny and significant personal attacks on his integrity on a matter where he had nothing to gain personally and quite a bit to lose. It was clear to me from his evidence that his motivation was not to 'drop a bucket' on the Government. He kept his comments very much to the specific incident despite having ample opportunity to use the Committee hearing to make broader criticisms he could have wished of the Government. Whilst there were some discrepancies in his evidence - almost inevitable when recalling pressured events from three years in the past - I found him to be entirely credible. Whilst the event surrounding 'children overboard' will forever cause debate about whether or not the Prime Minister lied, I believe the real legacy is that it will be harder for an incident such as this to happen in the future. A future Government will find it harder to mislead the people in this way and harder to conscript an army of Ministerial and departmental staff to keep a serious falsehood from being corrected. That is the real and very valuable legacy of people such as Mr Scafton and for that he should be congratulated.

### **The real victims from the Children Overboard incident**

The second point I wish to raise relates to the refugees who were at the heart of the children overboard incident. There were 223 asylum seekers on board the SIEV 4<sup>5</sup> (the boat the children were alleged to have been thrown from), almost all of them Iraqi. This total included at least 74 children. The ordeal of the refugees on the SIEV 4 stretched over three days from when they set out in their grossly overcrowded boat to when they came close to drowning before being plucked out of the ocean by the crew of the HMAS *Adelaide* after their boat sank in the middle of the ocean around 5pm on 8 October, 2001. After their rescue, they were then transferred to Christmas Island, then on to detention on Manus Island and later to detention on Nauru. It should be noted that, more than three years after these asylum seekers endured their terrifying ordeal at sea, there are still asylum seekers imprisoned on Nauru, including 14 survivors from the SIEV 4.<sup>6</sup>

It is totally unacceptable that there are victims of the Government's Pacific Solution whose ordeal has still not ended, well over three years after they fled Iraq and other countries seeking freedom. At the time of writing, the Australian Government had just finished 'reassessing' 41 Iraqi asylum seekers, finally deciding that 27 of them are now deemed to be refugees, more than three years after their initial refugee application.<sup>7</sup> The Iraqis rejected by the Government were once again told to "return to their home country as quickly as possible"<sup>8</sup>, despite the fact that the United Nations High Commission for Refugees (UNHCR) advised as recently as September 2004 in its Return Advice regarding Iraqi asylum seekers for "States to postpone the introduction of measures which are intended to induce voluntary returns, including of rejected

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<sup>5</sup>Chapter 3 of CMI report

<sup>6</sup> <http://www.nauruwire.org/nauru.htm>

<sup>7</sup> Media release by the Minister for Immigration, Senator Amanda Vanstone, 2/12/2004

<sup>8</sup> *ibid*

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cases. This includes financial or other incentives and particularly deterrent or punitive measures." UNHCR also "strongly advises States to suspend the forced returns of Iraqi nationals to all parts of Iraq until further notice."<sup>9</sup> Apart from the 27 who have just been found to be refugees, there are 20 other Iraqi people also still imprisoned on Nauru, plus 30 from Afghanistan and 5 from other countries, all paid for by Australian taxpayers.<sup>10</sup>

Through all the many days of hearings of both this Committee and the CMI Inquiry, the asylum seekers at the centre of the children overboard allegations have never had the opportunity to put their side of the story on the public record. These people, many of whom are now living in Australia, were gravely defamed by the Prime Minister of Australia and at least three of his Ministers. The Prime Minister made public statements at least twice saying "I don't want people like that in Australia."<sup>11</sup> They have never received any apology for the enormous slur that was cast upon them. This failure should be corrected.

**Senator Andrew Bartlett**  
**Senator for Queensland**

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<sup>9</sup> UNHCR Return Advisory Regarding Iraqi Asylum Seekers and Refugees, September 2004

<sup>10</sup> <http://www.nauruwire.org/nauru.htm>

<sup>11</sup> "A bit of empathy wouldn't go amiss", Gerard Henderson, *Sydney Morning Herald*, 17/8/2004

